

EXPLANATORY MEMORANDUM TO

THE ELECTRONIC MONITORING (RESPONSIBLE PERSONS) ORDER 2018

2018 No. 212

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to describe the persons who may be made responsible for the monitoring of prisoners under the Criminal Justice and Court Services Act 2000 (“the 2000 Act”) section 62(2B). The need to make this order now is to add a new description of a person to monitor alcohol conditions.
- 2.2 This instrument lists the responsible persons for monitoring prisoners on licence and revokes article 4 of the Criminal Justice (Electronic Monitoring) (Responsible Person) (No. 2) Order 2014; and the Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2016. Revoking these instruments allows all the responsible persons for monitoring licence conditions requiring electronic monitoring to be set out in a single instrument under the new power and removes from the statute book any listed person who will no longer be responsible.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 62(2B) of the 2000 Act, states that a person may not be made responsible for the monitoring of prisoners under section 62, unless they are of a description specified in an order by the Secretary of State. This order specifies all those responsible in one order.
- 4.2 The Responsible Persons specified in the Order are ones employed by, Capita Business Services Limited, Alcohol Monitoring Systems Limited and G4S Monitoring Technologies Limited. Capita currently monitor the tags set to support other licence conditions (like exclusion zones) and whereabouts of an offender, and also home detention curfew in England and Wales. G4S monitor offenders released on home detention curfew in Scotland. Alcohol monitoring services monitor tags imposed to monitor an alcohol abstinence condition on a licence.

- 4.3 The following two instruments are repealed in the new order so there is just one legislative list of persons responsible for the electronic monitoring of offenders on licence.
- 4.4 Article 4 of the Criminal Justice (Electronic Monitoring) (Responsible Person) (No. 2) Order 2014 was originally made under section 253 of the Criminal Justice Act 2003 to list the persons responsible for monitoring of curfews of those on licence. That provision has since been repealed and section 62 now applies to all electronic monitoring on licence
- 4.5 The Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2016 describes the monitoring arrangements for location monitoring on licence for the purposes of a pilot.

5. Extent and Territorial Application

- 5.1 The extent and territorial application of this instrument is England and Wales.
- 5.2 The description in this Order of the person who can be made responsible for monitoring a person released on Home Detention Curfew in Scotland, is for the purposes of applying the release provisions in England and Wales (see below at 7.5).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Criminal Justice and Court Services Act 2000 section 62(2B), states that a person may not be made responsible for the monitoring of prisoners under section 62, unless they are of a description specified in an order by the Secretary of State.
- 7.2 This is an administrative instrument for the purposes of stating in a single instrument the responsible persons for monitoring licence conditions requiring electronic monitoring. Instruments no longer required will be revoked.
- 7.3 The responsible persons named in the Order receive and process the data collected or transmitted by the electronic monitoring device. The Criminal Justice (Sentencing) (Licence Conditions) (Amendment) Order 2017 has introduced a new licence condition that can be electronically monitored and the responsible persons for the new condition need to be named in an Order.

Licence conditions

- 7.4 Prisoners may be released from custody into the community for a period of time to be spent on licence as part of their sentence and they will be bound by a number of licence conditions. When preparing for the release of a sentenced prisoner, supervising officers will consider what licence conditions should be imposed and these can include electronic monitoring where that is considered to be necessary and proportionate to manage the offender's assessed level of risk. The licence conditions will be imposed by the governor of a prison on behalf of the Secretary of State or by

the Parole Board, following recommendations by supervising officers and senior probation staff.

- 7.5 The aims of the licence conditions are to protect the public, to prevent re-offending and to secure the successful re-integration of the offender into the community. Licence conditions should be preventative as opposed to punitive and must be proportionate, reasonable and necessary. A licence must contain the six standard licence conditions which include to be of good behaviour and not to commit any offence, and to keep in touch with the supervising officer. Additional conditions can be imposed to better manage the risk of serious harm and reoffending if they are necessary and proportionate and do not go further than is necessary to manage the risk. Supervising officers will decide whether to recommend any additional licence conditions.
- 7.6 As above licence conditions are not generally imposed for punitive reasons, the exception is where prisoners are released early on Home Detention Curfew (HDC) under section 246 of the Criminal Justice Act 2003 and are required by section 253 of that Act to be released subject to an electronically monitored curfew as a condition of the licence. For these prisoners the curfew also has a punitive role that reflects the fact that they are still serving the custodial element of the sentence.
- 7.7 Electronic monitoring may be imposed as a licence condition in addition to the standard licence conditions for the purposes of monitoring: a curfew at a specified address; an offender's location; and abstinence from alcohol where it is necessary and proportionate to do so.

Curfew monitoring

- 7.8 When an offender has a monitored curfew condition they will be required to remain within a fixed location (usually the offender's residence) for a set period, usually each day. Compliance is determined by the continuity of the signal sent from the monitoring device, a tag normally worn on the ankle, to a Home Monitoring Unit (HMU) located within the home. Compliance is indicated where the monitoring device is within the range of the HMU. The responsible person for the purposes of monitoring a curfew receives the data gathered by the HMU and is alerted if the signal from the tag is interrupted during a period of curfew or if the equipment is moved or damaged. The data also enables the responsible person to monitor when the offender is leaving and entering the curfew address and thereby whether the curfew times are being adhered to. This information is then used to determine compliance with the licence and, if breached, it is shared with officials in HM Prison and Probation Service to consider whether the licence should be revoked and the offender recalled to custody; and/or with the person responsible for the supervision of the offender to consider enforcement action. Curfew conditions have been electronically monitored since 1999.

Location monitoring

- 7.9 Currently, high risk offenders released on licence may be given a location monitoring condition. Location monitoring can be used to monitor compliance with another condition, such as an exclusion zone, or as a standalone condition. The responsible person will monitor relevant data to determine whether the subject has breached their conditions and report such incidents to the supervising agency.
- 7.10 In October 2016 the MoJ commenced a GPS Pilot to test the wider use of location monitoring. The Pilot runs until 31 March 2018 and includes prisoners on licence.

The Pilot is testing a range of factors including how a location monitoring enabled tag might impact on the behaviour of offenders, its benefits, challenges and how best to implement the technology when a new electronic monitoring service is commenced in 2019.

Alcohol monitoring

- 7.11 The electronic monitoring of abstinence from alcohol is the new additional licence condition (as per 7.3 above). The Criminal Justice (Sentencing) (Licence Conditions) (Amendment) Order 2017 added a category of additional licence conditions which allows for the creation of conditions to prevent an offender from undertaking a specified conduct or activity, such as consuming alcohol. This new option for additional conditions gives probation providers more tools with which to manage offenders and protect the public.
- 7.12 When an offender has a licence condition to abstain from alcohol, this will be monitored using a transdermal electronic tag, normally worn on the ankle, that measures the level of alcohol in an offender's sweat every 30 minutes throughout a 24 hour period. The signal from the tag is relayed to the responsible person (through an HMU, telephone or Wi-Fi signal) at intervals as agreed by the supervising officer to maximise effectiveness, this could be daily or weekly. Where alcohol is detected the amount and the time is recorded and this information is then used to determine compliance with the licence and shared with the person responsible for the supervision of the offender.
- 7.13 Article 3(a) lists at (i) and (ii) the descriptions of all persons responsible for monitoring offenders subject to electronic monitoring in England and Wales. Article 3(a)(ii) lists the persons responsible for alcohol monitoring, reflecting the changes brought in by the Criminal Justice (Sentencing) (Licence Conditions) (Amendment) Order 2017 whereby a specified conduct or act can now be restricted.
- 7.14 Article 3(b) identifies the responsible person for monitoring an offender on Home Detention Curfew who resides in Scotland. Under Schedule 1 to the Crime (Sentences) Act 1997, a person is transferred to Scotland from the jurisdiction of England and Wales and under paragraph 6 of that Schedule may be subject to the condition that they are to be treated as though they are still subject to the law of England and Wales (restricted transfer). Article 3(b) describes the person responsible for monitoring a person who was transferred under a restricted transfer and is released on Home Detention Curfew under section 246 of the Criminal Justice Act 2003.
- 7.15 The provisions of Article 3 come into force on 14th March 2018.
- 7.16 Article 4(a) revokes Article 4 of the Criminal Justice (Electronic Monitoring) (Responsible Person) (No. 2) Order 2014 which describes the persons responsible for monitoring curfew on licence in England and Wales for a person residing in Scotland.
- 7.17 Article 4(b) revokes the Criminal Justice (Electronic Monitoring) (Responsible Person) Order 2016 which identified the responsible person for offenders subject to location monitoring during the MoJ's GPS Pilot which ends on 31 March 2018. Article 4(b) comes into force on 1st April 2018 to revoke the order once the MoJ's GPS Pilot ends on 31 March 2018.

Consolidation

- 7.18 This instrument revokes Article 4 of the Criminal Justice (Electronic Monitoring) (Responsible Person) (No. 2) Order 2014 and consolidates its contents into this Order.

8. Consultation outcome

- 8.1 There has been no public consultation, as this is a purely administrative instrument.

9. Guidance

- 9.1 No guidance is required.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector.
10.3 An Impact Assessment has not been prepared for this instrument as it is administrative only.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 As the instrument is only administrative no monitoring or review is felt to be necessary.

13. Contact

- 13.1 Robyn Malan de Merindol at the Ministry of Justice Telephone: 07970 306442 or email: robyn.malandemerindol1@justice.gov.uk can answer any queries regarding the instrument.