



# Management of Offenders (Scotland) Act 2019 2019 asp 14

## PART 1

### ELECTRONIC MONITORING ETC.

VALID FROM 01/10/2020

#### *Monitoring in criminal proceedings*

VALID FROM 17/05/2022

#### **1 Requirement when disposing of case**

- (1) When making a person subject to a disposal listed in section 3(2), a court may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
  - (a) is to be monitored by a person designated under section 11(1)(a), and
  - (b) is bound by the obligations set out in section 12(2) and (3).
- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
  - (a) is complying with the specified aspects of the disposal, and
  - (b) is fulfilling the obligations set out in section 12(2) and (3).
- (5) The court must—
  - (a) explain to the person the purpose mentioned in subsection (4), and

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- (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).
- (6) A requirement under subsection (1) is to be made by means of an order of the court (the form of which is to be prescribed by Act of Adjournal).
- (7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the court when disposing of the person's case.

VALID FROM 17/05/2022

## 2 Particular rules regarding disposals

- (1) If a person's agreement to a disposal mentioned in a particular paragraph of section 3(2) is necessary before the person can become subject to the disposal, the person's agreement to becoming subject to a requirement under section 1(1) is necessary before the requirement can be made in addition to the disposal.
- (2) A requirement made under section 1(1) lasts for as long as the person is subject to the associated disposal, but a court which makes a requirement under section 1(1) may vary or revoke the requirement in conjunction with the variation or revocation by it under an enactment of the associated disposal.
- (3) In subsection (1), the reference to agreement to a disposal includes agreement, consent or willingness to becoming subject to the disposal.

## 3 List of the relevant disposals

- (1) Subsection (2) contains the list referred to in section 1(1).
- (2) This is the list—
  - (a) making an order under, or in any way altering an order made under, section 209(1) of the Criminal Procedure (Scotland) Act 1995 (relating to supervised release in certain cases under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993),
  - (b) making an order under, or varying an order made under, section 245A of the Criminal Procedure (Scotland) Act 1995 (in that Act called a restriction of liberty order),
  - (c) imposing a requirement restricting movements by virtue of, or varying such a requirement imposed by virtue of, section 234CA(1) of the Criminal Procedure (Scotland) Act 1995 (relating to a drug treatment and testing order within the meaning given by section 234B(2) of that Act),
  - (d) imposing a restricted movement requirement by virtue of, or varying such a requirement imposed by virtue of, section 227A(2)(j) of the Criminal Procedure (Scotland) Act 1995 (relating to a community payback order under section 227A(1) of that Act),
  - (e) making an order by virtue of, or varying or renewing an order made by virtue of, section 104(1)(b) as read with section 104(2) and (3) of the Sexual Offences Act 2003 (relating to sexual offences prevention),

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- (f) making an order under, or varying or renewing an order made under, section 11 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (relating to sexual risk or harm).

#### **4 More about the list of disposals**

- (1) The Scottish Ministers may by regulations modify the list in section 3(2) so as to—
  - (a) add, alter or remove an entry,
  - (b) limit an entry so as to specify a certain aspect of what a court may do.
- (2) An entry included in section 3(2) may relate to anything, at any stage in criminal proceedings—
  - (a) which can be made or imposed by a court with respect to a person, or
  - (b) to which a person can otherwise be made subject by a court,except something under which a person is to be detained in custody.
- (3) A general or specific reference to a disposal mentioned in section 3(2) is, in relation to a requirement under section 1(1), to be construed as being to the relevant order or other measure so far as concerning—
  - (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or
  - (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.
- (4) For the avoidance of doubt, anything listed in section 3(2) is to be regarded as a disposal for the purposes of this Part (whether or not it is the final disposal of a case).

VALID FROM 17/05/2022

### *Monitoring on release on parole*

#### **5 Requirement with licence conditions**

- (1) When imposing any conditions of a sort mentioned in section 7(1) in connection with release of a person on licence, the Scottish Ministers may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
  - (a) is to be monitored by a person designated under section 11(2)(a), and
  - (b) is bound by the obligations set out in section 12(2) and (3).
- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
  - (a) is complying with the specified aspects of the conditions, and
  - (b) is fulfilling the obligations set out in section 12(2) and (3).
- (5) The Scottish Ministers must—

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- (a) explain to the person the purpose mentioned in subsection (4), and
- (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).

(6) The terms of a requirement made under subsection (1) are to be stated in the licence on which the person is released (with the licence being as referred to in the enactment under which the person is released).

(7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the Scottish Ministers when imposing the conditions.

## **6 Particular rules regarding conditions**

(1) Where a recommendation of the Parole Board for Scotland is necessary before any conditions mentioned in a particular paragraph of section 7(1) can be imposed on a person, the Parole Board's recommendation that there should be a requirement under section 5(1) in the person's case is necessary before the requirement can be made in addition to the conditions.

(2) A requirement made under section 5(1) lasts for as long as the person is subject to the associated conditions, but the Scottish Ministers may vary or revoke the requirement in conjunction with the variation or revocation by them under an enactment of the associated conditions.

## **7 List of the relevant conditions**

(1) These are the conditions referred to in section 5(1)—

- (a) a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which relates to release on licence under section 3AA of that Act),
- (b) conditions under section 12(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (on release on licence under Part 1 of that Act (where sentencing is on or after 1 October 1993)),
- (c) conditions under section 22(6) of the Prisons (Scotland) Act 1989 (on release on licence regarding certain sentences (where sentencing is before 1 October 1993)),
- (d) conditions relating to temporary release in accordance with rules made under section 39 of the Prisons (Scotland) Act 1989 (known as prison rules),
- (e) conditions relating to release from imprisonment or detention which arise on the basis prescribed in regulations made by the Scottish Ministers.

(2) A general or specific reference to any conditions mentioned in subsection (1) is, in relation to a requirement under section 5(1), to be construed as being to the relevant conditions so far as concerning—

- (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or
- (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.

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### *Devices, use and information*

#### **8 Approved devices to be prescribed**

- (1) An approved device, in relation to a requirement under—
  - (a) section 1(1), or
  - (b) section 5(1),is an electronic device of a type prescribed in regulations made by the Scottish Ministers.
- (2) A type of device that may be prescribed in regulations under subsection (1) includes—
  - (a) a device for monitoring a person's whereabouts in some manner (including of being at, or not being at, a particular place), or
  - (b) a device for—
    - (i) detecting whether a person has consumed, taken or ingested alcohol, drugs or other substances, or
    - (ii) measuring the level of alcohol, drugs or other substances consumed, taken or ingested by a person.
- (3) Regulations under subsection (1) may include provision as to any apparatus to be linked to a device as well as prescribing the device itself.

#### **9 Use of devices and information**

- (1) The Scottish Ministers may by regulations make provision about—
  - (a) the use of an approved device in connection with a requirement made under—
    - (i) section 1(1), or
    - (ii) section 5(1),
  - (b) the use of information obtained through monitoring of a person by means of such a device for the purpose mentioned in section 1(4) or 5(4).
- (2) Subsections (3) to (5) give examples of what regulations under subsection (1) may do.
- (3) Regulations may set out how or when a device is to be—
  - (a) worn by a person subject to a requirement made under section 1(1) or 5(1), or
  - (b) used in some other way by a person subject to such a requirement.
- (4) Regulations may provide for—
  - (a) circumstances in which a particular type of device is, or is not, to be used,
  - (b) what information may, or may not, be gathered—
    - (i) at particular times,
    - (ii) in particular circumstances.
- (5) Regulations may—

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- (a) allow or restrict the use or sharing of information obtained through monitoring,
- (b) fix periods—
  - (i) during which such information may be retained,
  - (ii) after which such information must be destroyed.

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### *Arrangements and designation*

#### **10 Arrangements for monitoring system**

- (1) The Scottish Ministers must make contractual or other arrangements to secure the monitoring of a person—
  - (a) by means of an approved device, and
  - (b) in connection with a requirement made under—
    - (i) section 1(1), or
    - (ii) section 5(1).
- (2) The Scottish Ministers must keep the Scottish Courts and Tribunals Service informed of the identity of whoever is eligible for designation by a court under section 11(1)
  - (a) (including by reference to eligibility in all or some circumstances).
- (3) Different arrangements may be made under subsection (1) for different purposes (including arrangements of temporary or local effect).

#### **11 Designation of person to do monitoring**

- (1) When a requirement is made under section 1(1), the court must—
  - (a) designate a person to be responsible for monitoring the monitored person by means of an approved device for the purpose mentioned in section 1(4),
  - (b) notify the monitored person that a person has been designated under paragraph (a),
  - (c) send to the designated person—
    - (i) intimation of the fact of designation,
    - (ii) the date on which monitoring of the monitored person is to begin,
    - (iii) details of the requirement and the specified aspects of the associated disposal, and
    - (iv) any further information that it considers appropriate.
- (2) When a requirement is made under section 5(1), the Scottish Ministers must—
  - (a) designate a person to be responsible for monitoring the monitored person by means of an approved device for the purpose mentioned in section 5(4),
  - (b) notify the monitored person that a person has been designated under paragraph (a),
  - (c) send to the designated person—
    - (i) intimation of the fact of designation,
    - (ii) the date on which monitoring of the monitored person is to begin,

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- (iii) details of the requirement and the specified aspects of the associated conditions, and
  - (iv) any further information that they consider appropriate.
- (3) The designated person's responsibility for monitoring the monitored person—
- (a) is suspended if the disposal is or (as the case may be) the conditions are suspended,
  - (b) ends—
    - (i) when the disposal ceases or (as the case may be) the conditions cease to have effect, or
    - (ii) if someone else is designated under subsection (1)(a) or (as the case may be) (2)(a) as a replacement.
- (4) If the designated person can no longer discharge the person's responsibility for monitoring the monitored person—
- (a) someone else must be designated under subsection (1)(a) or (as the case may be) (2)(a) as a replacement, and
  - (b) subsection (1)(b) and (c) or (as the case may be) (2)(b) and (c) applies again.
- (5) See section 10(2) for who is eligible for designation by the court under subsection (1) (a).
- (6) In subsections (1) to (4)—
- (a) a reference to the designated person is to whoever is for the time being designated under subsection (1)(a) or (as the case may be) (2)(a),
  - (b) a reference to the monitored person is to the person subject to the requirement made under section 1(1) or (as the case may be) 5(1),
  - (c) a reference to the specified aspects of the disposal or the conditions in question has the same meaning as is given by section 1(7) or (as the case may be) 5(7).

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### *Obligations and compliance*

#### **12 Standard obligations put on offenders**

- (1) The obligations in subsections (2) and (3) are set out in relation to a requirement made under—
- (a) section 1(1), or
  - (b) section 5(1).
- (2) The monitored person must obey instructions given by the designated person on how or when an approved device allocated to the monitored person is to be—
- (a) worn, or
  - (b) used in some other way,
- so as to facilitate monitoring of the monitored person by means of the approved device for the purpose mentioned in section 1(4) or (as the case may be) 5(4).
- (3) The monitored person must not—



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- (a) tamper with the approved device, or cause or permit someone else to tamper with the device, or
  - (b) intentionally damage or destroy the approved device, or cause or permit someone else so to damage or destroy the device.
- (4) In subsection (2), the reference to the designated person is to whoever is for the time being designated under section 11(1)(a) or (as the case may be) (2)(a).
- (5) In subsections (2) and (3)—
- (a) the references to an approved device include any apparatus linked to the device as well as meaning the device itself,
  - (b) the references to the monitored person are to the person subject to the requirement made under section 1(1) or (as the case may be) 5(1).

### **13 Deemed breach of disposal or conditions**

- (1) In the operation of a disposal mentioned in section 3(2)—
- (a) an additional requirement made under section 1(1) is to be regarded as part of the disposal,
  - (b) the disposal is therefore to be taken as breached with respect to the requirement if the person subject to it contravenes section 12(2) or (3).
- (2) Any provisions of an enactment as to breach of the disposal are engaged by virtue of subsection (1) accordingly (so far as relevant in the case).
- (3) No offence constituted by reason of breaching the disposal (where there is such an offence) can be committed by virtue of subsection (1).
- (4) In the operation of any conditions mentioned in section 7(1)—
- (a) an additional requirement made under section 5(1) is to be regarded as part of the conditions,
  - (b) the conditions are therefore to be taken as breached with respect to the requirement if the person subject to it contravenes section 12(2) or (3).
- (5) Any provisions of an enactment—
- (a) as to breach of the conditions or the licence in which they are contained, or
  - (b) as to recall to a prison or another place in consequence of breach of the conditions or the licence in which they are contained,
- are engaged by virtue of subsection (4) accordingly (so far as relevant in the case).
- (6) In subsections (2) and (5), the references to provisions relating to breach of something include provisions relating to variation or revocation of it in consequence of breach of it.

### **14 Documentary evidence at breach hearings**

- (1) As regards a requirement made under section 1(1), subsection (3) applies in relation to a hearing on the issue of whether the person subject to the requirement has—
- (a) contravened the specified aspects of the associated disposal, or
  - (b) contravened section 12(2) or (3).
- (2) As regards a requirement made under section 5(1), subsection (3) applies in relation to a hearing on the issue of whether the person subject to the requirement has—



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- (a) contravened the specified aspects of the associated conditions, or
  - (b) contravened section 12(2) or (3).
- (3) Evidence may be given by way of a document bearing to comprise (both)—
- (a) a statement—
    - (i) produced by an approved device (or any apparatus linked to the device), and
    - (ii) showing information relevant to the issue, and
  - (b) a certificate signed by or on behalf of the designated person that the information is accurate.
- (4) Examples are information about—
- (a) the device's whereabouts at a particular time (including when being at, or not being at, a particular place),
  - (b) the—
    - (i) connectivity of the device or working of the device in some other way,
    - (ii) wearing of the device or use of the device in some other manner, at a particular time,
  - (c) the presence or level of alcohol, drugs or other substances in the wearer's or user's body at a particular time.
- (5) The document—
- (a) is sufficient evidence of everything contained in it,
  - (b) is admissible only if a copy of it is served, prior to the start of the hearing, on the person whose alleged contravention is the subject of the hearing.
- (6) In subsections (1) to (3)—
- (a) a reference to a hearing includes a court or administrative hearing,
  - (b) a reference to the specified aspects of the disposal or the conditions in question has the same meaning as is given by section 1(7) or (as the case may be) 5(7),
  - (c) the reference to the designated person is to someone who at the time of the signing of the certificate is designated under section 11(1)(a) or (as the case may be) (2)(a).

### *SSI procedure and schedule*

VALID FROM 01/10/2020

## **15 Procedure for making regulations**

- (1) Regulations under this Part may—
- (a) make different provision for different purposes (including provision of temporary or local effect),
  - (b) include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under this Part—

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- (a) if enabled by section 9(1), are subject to the affirmative procedure,
- (b) otherwise, are subject to the negative procedure.

## 16 Additional and consequential provisions

- (1) Part 1 of schedule 1 amends provisions relating to particular restrictive measures.
- (2) Part 2 of schedule 1 contains consequential amendments in relation to electronic monitoring.

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### Commencement Information

- II** [S. 16\(1\)](#) in force at 11.10.2019 for specified purposes by [S.S.I. 2019/309](#), [reg. 2](#), [sch.](#)

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