

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL JUSTICE (SENTENCING) (LICENCE CONDITIONS) ORDER 2015**

**2015 No. 337**

**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 This Order applies to offenders subject to determinate custodial sentences who have been released from custody into the community on licence. The purpose of the Order is to set out the conditions that may be applied on the licence. These include standard conditions which an offender must be subject to, and the types of additional conditions which may be included to manage the risk posed by the offender.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 This Order has been drafted pursuant to section 250 of the Criminal Justice Act 2003 to set out the conditions and type of conditions that can be imposed under that section to a licence of an offender released on licence from a sentence of imprisonment. It further reflects changes made by the Offender Rehabilitation Act 2014, and by the Criminal Justice and Courts Act 2015, once commenced, to the Criminal Justice and Courts Services Act 2000.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**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 (Sentencing) (Licence Conditions) Order 2015 (the “2015 Order”) applies to offenders given custodial sentences for a determinate period who are

released into the community on licence. It sets out the standard conditions to be contained in all licences, additional conditions that must be included where specific criteria are met, and categories of additional conditions that may be included where the standard conditions are not sufficient to ensure the offender's successful integration into the community, prevent re-offending or to ensure the protection of the public. It revokes the Criminal Justice (Sentencing) (Licence Conditions) Order 2005 which contains the current standard and additional licence conditions (the "2005 Order").

7.2 The 2015 Order ensures that there is a consistent approach between the wording of licence conditions set out in this Order and the wording of statutory supervision requirements imposed as part of a period of post sentence supervision introduced by section 2 of the Offender Rehabilitation Act 2014. The wording of statutory supervision requirements is set out in section 256AB of the Criminal Justice Act 2003. Offenders released from custodial sentences of less than 2 years will be supervised initially on licence before moving to a period of post sentence supervision. Aligning the licence conditions with those imposed during post sentence supervision reduces the risk of any confusion as the offender makes the transition between the two periods.

7.3 Article 4 of the 2015 Order sets out standard wording to be included in a licence where an electronic monitoring requirement is imposed as a licence condition. Under Section 62 of the Criminal Justice and Court Services Act 2000 (the "2000 Act") the Secretary of State may impose an electronic monitoring condition as part of an offender's licence. Section 62A of the 2000 Act permits mandatory electronic monitoring. Section 62A of the 2000 Act has yet to be commenced, but is included in the 2015 Order rather than amending this Order when the section is commenced. The wording in Article 4 includes conditions that set out the offender's responsibilities in complying with electronic monitoring including that the offender must not damage or tamper with the equipment and must take steps to alert the authorities when the equipment is not working. As forms of satellite tracking (such as GPS monitoring) become more widely available to be used on offenders on licence, the additional conditions in the 2015 Order help ensure that an offender is not able to avoid their electronic monitoring conditions by tampering with equipment or arguing that the monitoring equipment was faulty, by making their obligations clear. Each of the electronic monitoring conditions will apply regardless of the type of electronic 'tag' used and regardless of whether the offender is subject to location monitoring or monitoring of other requirements in the licence.

7.4 Article 5 of the 2015 Order sets out standard wording to be included in a licence where a drug testing condition is imposed as a licence condition. Section 64 of the 2000 Act as amended by the Offender Rehabilitation Act 2014 permits the Secretary of State to impose a drug testing condition as part of an offender's licence to ascertain whether there are any specified Class A or Class B drugs in the offender's body. The 2015 Order gives further effect to these powers. It sets out additional conditions which apply to determinate sentenced offenders subject to this drug testing requirement to ensure that the offender acts in a manner which does not frustrate the testing.

7.5 Article 6 of the 2015 Order sets out standard wording to be included in a licence where a polygraph testing is imposed as a licence condition. Section 28 of the Offender Management Act 2007 permits the Secretary of State to include a polygraph condition in the licence of an offender convicted of a specified sexual offence who is released from custody into the community on licence. The 2015 Order gives further effect to these powers by providing that determinate sentenced offenders who are subject to a polygraph condition must conduct themselves in a manner which does not frustrate the testing.

7.6 Article 7 specifies types of additional licence conditions that may be included in a licence. When preparing for the release of a determinate sentenced offender, supervising officers will consider whether to recommend any additional condition of a type permitted by Article 7. Any such conditions must in turn be approved by the Governor of the releasing prison, acting on behalf of the Secretary of State.

## **8. Consultation outcome**

8.1 There was no consultation undertaken specifically for this instrument. However, consultation with practitioners, trade unions and Home Office Immigration Enforcement has been conducted in relation to the Probation Instruction and Prison Service Instructions which support practitioners supervising offenders on licence and which refer to the Articles contained within this instrument. Consultees' views were taken into account in the drafting of these Instructions.

## **9. Guidance**

- 9.1 A further version of the Prison Service Instruction 'Licence Conditions, Licences and Licence and Supervision Notices' and Probation Instruction 'Licence Conditions and Temporary Travel Abroad' will be published on 23 March 2015 to coincide with the coming into force of this instrument. Practitioners in the probation and prison services will be advised of these publications, which can be found at the links below, and prisoners will be able to access them through their establishment library.
- <http://www.justice.gov.uk/offenders/probation-instructions>  
<http://www.justice.gov.uk/offenders/psis>

## **10. Impact**

10.1 There will be no impact on business, charities or voluntary bodies. To the extent such bodies supervise offenders under arrangements with the Secretary of State the 2015 Order has no impact on the substance of those obligations. The revised drafting simply provides additional clarity in respect of an offender's obligations to comply with those supervising their licence conditions.

10.2 There will be no impact on the public sector, for the same reasons.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation does not apply to small business, other than as stated in 10.1.

**12. Monitoring & review**

12.1 Compliance with this instrument will continue to be monitored through ongoing communication with prison governors by NOMS. As the order make no substantive changes to the operation of licence conditions, no other monitoring is planned.

**13. Contact**

Brian Chapman at the Ministry of Justice (National Offender Management Service) can answer any queries regarding the instrument. Tel: 0300 047 4424 or email: [brian.chapman@noms.gsi.gov.uk](mailto:brian.chapman@noms.gsi.gov.uk)