

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 2003 (ALCOHOL ABSTINENCE AND
MONITORING REQUIREMENT) (PRESCRIPTION OF ARRANGEMENT FOR
MONITORING) (AMENDMENT) ORDER 2017

2017 No. 234

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 Order specifies the arrangement for monitoring compliance with an alcohol abstinence and monitoring requirement (AAMR) which can be imposed by a court as part of a community order or suspended sentence order.
- 2.2 This Order is linked to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2017 (the “Piloting Amendment Order”) which comes into force on 31 March 2017 and provides that until the end of 31 March 2018 an AAMR can continue to be imposed as part of a community order or suspended sentence order by courts in nine specified local justice areas in London.
- 2.3 This 2017 Prescription Amendment Order provides that, for the extended period of time, the arrangements for monitoring compliance with an AAMR will continue to be through a transdermal electronic tag.

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 the negative 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 This Order is linked to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2016 (S.I. 2016/286), as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2017 (S.I. 2017/225 (C.19)). These orders bring and keep in force section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the “2012 Act”). Section 76 of the 2012 Act inserts section 212A into the Criminal Justice Act 2003 (the “2003 Act”) which allows an AAMR to be imposed as a requirement of a community order or suspended sentence order.

- 4.2 Before any national roll-out of an AAMR, legislation requires that it must first be piloted. A pilot has been running since July 2014; initially in South London which gradually expanded to cover 9 London local justice areas by January 2017. As the AAMR is now available across all London local justice areas, there is potential for numbers and offence mix to increase if the pilot continues for another year, which will provide additional data for a more robust evaluation. Consequently, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2017 seeks to extend the pilot duration for a further 12 months until the end of 31 March 2018.
- 4.3 The Orders relevant to the pilot are:
- the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2016 which gave courts a power to impose AAMR as part of a community order or suspended sentence order in nine specified local Justice areas in London until the end of 31 March 2017; and
 - the Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription of Arrangement for Monitoring) Order 2016 which prescribes that the monitoring of compliance with an AAMR will be by a transdermal electronic tag.
- 4.4 The combined intention of both the Piloting Amendment Order and the Prescription Amendment Order is to give effect to the extended pilot across London until the end of 31 March 2018 and to keep in place the arrangements for monitoring compliance with the AAMR, through transdermal electronic tags. As required, by section 212A(12) of the 2003 Act, Courts will be notified that the arrangements for monitoring of the specified kind are available in their relevant local justice area.
- 4.5 An offender who is subject to an AAMR is required to submit to monitoring for the purposes of ensuring compliance with the requirements placed on them. Under section 212A(1)(a) of the 2003 Act this provides that a court can order an offender to abstain from alcohol consumption for a specified period or to not consume alcohol so that at any point during a specified period they exceed a certain level of alcohol in their body. As previously, the pilot will require total abstention from consuming alcohol.
- 4.6 Section 212A(6) and (7) of the 2003 Act requires the Secretary of State to specify the arrangements for monitoring compliance with an AAMR. This Order therefore provides that, for the purposes of the extension of the London pilot until the end of 31 March 2018, the method of monitoring compliance will continue to be a transdermal electronic tag.
- 4.7 The tag provides data to a central monitoring point where it is analysed to check for compliance. If there are indications that a breach has occurred or should be considered, then the enforcement authority is advised accordingly. The Responsible Officer will determine the best course of action to take following discussion with the offender. There is no recourse to secondary alcohol testing equipment. The Responsible Officer could determine that a warning is the best course of action, or, if the offender has already received a warning for alcohol consumption, they could instigate breach proceedings and bring them before the Court, where the offender could be resentenced.
- 4.8 AAMR tags cannot be used where the offender is dependent on alcohol or where an alcohol treatment requirement is specified in the Order. AAMR tags will be

recommended to sentencers following Pre-Sentence Reports prepared by the National Probation Service.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.
- 5.3 By virtue of the underlying orders, this Order is restricted to the below listed London local justice areas. Legislation requires AAMR to be piloted before a roll-out can take place and the pilot has only been available across the whole of London since January 2017. The decision to extend the pilot for a further 12 months across London is to allow us to gain a better understanding of how sentencers are using AAMR and the offences it is applied to.
- 5.4 The local justice areas in which AAMR can be imposed as part of a community order or suspended sentence order are: Central London; East London; North East London; North London; North West London; South London; South East London; South West London; and West London.

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 This pilot is being procured and run by the London Mayor's Office for Policing and Crime (MOPAC), with no additional funding from MoJ for the further extension to 31 March 2018.
- 7.2 Section 76 of the 2012 Act allows an AAMR to be imposed as part of a community order or suspended sentence order for those offenders where alcohol consumption was an element of the offence, or associated offence, for which they are being sentenced, and was a factor that contributed to the offence. The AAMR can only be imposed for a maximum period of 120 days and cannot be used where the offender is dependent on alcohol and where an Alcohol Treatment Requirement is specified in the Order. The tool used to determine dependency within the Pre-Sentence Report is the same tool used when initially screening offenders for Alcohol Treatment Requirements. It is called the Alcohol User Disorder Identification Test (AUDIT Tool). The decision to impose an AAMR lies ultimately with the sentencer.
- 7.3 AAMRs are intended to tackle low level offending behaviour where alcohol has been a contributory factor in the offending. They are meant to punish the offender by ensuring they do not consume alcohol during the period in which the AAMR is in force, and through enforcing sobriety they are designed to mitigate offending behaviour which is driven by alcohol. This pilot is testing a technological solution to monitoring alcohol levels in offenders subject to an AAMR, and how sentencers apply an AAMR to those offenders suitable for the requirement. Furthermore, as those subject to an AAMR will not be drinking during the lifetime of the order, the intention is that abstinence would deter those offenders from undertaking any alcohol related crime, therefore making a saving to the public sector in managing and dealing with

the outcome of that behaviour. This should have a positive effect across the wider community in the areas in which the AAMR is being piloted and this will be tested further during the next extension of the pilot, which is expected to increase the volumes of AAMRs imposed, now that the requirement is available to all London Courts.

- 7.4 Transdermal electronic tags, are tags fitted around the ankle of an offender that measures the level of alcohol in an offenders sweat every 30 minutes throughout a 24 hour period. They maintain contact with the surface of the skin but are not invasive, and cannot be fooled either positively by the offender spraying perfume or negatively by attempting to cover the relevant area of skin. This is well established technology that has been used successfully at a number of locations in the United States of America. In the U.K., it has been used on a voluntary basis in Glasgow, Cheshire, Lewisham, and in Northamptonshire Police Force to test Sobriety Conditional Cautions. Over 360,000, subjects have been monitored in this way in the U.S. and over 300 in the U.K.
- 7.5 The funding for the procurement for the extension of the pilot is provided by MOPAC. MoJ made a contribution of £400,000 for the expansion phase in the 2016/7 and in agreement with MOPAC will not be providing further funding in 2017/8. Despite small volumes, the current emerging picture of the pilot is encouraging, with good compliance rates and an increasing uptake by sentencers. The purpose of the pilot is to understand better how the AAMR would work in practice in the event of a national roll-out. In spite of the geographical expansion of the pilot in 2016/17 numbers have remained low and a further 12 months extension of the pilot will allow the collection of further data which will inform future policy.
- 7.6 An evaluation will be undertaken, to evaluate in particular:
- how sentencers use AAMR, and the effectiveness of business processes within the criminal justice system;
 - compliance rates; and
 - any behavioural impact on offenders.

Consolidation

- 7.7 No consolidation is required at present.

8. Consultation outcome

- 8.1 The AAMR provisions were debated by Parliament during the passage of LASPO 2012 and include a statutory obligation to pilot before any national roll-out. A further extension of the pilot is in the spirit of such obligation and so we are not consulting on the further extension of the pilot.

9. Guidance

- 9.1 MOPAC has provided guidance to the Courts, National Probation Service, Community Rehabilitation Companies and offenders on the operation of AAMR.
- 9.2 Guidance to offenders who are placed on AAMR will continue to be provided by the company contracted to fit the AAMR transdermal tag.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector remains limited in that there will be some offenders placed on an AAMR who might breach those requirements, thereby triggering enforcement proceedings where the Court may make the community order or the community requirements of a suspended sentence order more onerous, revoke the Order and resentence the offender, or fine the offender.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The pilot will be subject to a review and evaluation throughout its lifetime, which will be used to inform future policy.
- 12.2 The evaluation will be published as soon as is practicable.

13. Contact

- 13.1 Magali Provensal at the Ministry of Justice, Telephone: 07773 960 355 or email: Magali.provensal@justice.gsi.gov.uk can answer any queries regarding the instrument.