

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRONIC MONITORING (RESPONSIBLE PERSONS) (CORONAVIRUS)**  
**(AMENDMENT) ORDER 2020**

**2020 No. 418**

**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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to amend the Electronic Monitoring (Responsible Persons) Order 2018 (S.I. 2018/212) (“the 2018 Order”). The instrument adds a new provider to the list of existing persons, set out in the 2018 Order, who may be made responsible for the electronic monitoring of prisoners under section 62 of the Criminal Justice and Court Services Act 2000 (“the 2000 Act”).

**3. Matters of special interest to Parliament**

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

- 3.1 The instrument is subject to negative resolution procedure and will breach the 21-day rule for laying in Parliament. It will come into force the day after it is made. This is emergency legislation in response to the coronavirus crisis where new operational measures need to be put in place at pace to support new rules 9A and 5A introduced, respectively, to the Prison Rules 1999 and the Young Offenders Rules 2000. Those rules provide that prisoners may be released on restricted temporary licence in order to free up prison space and help delay the spread of the virus. The rules came into force on 6th April 2020 and it is anticipated releases may take place over the coming weeks. This instrument needs to come into force immediately to provide additional capacity for the electronic monitoring of any prisoner who is to be temporarily released under those rules but is determined to require electronic monitoring. A delay of three weeks would prevent such release if it would exceed the Department’s existing capacity for electronic monitoring. Any such delay to the release of such prisoner may contribute to the Department being unable to run safe and decent prisons.
- 3.2 While the Ministry acknowledges the general desirability of observing the 21-day convention, in the current fast-moving circumstances of the spreading Coronavirus and the urgent need to ensure prisons can continue to operate safely and protect prisoners and staff, the Ministry’s view is that this change needs to be made the day after the SI is made and cannot be delayed for 21 days.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 Section 62(2B) of the 2000 Act states that a person may not be made responsible for the electronic monitoring of prisoners under section 62 of that Act unless they are of a description specified in an order made by the Secretary of State. This instrument amends the 2018 Order to add a new responsible person for that purpose

**7. Policy background**

*What is being done and why?*

- 7.1 Her Majesty's Prison and Probation Service (HMPPS) has taken advice from Public Health England (PHE) on reducing the risks associated with outbreaks of COVID-19 (hereafter referred to as coronavirus) in prisons and the clinical risks to vulnerable prisoners.
- 7.2 Following this advice, the Government has determined that there is a need to put in place mechanisms to allow HMPPS to release prisoners within clearly prescribed limits in order to allow for the safe running of the prison estate during the coronavirus transmission control period. This is part of a package of measures that HMPPS has put in place for managing the prison population which balances the need to protect the public and maintain law and order, with protecting the health and safety of those working and detained in prison. The measures are necessary in order to: delay the spread of coronavirus within the prison system; protect the welfare of staff and prisoners; isolate and manage any prisoners infected; enhance social distancing protocols; reduce the risk of explosive outbreaks associated with closed settings; and, protect those in custody who are within vulnerable groups.
- 7.3 In response to this, provision has been made in the Prison Rules 1999 and the Young Offender Institution Rules 2000 for, if required, the restricted temporary release on licence of a defined cohort of prisoners in response to the coronavirus pandemic. Any prisoner released under this provision may be subject to a licence condition requiring that person to be electronically monitored.
- 7.4 To provide HMPPS with the flexibility and capacity to help meet this unexpected, additional demand for electronic monitoring and respond effectively to this situation, this instrument adds a new person to the list of persons who may be made responsible for such electronic monitoring. That person is Attenti EM UK Ltd, a company with

whom the Government has already worked with on electronic monitoring solutions albeit not in a prisoner context.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 This Order does not seek to consolidate or revoke any existing orders.

## **10. Consultation outcome**

10.1 While there has been no public consultation, HMPPS continues to engage with stakeholders on electronic monitoring. The matter has been discussed with the Police national lead for electronic monitoring, and senior officials for prisons and probation, including the Director General for probation. All are supportive of the need to bring in another responsible person as needed to support HMPPS response to COVID-19.

## **11. Guidance**

11.1 HMPPS will provide appropriate guidance and support to stakeholders.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this for this instrument. It only adds the name of a responsible person for electronic monitoring to an existing list.

## **13. Regulating small business**

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

## **14. Monitoring & review**

14.1 There is no intention to monitor or review this Order. However, the effectiveness of the service provided will be closely monitored and the findings will help inform the deployment of future electronic monitoring opportunities.

## **15. Contact**

15.1 Toby Head at the Ministry of Justice Telephone: 07773 062867 or email: toby.head@justice.gov.uk can be contacted with any queries regarding this instrument.

15.2 Ken Everett as Head of Electronic Monitoring of Operations at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister of State Lucy Frazer QC MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard