

MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part 1 – Electronic Monitoring Etc.

Monitoring in criminal proceedings

Section 1 – Requirement when disposing of case

13. Section 1 provides the overarching arrangements under which a criminal court can, when disposing of a case, require an individual to submit to electronic monitoring.
14. Section 1(1) provides that the court may, when disposing of a case, require the person whose case is being disposed of to submit to monitoring by means of an approved device. A description of the relevant disposals that can be monitored is contained in section 3(2) and a definition of approved device is contained in section 8(1).
15. Section 1(3) provides that a requirement made under this section is to be monitored by a person designated by the court in terms of section 11(1)(a). It also sets out that the person subject to the monitoring requirement is bound by the obligations described in sections 12(2) and (3) whilst being electronically monitored.
16. Section 1(4) provides that electronic monitoring is for the dual purpose of ascertaining whether or not the monitored person is, firstly, complying with the specific requirements of the disposal which are to be electronically monitored, and secondly, fulfilling the obligations placed on the individual under section 12(2) and (3).
17. Section 1(5) provides that the court must explain to a person who is being made subject to an electronic monitoring requirement the purpose of the electronic monitoring as defined at subsection 1(4) above (i.e. to ascertain whether or not they are complying with the specific requirements of the underlying disposal and fulfilling the section 12 obligations placed on the individual). Section 1(5) also provides that the person must be warned of the consequences of failing to fulfil the section 12 obligations.
18. Section 1(6) provides that the electronic monitoring requirement is to be stated in an order of the court, and that the form of that order is to be prescribed by Act of Adjournal.
19. Section 1(7) provides that it is for the court to specify the particular aspects of the disposal that are to be monitored when disposing of the case.

Section 2 – Particular rules regarding disposals

20. Section 2(1) provides that if a person's agreement is necessary before they can become subject to any of the disposals listed in section 3(2), then it is also necessary that they agree to become subject to an electronic monitoring requirement before it can be made.

21. Section 2(2) provides that an electronic monitoring requirement lasts for as long as a person is subject to the related disposal. It further provides that a court may vary or revoke an electronic monitoring requirement when the related disposal is being varied or revoked.

Section 3 - List of the relevant disposals

22. Section 3 contains a list of the relevant disposals in relation to which a court may additionally require a person to be subject to electronic monitoring. The list covers the making, altering, varying and renewing of the various disposals. These disposals are—
- a supervised release order made under section 209(1) of the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act');
 - a restriction of liberty order made under section 245A of the 1995 Act;
 - a movement restriction forming part of a drug treatment and testing order made under section 234C(1) of the 1995 Act;
 - a restricted movement requirement forming part of a community payback order made under section 227A(2)(j) of the 1995 Act;
 - a sexual offences prevention order made under section 104(1)(b) (as read with section 104(2) and (3)) of the Sexual Offences Act 2003; and
 - a sexual harm prevention order made under section 11 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

Section 4 - More about the list of disposals

23. Section 4(1) provides that the Scottish Ministers may by regulations modify the list of relevant disposals so as to add, alter or remove an entry. It also provides that the Scottish Ministers may limit an entry to the list of relevant disposals so as to specify a certain aspect of what a court can do. This would enable Ministers to add a specific court order to the list in section 3 but limit that entry to a specified aspect of the court order. The modifications that can be made to the list are however limited by the provisions of subsections (2) and (3).
24. Section 4(2) provides that an entry included in the list of relevant disposals may relate to anything at any stage in criminal proceedings which may be made or imposed by the court on a person or to which a person can otherwise be made subject by a court. Section 4(2) also provides that an entry in section 3(2) cannot be something under which a person is to be detained in custody – for example, a sentence of imprisonment could not be added to the list in section 3(2).
25. Section 4(3) provides that an entry in the list of relevant disposals can only relate to the monitoring of a person's whereabouts (including being at or not being at a particular place) or a person's consumption, taking, or ingestion of alcohol, drugs or other substances.
26. Section 4(4) provides that any entry in section 3(2) is to be regarded as a disposal for the purposes of Part 1 regardless of whether or not it is a final disposal.

Monitoring on release on parole

Section 5 - Requirement with licence conditions

27. Section 5 enables the Scottish Ministers to impose an electronic monitoring requirement on a person when imposing licence conditions on the release of that person from a prison or young offenders institution. In effect section 5 replicates for licence conditions the provisions of section 1 relating to court disposals.

28. Section 5(1) provides that the Scottish Ministers may, when imposing licence conditions, require a person to submit to monitoring by means of an approved device. A description of the relevant licence conditions that can be monitored is contained in section 7(1) and a definition of approved device is contained in section 8(1).
29. Section 5(3) provides that a requirement made under this section is to be monitored by a person designated by the Scottish Ministers in terms of section 11(2)(a). It also sets out that the person subject to the monitoring requirement is bound by the obligations described in sections 12(2) and (3) whilst being electronically monitored.
30. Section 5(4) provides that electronic monitoring is for the dual purpose of ascertaining whether or not the monitored person is, firstly, complying with the specific requirements of the licence conditions which are to be electronically monitored, and secondly, fulfilling the obligations placed on the individual under section 12.
31. Section 5(5) provides that the court must explain to a person who is being made subject to an electronic monitoring requirement the purpose of the electronic monitoring as defined at subsection 5(4) above. Section 5(5) also provides that the person must be warned of the consequences of failing to fulfil the section 12 obligations.
32. Section 5(6) provides that the terms of the requirement for electronic monitoring are to be stated in the licence on which the person is released.
33. Section 5(7) provides that it is for the Ministers to specify the particular aspects of the licence conditions that are to be monitored when imposing the licence conditions.

Section 6 – Particular rules regarding conditions

34. Section 6(1) provides that if a recommendation of the Parole Board for Scotland is necessary before particular conditions mentioned in section 7(1) can be imposed on a person, then a recommendation from the Parole Board for Scotland is also necessary before an electronic monitoring requirement can be made in relation to those conditions.
35. Section 6(2) provides that an electronic monitoring requirement lasts for as long as a person is subject to the related conditions. It further provides that the Scottish Ministers may however vary or revoke an electronic monitoring requirement when the related conditions are being varied or revoked.

Section 7 – List of the relevant conditions

36. Section 7(1) lists the relevant conditions in connection with which the Scottish Ministers may require a person to submit to electronic monitoring. Section 7(1)(e) allows the Scottish Ministers to prescribe by regulations additional types of early release conditions which can be electronically monitored.
37. Section 7(2) provides that the reference to conditions mentioned in section 7(1) is limited so as to relate to the monitoring of either a person's whereabouts (including being at or not being at a particular place), or a person's consumption, taking, or ingestion of alcohol, drugs or other substances.

Devices, use and information

Section 8 – Approved devices to be prescribed

38. Section 8(1) provides that an approved device, in relation to the electronic monitoring of a person either in relation to a court disposal or on release from prison/young offenders institution on licence, is an electronic device prescribed in regulations made by the Scottish Ministers.
39. Section 8(2) provides that the type of device that may be specified in regulations made by the Scottish Ministers includes devices to monitor a person's whereabouts (including

being at or not at a particular place) or detect whether they have consumed, taken, or ingested alcohol, drugs or other substances (and to measure the level of alcohol, drugs or other substances).

40. Section 8(3) provides that regulations under (1) may include provision as to any apparatus linked to a device as well as prescribing the device itself.

Section 9 – Use of devices and information

41. Section 9 provides the Scottish Ministers with regulation-making powers under affirmative procedure to make provision in relation to the use of approved devices, and the use of information obtained through the monitoring of a person by means of such devices. It also sets out a number of examples of what regulations made under these powers may do.

Arrangements and designation

Section 10 – Arrangements for monitoring system

42. Section 10(1) provides that the Scottish Ministers are obliged to make arrangements to secure the monitoring of a person, by means of an approved device, in connection with an electronic monitoring requirement made in relation to either a relevant court disposal or licence condition. Section 10(3) states that different arrangements may be made by the Scottish Ministers, under section 10(1), for different purposes.
43. Section 10(2) provides that the Scottish Ministers are obliged to keep the Scottish Courts and Tribunals Service informed of the identity of persons who are eligible for the courts to designate under section 11(1)(a). This designated person being responsible for monitoring a person for the purposes of an electronic monitoring requirement imposed by the court.

Section 11 – Designation of person to do monitoring

44. Section 11(1) provides that where an electronic monitoring requirement is made under section 1(1), the court must designate a person responsible for monitoring the person subject to the requirement and notify the monitored person of that designation. It further provides a list of information which the court must send to the designated person.
45. Section 11(2) provides that where an electronic monitoring requirement is made under section 5(1), the Scottish Ministers must designate a person responsible for monitoring the person subject to the requirement and notify the monitored person of that designation. It further provides a list of information which the Scottish Ministers must send to the designated person.
46. Section 11(3) specifies that if the relevant disposal or condition is suspended, the designated person's responsibility for monitoring the monitored person is likewise suspended. It also provides that the designated person's responsibility ends when the disposal ceases, or the conditions cease to have effect, or if someone else is designated as a replacement.
47. Section 11(4) provides that if the designated person can no longer discharge their responsibility to monitor a monitored person the court or the Scottish Ministers (as the case may be) must designate a replacement. It also provides that the court or the Scottish Ministers must notify the monitored person of the replacement designated person, and send the replacement designated person the same information as was provided to the person first (or previously) designated.

Obligations and compliance

Section 12 – Standard obligations

48. Section 12 sets out the standard obligations placed on a person in relation to an electronic monitoring requirement made either by the court under section 1(1) or by the Scottish Ministers under section 5(1).
49. Section 12(2) provides that a monitored person must obey the instructions given by the designated person on how the approved device must be worn or used so as to enable electronic monitoring for the purposes set out in section 1(4) or 5(4).
50. Section 12(3) provides that a monitored person must not tamper with or intentionally damage or destroy the device, nor cause or permit someone else to tamper with, damage or destroy the device.

Section 13 – Deemed breach of disposal or conditions

51. Section 13 deals with the consequences of a person failing to comply with the obligations set out in section 12.
52. Section 13(1) provides that an electronic monitoring requirement made under section 1(1) is to be regarded as if it is part of the relevant disposal listed in section 3(2). It further provides that any contravention of the obligations set out at either section 12(2) (to obey instructions given by a designated person) or 12(3) (not to tamper with or intentionally damage the device) is to be taken as a breach of the relevant disposal.
53. Section 13(2) provides that in the event a person contravenes the section 12 obligations, any statutory provisions as to breach of the relevant disposal are triggered. This allows the court to utilise the breach procedures that attach to the relevant disposal (including any powers to vary or revoke the relevant disposal following a breach) where the electronic monitoring requirement has been breached by the person.
54. Section 13(3) provides that, where it is an offence to breach the underlying disposal, that offence cannot be committed by breaching the section 12 obligations. For example, a person who removes the electronic tag, and thereby breaches the associated disposal by virtue of section 13(1)(b), does not commit an offence by doing so, even if a breach of the associated disposal constitutes an offence.
55. Section 13(4) provides that an electronic monitoring requirement made under section 5(1) is to be regarded as if it is part of the relevant licence conditions listed in section 7(1). It further provides that any contravention of the obligations set out at either section 12(2) (to obey instructions given by a designated person) or 12(3) (not to tamper with or intentionally damage the device) is to be taken as a breach of the relevant conditions.
56. Section 13(5) provides that any statutory provisions for breach of the associated conditions or the licence in which they are contained are therefore triggered by any such failure to comply with the section 12 obligations. In addition, section 13(5) also provides that any statutory provisions for recall to prison or another place in consequence of a breach of the conditions or licence are also triggered by any such failure to comply with the section 12 obligations.
57. Section 13(7) provides that any references to provisions relating to breach of something include provisions relating to variation or revocation of it in consequence of breach of it.

Section 14 – Documentary evidence at breach hearings

58. Sections 14(1) and 14(2) provide that the rule on documentary evidence in section 14(3) applies in relation to a hearing on the issue of whether a person subject to an electronic

monitoring requirement has breached the associated disposal, the associated conditions or the section 12 obligations.

59. Section 14(3) provides that evidence in relation to such a breach may be given by way of a document which contains both a statement produced by an approved device or linked equipment showing information relevant to the issue, and a certificate signed on behalf of the designated person to state that the information is accurate.
60. Section 14(4) provides that the evidence given by way of such a document might include, by way of example: information about the whereabouts of the device; the connectivity, working or wearing of the device at a particular time; or the presence or level of alcohol, drugs or other substances in the wearer or user's body, at a particular time.
61. Section 14(5) provides that the document is sufficient evidence of everything contained in it and is only admissible if it is served on the person to whom the hearing relates prior to the start of the hearing.

SSI procedure and schedule

Section 15 – Procedure for making regulations

62. Section 15 provides that regulations made under this Part, if enabled by section 9(1) are subject to the affirmative procedure and are otherwise subject to negative procedure. It also provides that regulations may make different provisions for different purposes (including provision of temporary or local effect) and include incidental, supplementary, consequential, transitional, transitory or saving provisions.

Section 16 – Additional and consequential provisions

63. Section 16 introduces Part 1 of schedule 1 which amends provisions about court orders, and Part 2 of schedule 1 which contains consequential amendments.