

POLICY NOTE

THE RESTRICTION OF LIBERTY ORDER ETC. (SCOTLAND) AMENDMENT REGULATIONS 2019

SSI 2019/423

The above instrument was made in exercise of the powers conferred by section 245C of the Criminal Procedure (Scotland) Act 1995 and all other powers enabling them to do so. The instrument is subject to negative procedure.

These Regulations have the effect of prescribing the equipment that can be used for the purposes of electronic monitoring in Scotland. In practice this is done by setting out in a list within the regulations, a very brief description of each piece of equipment that can be used for electronic monitoring and each model number e.g. Security Keyfob 433, model number 10-0054-4. We originally proposed to update these regulations in January/February 2020 to prepare for the move to a new electronic monitoring contract (from 1 April 2020).

We have moved to have these Regulations made and laid more swiftly however (and in breach of the 28 day rule) as there has been an unprecedented increase in the numbers of electronically monitored court orders over recent weeks with the numbers monitored now at a historically high level. There are also changes proposed to Home Detention Curfew (HDC) over the next few weeks which may mean that in future weeks a larger number of people are released on HDC, where numbers are currently at a historic low.

The current private sector service provider of the electronic monitoring service have stocks of new monitoring equipment that could be used if the number of those to be monitored increases. We are moving to prescribe that equipment now so that it is available to use should there be any further increases in demand on the service. We believe this is a pragmatic step to ensure continuity in the operation of this important aspect of the justice system.

In practice the regulations update a list which contains a brief description and model number for each piece of equipment, replacing it with a different and updated list of descriptions and model numbers, removing any equipment no longer used. This is necessary to ensure a sufficient supply of radio frequency equipment – when radio frequency technology advances then new models are introduced into the service and the new model numbers need to be prescribed.

We acknowledge that the enabling power in these Regulations will be repealed when Part 1 and Schedule 1 of the Management of Offenders (Scotland) Act 2019 come into force bringing in a new statutory regime of electronic monitoring. Until that new regime is in force, the Scottish Ministers will remain under an obligation, in terms of the existing regime, to specify devices for the purposes of monitoring an individual's compliance with various community sentences and licence conditions. Once the new regime is in force, new Regulations will require to be made specifying the types of

devices that can be used for monitoring compliance with community sentences and licence conditions.
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Policy Objectives

These regulations allow the prescribed equipment to be used for electronic monitoring. This will allow newer models of equipment to be introduced into the service to start to replace older equipment. This newer equipment can be used as part of the planned swap out of equipment in order to prepare for a new contractual period from 1 April 2020. By prescribing it now, it also provides for a contingency if there is any significant increase in demand on the service in advance of that planned swap out.

Consultation

The development of electronic monitoring more generally has been the subject of significant recent Parliamentary oversight through the recent passage of the Management of Offenders Act 2019. There has not been consultation on this specific step as it is a largely administrative arrangement that supports the wider operation of the service. It does not make any changes to the underlying legislative basis for monitoring, it only lists the equipment used.

Impact Assessments

An impact assessment has not been done, as the changes here are largely administrative in nature and do not impact on the underpinning legislative basis covering what it is possible to monitor.

Financial Effects

No BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

16 December 2019