

EXPLANATORY MEMORANDUM TO
THE CRIMINAL JUSTICE ACT 2003 (ALCOHOL ABSTINENCE AND
MONITORING REQUIREMENT) (PRESCRIPTION OF ARRANGEMENT FOR
MONITORING) (AMENDMENT) ORDER 2016

2016 No. 10

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 arrangements for the extension of monitoring compliance with an alcohol abstinence monitoring requirement (AAMR) which can be imposed by a court as part of a community order or suspended sentence order. Specifically, this Order provides for the monitoring of compliance to be achieved through a transdermal electronic tag.
- 2.2 This Order is linked to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2014, as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2015. The 2015 Amendment Order came into force on 30th July 2015 and provided for the 12 month pilot, which commenced on 31st July 2014, to be extended by a further six months. The pilot has been further extended to the end of 31st March 2016 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2016. This has the effect that an AAMR can continue to be imposed by courts in the South London local justice area, comprising Croydon, Lambeth, Southwark and Sutton.
- 2.3 This 2016 Amendment Order provides that, for the extended period of time, the arrangements of 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 2014 (the 'Piloting Order'), as amended by the Legal Aid, Sentencing and Punishment of

Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2015 as further amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2016. 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 a new section 212A into the Criminal Justice Act 2003 (the 2003 Act) which allows an AAMR to be imposed as part of 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. The initial pilot commenced on 31 July 2014 for a period of 12 months and was extended on 30 July 2015 for a further six months. The combined intention of both the Piloting Order (as amended) and this Order prescribing arrangements for monitoring is to give effect to a further extension of the first AAMR pilot. Specifically, the Piloting Order, as amended, provides that an AAMR can be imposed to the end of 31 March 2016, in the South London local justice area. This comprises Croydon, Lambeth, Southwark and Sutton.
- 4.3 An offender who is subject to an AAMR is required to submit to monitoring for the purposes of ensuring compliance with the requirement 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 amount of time 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 with the first 18 months of the pilot, the extension of the South London local justice area pilot will require total abstinence from consuming alcohol.
- 4.4 Section 212A(6) and (7) of the 2003 Act requires the Secretary of State to specify the arrangements for monitoring compliance with an AAMR. The effect of this Order is that for the purposes of the extension of the South London local justice area pilot, the method of monitoring compliance will continue to be a transdermal electronic tag. These are tags fitted around the ankle of an offender that measure the level of alcohol in an offender's 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.
- 4.5 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.
- 4.6 AAMR tags cannot be used where the offender is dependent on alcohol and 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. 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 Use Disorder Identification Test (AUDIT Tool). The decision to impose an AAMR lies ultimately with the sentencer.

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 In continuity with the pilot it extends, This SI is restricted to the South London Local Justice Area. The legislation requires AAMR to be piloted before roll-out can take place and, as the original pilot was a proof of concept pilot, it was decided that it would be focussed to one Local Justice Area. This would allow for sufficient numbers as this covers the boroughs of Croydon, Lambeth, Sutton and Southwark, but also be manageable in the sense that cases in this area are dealt with in the same court. The decision to further extend the pilot in the same local Justice Area is to allow us to gain a better understanding of how judges are using AAMR and the offence mix it is applied to

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 pilot is being procured and run by the London Mayor's Office for Policing and Crime (MOPAC).
- 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 cannot be used where the offender is dependent on alcohol and where an alcohol treatment requirement is specified in the order.
- 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 that 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, they should not be 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 area in which the AAMR is being piloted and this will be tested further during the extension of the pilot.
- 7.4 This is well established technology that has been used successfully at a number of locations in the United States of America. In the UK, it has been used on a voluntary basis in Glasgow, Cheshire and Lewisham, and is currently being used by Northamptonshire Police Force to test Sobriety Conditional Cautions. Over 360,000 subjects have been tested in the US and over 200 in the UK.
- 7.5 MOPAC are procuring the pilot. As with the first 18 months of the pilot, all funding for this further extension is being provided by them. This funding is made up of a

combination of fixed costs and unit costs (per offender tagged). This includes costs for equipment, installation and monitoring. The unit cost is calculated at £800 per offender, which allows a maximum of 120 days on the tag.

- 7.6 As this is a proof of concept pilot an initial evaluation has been undertaken, which reported in Autumn 2015, and tested:
- how widely magistrates use AAMR, and the technical processes within the criminal justice system;
 - compliance rates of the AAMR; and
 - the efficacy of ‘transdermal tags’ in monitoring alcohol abstinence.

Consolidation

- 7.7 The Department does not intend to consolidate the Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription of Arrangement for Monitoring) Order 2014 as amended by the Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription of Arrangement for Monitoring) (Amendment) Order 2015.

8. Consultation outcome

- 8.1 This was debated by Parliament during the passage of the 2012 Act. The provisions include a statutory obligation to pilot before any national roll-out. We are not, therefore, consulting on the further extension of this initial small scale pilot.

9. Guidance

- 9.1 Guidance to the Courts, National Probation Service, Community Rehabilitation Companies and offenders on the operation of AAMR within the South London Justice Area was provided by MOPAC in conjunction with CJS partners at the beginning of the initial 12 month pilot. The same guidance will apply to the further continuation of the pilot.
- 9.2 Guidance to offenders who are placed on AAMR will 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 is limited in that there will be some offenders who are placed on an AAMR by the Court and breach those requirements, and so will be brought back to the Court for a breach hearing 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 conducted by MOPAC, including the now eight month extension, will be subject to independent review and evaluation throughout its lifetime which will be used to inform future policy.
- 12.2 The MOPAC evaluation will be published as soon as is practicable.

13. Contact

- 13.1 Caroline Marlborough at the Ministry of Justice Telephone: 07773 960201 or email: Caroline.Marlborough@justice.gsi.gov.uk can answer any queries regarding the instrument.