

EXPLANATORY MEMORANDUM TO

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

2016 No. 327

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 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 (the “Prescription 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 2016 which comes into force on 1 April 2016 and provides that until the end of 31 March 2017 an AAMR can be imposed by courts in nine specified local justice areas in London.

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, which brings into 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 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. An initial pilot commenced on 31 July 2014 for a period of 12 months. This was then extended for a further 6 months to 31 January 2016 and again extended to the end of 31 March 2016.
- 4.3 The Orders relevant to the initial pilot in the South London local justice area are:
- the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2014 (S.I.

2014/1777), which came into force on 31 July 2014 and thereby allowed courts in the South London local justice area, comprising Croydon, Lambeth, Southwark and Sutton to impose an AAMR for a period of 12 months;

- the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2015 (S.I. 2015/1480), which came into force on 30 July 2015 and amended the 2014 Order to provide for the original 12 month pilot, to be extended for a further period of 6 months.
- the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting (Amendment) Order 2016 (S.I. 2016/1), which enabled the extension of the pilot for a further 2 months until the end of 31 March 2016.

- 4.4 The present Order gives effect to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2016 (the “Piloting Order”), which expands the AAMR pilot across nine specified local justice areas in London until the end of 31 March 2017. The combined intention of the both Piloting Order and the Prescription Order is to give effect to the expanded pilot across London. As required by section 212A(12) of the 2003 Act, courts will be notified as and when 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 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. 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 London pilot, the method of monitoring compliance will 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.
- 4.7 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. 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 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, 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 to test the equipment and processes as this covered the boroughs of Croydon, Lambeth, Southwark and Sutton, but also be manageable in the sense that cases in this area are dealt with in the same court. However, as the past 20 months have shown volumes have not enabled a robust evaluation of the way that judges use the technology or the impact of sobriety tagging of offender behaviour . The decision to expand the pilot across London is to allow us to gain a better understanding of how judges are using AAMR and the offence mix it is applied to.
- 5.4 The local justice areas to which this Order applies 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 additional funding from MoJ for the expansion to new London Justice Areas.
- 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.
- 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, 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 area in which the AAMR is being piloted and this will be tested further during the expansion of the pilot to other London local justice areas.

- 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 Most of the funding for the procurement of the pilot is provided by MOPAC, with a contribution from the MoJ of £400,000 for the expansion phase. The total cost 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. The purpose of the pilot is to understand better how the AAMR would work in practice in the event of a national roll-out, and the geographical expansion of the pilot will allow the collection of further data which will inform future policy.
- 7.6 An independent academic evaluation will be undertaken, to evaluate in particular:
- how magistrates use AAMR, and the effectiveness of business processes within the criminal justice system;
 - compliance rates; and
 - any behavioural impact on offenders.

Consolidation

- 7.7 Not applicable

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 limited geographical expansion of the pilot is in the spirit of such obligation and so we are not consulting on the expansion of the pilot across London.

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 expansion of the pilot to other local justice areas.
- 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 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 independent academic 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: 07 773 960 355 or email: Magali.Provensal@justice.gsi.gov.uk, can answer any queries regarding the instrument.