

## **Equalities Statement - Alcohol Abstinence and Monitoring Requirement**

### **Policy Summary**

The Alcohol Abstinence and Monitoring Requirement (AAMR) was introduced via the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which inserts the requirement at section 212A into the Criminal Justice Act 2003. The purpose of this legislation is to bring into force section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which inserts the Alcohol Abstinence and Monitoring Requirement (AAMR) at section 212A into the Criminal Justice Act 2003. This enables AAMR to be imposed as a sentencing option for alcohol related offending where a community order or suspended sentence order is imposed.

The legislation requires that AAMR is piloted before it can be rolled out. Two successful pilots, supported by MoJ, have provided sufficient exploration of the requirement to inform the decision to commence the legislation and roll out AAMR.

AAMR is intended to tackle offending behaviour where alcohol has been a contributory factor. It is 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 abstinence mitigate offending behaviour which is driven by alcohol. Those subject to an AAMR should not be drinking alcohol during the lifetime of the order thereby removing a potential contributing factor or trigger to the behaviour of offenders who undertake alcohol related crimes. Reducing alcohol related crime will deliver public sector savings in terms of managing and dealing with the outcomes of it and will lead to fewer victims. We would also expect this to have a positive effect more broadly in communities and on individuals.

The Crime Survey for England and Wales estimates that the proportion of violent incidents where the victim believed the offender(s) to be under the influence of alcohol, for year ending March 2018 was 39%.<sup>1</sup>

An AAMR may only be imposed for an alcohol related offence, it may not be imposed on someone who is alcohol dependent or alongside an Alcohol Treatment Requirement (ATR). The requirement is being applied to adult offenders only. The legislation allows for the requirement to be monitored electronically or by other means including testing.

### **Equalities Duties**

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/thenatureofviolentcrimeinenglandandwales/yearendingmarch2018>

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying ‘due regard’ needs to be proportionately considered against the nine “protected characteristics” under the Equality Act 2010 – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity. This Equality Statement considers the potential effects of our proposals according to the protected characteristics for which we have data: race, sex and age.

## **Equality Considerations**

### **Direct discrimination**

The AAMR may be applied to any adult offender who has been found guilty of an alcohol related offence and is sentenced to a community order or suspended sentence order, providing they are not alcohol dependent or alongside an ATR. There is therefore no direct discrimination within the meaning of the Equality Act as the law applies equally to all adult offenders charged and convicted of these offences. We do not consider that this results in people being treated less favourably because of protected characteristics.

### **Indirect discrimination**

Only alcohol related offences will be eligible for consideration for an AAMR, this legislation therefore does not apply to people who consume alcohol and do not go on to commit criminal offences. Sentencing is a matter for the courts to determine in individual cases, based on the full facts of the case and of the offender before them. The aim behind this legislation is to ensure that the options available to the courts can punish those who consume alcohol to the extent that they commit crimes. Where alcohol is believed to have been a factor in the offence or triggers the offence sentencers will be able to consider a compulsory ban on consuming alcohol as a punishment.

Our initial assessment, as evidenced by the pilots is that AAMR is not indirectly discriminatory within the meaning of the Equality Act as we believe it does not put people with protected characteristics at a particular disadvantage when compared to others who do not share those characteristics.

We recognise that groups with certain protected characteristics are over-represented amongst some groups of offenders when compared to the general population. We are not able to say how many offenders will be subject to AAMR as this will be a new sentencing option but numbers will likely be a very small proportion of community orders and suspended sentence orders.

We do not consider that this would amount to indirect discrimination, since we consider that these proposals are a proportionate means of achieving the legitimate aims set out above.

### **Advancing equality of opportunity**

We have had regard to this aspect of the equality duty but do not consider commencing this legislation would impact on the advancement of equality of opportunity.

### **Discrimination arising from disability and duty to make reasonable adjustments**

Offenders who are disabled may be subject to this legislation, as they are to other forms of electronic monitoring as a requirement of a community order or suspended sentence order and it would not be reasonable to make an adjustment for them so that they are out of scope of the proposal. It remains important to us to make reasonable adjustments for offenders with disabilities to ensure appropriate support is given.

We do not consider that any additional adjustments are required for disabled people over and above the ones already in place in courts, prisons and for electronic monitoring in general. It is a matter for the decision makers, Pre-Sentence Report writers and sentencers, to ensure that the subject is physically and mentally fit enough to be electronically monitored and to comply with the requirements of their order. If, during the requirement, the probation staff monitoring the offender become aware that the subject is unable to wear the tag, then the order will be referred back to the court for a decision on what action to take.

### **Fostering good relations**

We do not consider that there is any significant impact on the achievement of this objective.

### **Evidence**

There is limited direct evidence that can be brought to this equalities statement because this a new sentence and sentencing decisions will be based on individual cases. We estimate that the proportion of offenders likely to receive an AAMR as part of community sentence would be relatively small. Please see Annex A below for a summary of the current equalities data for community sentences and electronic monitoring.

An Equalities Analysis will commence at the start of the project to introduce AAMR, it will provide assurance that equality considerations are embedded from the outset. Equalities data will be included in Management Information collected on AAMR and used to inform our approach to fair outcomes.

## Annex A

### Sentencing outcomes

1. Offenders supervised by the Probation Service, at end of period 2018, under **Community Orders** by age, sex and ethnicity\*, England and Wales:

	Number	Percentage
<b>Males</b>	58,672	100%
18-20	5,390	9%
21-24	8,085	14%
25-29	11,519	20%
30-39	17,963	31%
40-49	9,775	17%
50-59	4,523	8%
60 and over	1,417	2%
<b>Females</b>	10,756	100%
18-20	779	7%
21-24	1,172	11%
25-29	1,818	17%
30-39	3,739	35%
40-49	2,134	20%
50-59	927	9%
60 and over	187	2%
<b>Male and Female total</b>	<b>69,428</b>	

- At end of 2018, females accounted for 15% of those being supervised as part of a Community Order.

#### Ethnicity\*

	Males	Females	Total percentage
White	42,624	8,212	73%
Mixed Ethnic Groups	1,816	328	3%
Asian or Asian British	3,182	176	5%
Black or Black British	3,786	505	6%
Chinese or Other ethnic group	808	69	1%

Not stated	479	97	1%
Missing	5,977	1,369	11%

2. Offenders supervised by the Probation Service, at end of period 2018, under **Suspended Sentence Order** by age, sex and ethnicity\*, England and Wales:

	<b>Number</b>	<b>Percentage</b>
<b>Males</b>	37,267	100%
18-20	3,963	11%
21-24	5,620	15%
25-29	7,002	19%
30-39	10,466	28%
40-49	5,960	16%
50-59	3,078	8%
60 and over	1,178	3%
<b>Females</b>	5,913	100%
18-20	401	7%
21-24	586	10%
25-29	1,003	17%
30-39	1,947	33%
40-49	1,258	21%
50-59	592	10%
60 and over	126	2%
<b>Male and Female total</b>	<b>43,180</b>	

- At end of 2018, females accounted for 14% of those being supervised as part of a Suspended Sentence Order.

Ethnicity\*

	<b>Male</b>	<b>Female</b>	<b>Total percentage</b>
White	26,865	4,398	72%
Mixed Ethnic Groups	1,252	209	3%
Asian or Asian British	2,284	129	6%
Black or Black British	2,627	353	7%
Chinese or Other ethnic group	548	66	1%
Not stated	370	46	1%
Missing	3,321	712	9%

\* Information on ethnicity is not a requirement and therefore offenders do not have to disclose their ethnic background. It is self-declared.

Data: <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2018>

## Electronic Monitoring

3. Equalities data for electronic monitoring is limited and the sentencing data does not separate community orders from suspended sentence orders and **the court sentences data includes under 18s who are not eligible for AAMR** (at 4 and 5 below). The numbers of offenders likely to be sentenced to an AAMR requirement is uncertain, however we expect them to be a small proportion in addition to the existing electronic monitoring data as below.
4. The total new electronic monitoring order notifications for court sentences for year ending 31 March 2019 was 28,066. At 31 March 2019, 4,835 subjects were being electronically monitored for a community order or suspended sentence order.

Data source: <https://www.gov.uk/government/statistics/hmpps-annual-digest-2018-to-2019>

5. Electronically monitored court sentences, subjects by protected characteristic, as at 31 March 2018, England and Wales comprised:

Sex

	Number	Percentage
Males	4,079	85%
Females	702	15%

Age

	Number	Percentage
Under 18's**	565	12%
18 - 20	569	12%
21 - 24	588	12%
25 - 29	689	14%
30 - 39	1,164	24%
40 - 49	702	15%
50 - 59	365	8%
60 and over	139	3%

\*\*AAMR would apply to adults (aged 18+) only.

Data source: <https://www.gov.uk/government/statistics/hm-prison-and-probation-service-offender-equalities-annual-report-2017-to-2018>