EXECUTIVE NOTE

THE BAIL CONDITIONS (METHODS OF MONITORING COMPLIANCE AND SPECIFICATION OF DEVICES) (SCOTLAND) REGULATIONS 2006 (SSI 2006/7)

1. The above Regulations were made in exercise of the powers conferred by sections 24B(1)(b) and 24D(4) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") as inserted by section 17 of the Criminal Procedure (Amendment) (Scotland) Act 2004. The instrument is subject to the negative resolution procedure.

Background

2. The Executive is currently piloting electronically monitored movement restriction conditions of bail in 4 courts – the Sheriff Courts of Glasgow, Kilmarnock and Stirling, and the High Court sitting at Glasgow. The pilots started in April 2005 and will run until April 2007. They will be subject to an independent evaluation. The Regulations prescribing the courts which may make electronically monitored movement restrictions conditions of bail during the pilot period ("The Remote Monitoring Requirements (Prescribed Courts) (Scotland) Regulations 2005 – SSI 2005/141 ") were agreed by Parliament on 23rd February 2005.

3. Section 24A(1) of the 1995 Act provides that a person who has been refused bail by the court, may make an application for bail with a requirement that his or her movements be restricted and that compliance with this condition be electronically monitored. Section 24A(2) of the 1995 Act provides for the court to impose, at its own hand, a condition restricting a person's movements, again to be electronically monitored, if bail has already been granted and that person has been charged with or convicted of rape or murder. The policy is therefore aimed at reducing the number of accused held on remand in custody who, subject to the safeguards in respect of public safety, can be released on bail into the community. It will also tighten the supervision of the high risk group, in cases involving rape and murder charges, who are granted bail. The pilot scheme will test this and the operation of the legislation.

4. Electronic monitoring will be used to monitor compliance of the movement restriction to (or from) a specified place or description of place. The arrangements will in large mirror the arrangements already in place under provisions in section 245A and 245C of the 1995 Act for the electronic monitoring of offenders subject to restriction of liberty orders.

5. The electronic monitoring service is currently provided by Reliance Monitoring Services, using devices manufactured by Elmotech Ltd. Following a competitive tendering exercise, Serco Ltd won the contract to provide the electronic monitoring service from 1st April 2006. Serco Ltd will be using devices manufactured by Premier Geografix Ltd (PGL). The PGL equipment works in the same way as the Elmotech equipment currently in use.

Regulations

6. Section 24B (1) of the 1995 Act empowers Scottish Ministers to make regulations prescribing:

- which courts, or description or descriptions of courts, may impose electronic monitoring requirements;
- what method or methods of monitoring compliance with a movement restriction condition may be specified in any such requirement by any such court; and
- The description or descriptions of persons in respect of whom such requirements may be imposed.

7. Section 24D (4) Act requires Scottish Ministers to make regulations to specify the devices which may be used for the purpose of electronically monitoring the compliance of persons in respect of whom electronic monitoring requirements have been imposed with the movement restriction conditions in respect of which they are imposed.

Purpose of these Regulations

8. The purpose of these Regulations is to revoke The Bail Conditions (Specification of Devices) and Restriction of Liberty Order Regulations 2005 (SSI 2005/142) and to make a new set of regulations specifying the methods of compliance and the devices which may be used in monitoring compliance with a movement restriction condition. It was decided to adopt this approach, rather than to amend SSI 2005/142, to take account of the views of the Justice 1 Committee when considering SSI 2005/142. SSI 2005/142 also specified the devices which could be used to monitor compliance with a Restriction of Liberty Order and during the debate, the Convener stated that:

> *"This is probably a trivial matter about the presentation of the regulations, but it is important to me……. As a matter of policy, would having separate regulations for restriction of liberty orders and bail conditions not be a more accurate approach, as they are two different things?"*

9. The Executive undertook to produce separate regulations for bail and restriction of liberty orders at the next opportunity. Separate regulations relating to restriction of liberty orders (The Restriction of Liberty Order (Scotland) Regulations 2006) are also being considered by this Committee.

10. There is no change to the method of compliance specified in these Regulations from those in SSI 2005/142. There is however, a change to the specification of the devices, which may be used for the purposes of electronically monitoring an offender's compliance with an movement restriction condition as explained in paragraph 5 above.

11. These Regulations will come into effect on **20 February 2006** to enable the newly specified devices to be used prior to the start of the new contract. This is part of the equipment swap-out arrangements agreed between the two companies. In order to ensure uninterrupted monitoring of offenders, each Elmotech tag and home monitoring unit will be removed from each offender subject to an Order, which extends past 31st March 2006 and will be replaced by a PGL tag and home monitoring unit. This will be done throughout March and will help ensure a smooth transition from the current contractor, Reliance Monitoring Services, to the new contractor, Serco Ltd. Reliance Monitoring Services will still be responsible for monitoring offenders until 31st March.

12. The Bail Conditions (Specification of Devices) and Restriction of Liberty Order Regulations 2005 (SSI 2005/142) will be revoked on 16th April 2006. This is to allow for the

unlikely event that Elmotech tags and equipment are not replaced by PGL equipment in time for the start of the new contract on 1st April 2006, and will ensure that all offenders subject to electronic monitoring continue to be monitored until the replacement is effected.

Financial Effects

11. A regulatory impact assessment has not been prepared in this instance, as the change in contractor will have no impact on Scottish businesses.

Other regulations

13. Similar regulations specifying the new electronic monitoring are also being made in respect of Restriction of Liberty Orders (The Restriction of Liberty Order (Scotland) Regulations 2006) and for use in Intensive Support and Monitoring Services (ISMS).

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