EXPLANATORY MEMORANDUM TO

THE COMPULSORY ELECTRONIC MONITORING LICENCE CONDITION (AMENDMENT) ORDER 2021

2021 No. 999

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 This instrument amends the criteria pursuant to which an electronic monitoring condition is required to be included in the licence of a person released on licence in accordance with the Compulsory Electronic Monitoring Licence Condition Order 2021 (S.I. 2021/330) ("the Earlier Order").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 This instrument amends the Earlier Order. The Earlier Order was made in accordance with section 62A of the Criminal Justice and Court Services Act 2000, which confers a power on the Secretary of State to provide by order that an electronic monitoring condition must be included on the licence of all those persons released from prison who meet the description set out in the order. The Earlier Order accordingly requires the compulsory inclusion of an electronic monitoring condition on the licence of a 'qualifying offender' for the 'specified period', as each of those terms is described in the Earlier Order.

6.2 Article 2 of the Earlier Order describes the criteria pursuant to which a person is a 'qualifying offender'. As regards the amendments made by this Order, that article requires a person to meet the following criteria:

- where a person is serving two or more sentences of imprisonment, the sentence that meets the other criteria specified in the article must be the longest being served;

- on release, the person is required to reside at an address which is within a 'specified area', being six police areas specified in Schedule 1 to the Earlier Order.

6.3 Article 2 of this instrument amends those criteria to provide:

- where a person is serving two or more sentences of imprisonment, the sentence that meets the other criteria must be the longest or equal longest being served; this amendment puts beyond doubt the position of persons serving two or more sentences of equal length which are either the only sentences being served or are the longest of all sentences being served; if any one of those equal-length sentences meets the other criteria this criteria will be satisfied;
- on release, the person is required to reside within a specified area (and the requirement to reside at an address within that area is removed); this amendment also puts beyond doubt the position of persons required to reside at an address within an area which is expressed in non-specific or broad terms, such as a requirement to reside at any address within the whole of a police area or simply within a particular area, with no requirement to reside at a fixed address;
- thirteen police areas are added to the scope of areas constituting a 'specified area': Bedfordshire, the City of London, Cumbria, Derbyshire, Durham, Essex, Hampshire, Hertfordshire, Kent, the Metropolitan police district, North Wales, Nottinghamshire and Sussex.

6.4 The amendments made by this instrument will only apply to persons released before commencement of the instrument if, during the period prior to commencement, they were required to reside on licence in one of the six 'original' police areas specified in the Earlier Order. The instrument will also apply to any person released after commencement of this instrument. As regards the thirteen 'new' police areas included within the scope of a 'specified area', the effect of this application provision means that:

- a person released on licence before commencement and required to reside on licence before commencement within one of the thirteen 'new' police areas *will not* have the electronic monitoring condition included in their licence on or following commencement *unless* they are subsequently recalled and re-released on licence and required to reside in one of those areas;
- a person released on licence before commencement and required to reside on licence before commencement within one of the six 'original' police areas will have the electronic monitoring condition included in their licence in accordance with the terms of the Earlier Order; if, after commencement, that person is required to reside within a different police area and that area is one of the new police areas, subject to the other provisions of the Earlier Order, the electronic monitoring condition will *not* be removed, and will remain on their licence while required to reside in that area;
- a person released on licence after commencement and required to reside on licence within *any* of the police areas will have the electronic monitoring condition included in their licence.

7. Policy background

What is being done and why?

7.1 This instrument amends the Earlier Order, however it does not change the purpose of that order. The primary purpose of this instrument is to expand the specified areas to include a further thirteen areas, bringing the total specified areas to nineteen. The secondary purpose of this instrument is to make small amendments to the Earlier Order to clarify the operational application.

7.2 The Earlier Order is concerned with a group of offenders who offend prolifically for so called 'acquisitive crime', that is offences such as theft, burglary and robbery. Acquisitive criminals have the highest levels of reoffending across all offence types: 49% of all adults convicted of theft (including burglary) and 27% of all adults convicted of robbery are proven to reoffended within a year of release; this compares to a proven reoffending rate of 22% for all other offences[1]. In addition, these offenders are often not detected: 80% of theft (including burglary) cases and 64% of robbery cases resulted in no suspect being identified in the year ending March 2021, compared to 23% in all other cases[2]. These high reoffending but low detection rates add to the overall cost of reoffending and may contribute to a lack of public confidence in the criminal justice system.

7.3 For the purposes of the Earlier Order and this instrument, trail monitoring (which tracks a subject's movements) is imposed on release from custody for qualifying offenders. The offender is free to move around where and when they like (subject to other licence conditions) and the data collected from the trail monitoring is made available to the probation officer supervising the offender to better inform management and supervision.

7.4 The Earlier Order was limited and small in scope to allow for a test and learn approach, which is in line with the justifications for the power when it was introduced by the Criminal Justice and Courts Act 2015. Further legislation was anticipated, the main purpose of which would be to increase the number of specified areas to which the measure applies, following the very limited introduction to only six areas. As set out in the Explanatory Memorandum to the Earlier Order, at least 1,500 cases are required for a robust evaluation of this measure, that includes findings of its impact on reoffending behaviour, efficient implementation and cost effectiveness; expansion allows us to reach this number in a timely way. This evaluation will be published. Accordingly, the instrument expands the scope of a specified area to include: Bedfordshire, the City of London, Cumbria, Derbyshire, Durham, Essex, Hampshire, Hertfordshire, Kent, the Metropolitan police district, North Wales, Nottinghamshire and Sussex.

7.5 This instrument also makes clarificatory amendments to the Earlier Order to put beyond doubt certain provisions regarding its scope as discussed above.

[1] MOJ (2021). Proven Reoffending Statistics: July to September 2019, https://www.gov.uk/government/statistics/proven-reoffending-statistics-july-to-september-2019
[2] HO (2021). Crime Outcomes in England and Wales, year ending March 2021, https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2020-to-2021

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 No consultation has been undertaken in connection with this statutory instrument.

11. Guidance

11.1 Operational guidance and training will be provided to HMPPS and the police regarding the implementation of this instrument.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is continuous collection and analysis of management information, this instrument supports our approach whereby the expansion will allow us to reach a total of 1,500 offenders who have been subject to this measure, in a timely way, which is the minimum required to conduct a robust quantitative (impact) evaluation.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Robyn Malan de Merindol at the Ministry of Justice Telephone: 07970 306442 or email: robyn.malandemerindol1@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Christina Pride, Deputy Director for Bail, Sentencing and Release Policy at the at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP, Minister of State at the Ministry of Justice and Home Office can confirm that this Explanatory Memorandum meets the required standard.