EXPLANATORY MEMORANDUM TO

THE COMPULSORY ELECTRONIC MONITORING LICENCE CONDITION (AMENDMENT) ORDER 2022

2022 No. 1019

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument requires the amendment of the Compulsory Electronic Monitoring Licence Condition Order 2021 (S.I. 2021/330) ("the Earlier Order") to expand Acquisitive Crime eligibility to include offenders sentenced to 90 days or more.

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 Courts 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'. A qualifying offender is a person who meets all of the criteria described in Article 2 of the Earlier Order. This Order makes only one amendment to Article 2 concerning the length of sentence made by the Earlier Order, that article requires a qualifying person to meet the following criteria:

- is serving a sentence of imprisonment for a determinate term of 12 months or more where that sentence is subject to release pursuant to section 244 of the Criminal Justice Act 2003 ("the 2003 Act").

6.3 Article 2 of this instrument amends these criteria to require that a qualifying person meets the following criteria:

- is serving a sentence of imprisonment for a determinate term of 90 days or more where that sentence is subject to release pursuant to section 244 of the Criminal Justice Act 2003 ("the 2003 Act").

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 Acquisitive Crime eligibility to include offenders who receive shorter custodial sentences; therefore, the minimum qualifying period is being reduced from 12 months to 90 days, there are no other changes. The measure is the subject of a pilot that began in April 2021 so as to understand its cost-effectiveness.

7.2 This instrument is concerned with a group of offenders who commit so called 'acquisitive crime,' that is offences such as theft, burglary, and robbery. Acquisitive criminals have amongst the highest levels of reoffending within 12 months: 45% of adults convicted of theft (including burglary) and 23% of those convicted of robbery reoffend within a year, compared to 21% for all other offence types.[1] This is coupled with a low rate of detection for these offences: 72% of theft (including burglary) cases and 42% of robbery cases resulted in no suspect being identified in the year ending March 2022, compared to 36% among all recorded crimes.[2]

7.3 Expanding the eligibility to include offenders sentenced to 90 days or more will give us the opportunity to further develop the evidence base for the effective use of electronic monitoring and will be also evaluated for impact, in line with the Earlier Order, as set out at 7.5 below. This expansion also aims to provide the opportunity to better assess the most effective period for electronic monitoring for these acquisitive offenders, helping to identify what is necessary and proportionate use and therefore influencing future decisions on how electronic monitoring can be used to reduce reoffending.

7.4 This expansion is currently projected to increase the number of offenders captured by this legislation by roughly 2,000 in the period up to March 2025, which is subject to some degree of uncertainty.

Evaluation

7.5 The additional offenders captured by this measure will also be subject to evaluation in the aforementioned pilot, which will focus on understanding the same impacts as those captured by the Earlier Order. In summary, these are:

- **Reoffending behaviour** – the extent to which trail monitoring on licence for offenders who commit neighbourhood acquisitive crimes affected reoffending behaviour;

[1] MOJ (2022). Table A4a, "Proven Reoffending Statistics: July to September 2020", https://www.gov.uk/government/statistics/proven-reoffending-statistics-july-to-september-2020

[2] HO (2022). Table 2.2, "Crime Outcomes in England and Wales, year ending March 2022", https://www.gouk/government/statistics/crime-outcomes-in-england-and-wales-2021-to-2022

- **Efficient implementation** – how the measure has affected offenders, organisations and communities
- **Cost effectiveness** – what were the quantifiable costs and benefits of the intervention for the criminal justice system.

Data protection

7.6 Data collected as a result of the compulsory electronic monitoring condition will be processed in compliance with data protection legislation and the statutory Code of Practice for Electronic Monitoring. Qualifying offenders will be made aware of the specific use to which their data will be put. A Data Protection Impact Assessment has been undertaken for the Acquisitive Crime project introduced through this measure and the Earlier Order.

8. European Union (Withdrawal) Act and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

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 significant impact on the public sector.

12.3 An Impact Assessment (IA) has not been prepared for this instrument because the total financial impact to the public sector of this measure is estimated to be under the £5 million threshold that requires production of an IA.

12.4 The quantified financial cost to the MoJ of this legislation in the period up to January 2024 is currently put at around £1 million in cash terms.

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.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Brigitte Ferreira at the Ministry of Justice Telephone: 07583067651 or email: brigitte.ferreira-vieria1@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 Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rob Butler MP, Parliamentary Under Secretary of State in the Ministry of Justice. at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.