EXPLANATORY MEMORANDUM TO

THE COMPULSORY ELECTRONIC MONITORING LICENCE CONDITION (AMENDMENT) ORDER 2026

2026 No. 761

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. Declaration

2.1 Lord Timpson, Minister of State for Prisons, Probation and Reoffending at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

2.2 Stephen O'Connor, Deputy Director for Probation Policy at the Ministry of Justice, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Toby Sherwin at the Ministry of Justice can be contacted at toby.sherwin1@justice.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes an amendment to The Compulsory Electronic Monitoring Licence Condition Order 2021 ("the existing Order"), specifically Article 4(b)(ii) dealing with the specified period of Electronic Monitoring, to reflect the implementation of the policy supporting the Sentencing Act 2026 changes. The Sentencing Act 2026 is changing the release point of some sentences to one third and the policy supporting that change prescribes intense supervision on release, and, for some sentences, suspension of supervision at the two third point. It is the suspension of supervision that these changes in the SI are aligning with.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 The acquisitive crime pilot has been running since April 2021, initially in 6 Police Force Areas (PFAs) and later expanded to 19 PFAs in September 2021. It mandated the use of GPS electronic monitoring of individuals convicted of acquisitive crime

offences (i.e., theft and robbery). A process[1] and impact[2] evaluation have been conducted, with the impact evaluation showing a seven-percentage point decline in the rate of reoffending within 12 months of release (from 33.2% to 25.2%). The pilot is due to be expanded to the remaining PFAs during this parliament, with intentions to begin roll-out around Autumn 2027.

5.2 To align continuation of the pilot with wider reforms, this instrument adjusts the specified period of Electronic Monitoring set out in the existing Order, so that the specified period will end when probation supervision ends following a qualifying offender's release on licence rather than at the end of the offender's sentence. Probation will be ending supervision for some offenders when they reach the third portion of their sentence. Qualifying offender is defined by Article 2 of the existing Order: a qualifying offender is an offender to which the 2021 Order applies to. This is being done to align application of Electronic Monitoring under the existing Order with wider changes to the structure of Standard Determinate Sentences. The criteria for the specified period set out in the existing Order refers to end of sentence. This does not take account of the new progression model for standard determinate sentences introduced by the Sentencing Act 2026, and the accompanying policy which moves these sentences to a clearer, three-stage structure.

5.3 After release from custody (first stage), the progression model divides the sentence into 'intensive supervision' (second stage), and a final 'licence stage' (third stage). As a matter of policy, a named cohort of offenders will continue to be supervised in the third stage. Those not falling into this cohort will remain on licence and can be recalled if they cannot be safely managed in the community, but will not be subject to active probation supervision.

5.1 The amendment to the specified period brought about by this instrument will end Electronic Monitoring at the point a qualifying offender transitions into the third stage of their sentence, if they are no longer subject to active supervision, or keep it in place if they will be.

What was the previous policy, how is this different?

5.2 The previous policy aligned consideration of the specified period for a qualifying offender to the end of sentence. The amendments change this to the end of supervision of the sentence, reflecting the new structure for standard determinate sentence.

6. Legislative and Legal Context

How has the law changed?

6.1 Alongside the Sentencing Act 2026 changes to the release point at one third a new structured progression model for individuals serving Standard Determinate Sentences after release is being introduced by policy, where for the last third of the sentence some will have their supervision suspended.

[1] Process evaluations of the acquisitive crime electronic monitoring project's 12 month+ cohort and 3 to 12 month cohort. https://www.gov.uk/government/publications/process-evaluations-of-the-acquisitive-crime-electronic-monitoring-projects-12-month-cohort-and-3-to-12-month-cohort

[2] Impact evaluation of the acquisitive crime project: 12 month+ cohort. https://www.gov.uk/government/publications/impact-evaluation-of-the-acquisitive-crime-project-12-month-cohort

Why was this approach taken to change the law?

6.2 Making this instrument is the only route to make the necessary change to the specified period for qualifying offenders.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this is a minor change to align with wider reforms, which have already been widely consulted on, we do not believe further consultation is required.

8. Applicable Guidance

8.1 The regime for application of Electronic Monitoring to qualifying offenders is set out in HM Prison and Probation Service policy frameworks, which will be update accordingly at the point this instrument comes into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument.

Impact on businesses, charities and voluntary bodies

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

9.3 This instrument does not apply to activities that are undertaken by small businesses.

9.4 There is no significant impact on the public sector. The main body that will be impacted are HM Prisons and Probation Service

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument does not include a statutory review clause.

10.2 Policy frameworks, including Electronic Monitoring, are subject to regular review.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As this instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

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