EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (ALCOHOL ABSTINENCE AND MONITORING REQUIREMENT) (PRESCRIPTION OF ARRANGEMENT FOR MONITORING) ORDER 2014

2014 No. 1787

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 The Order specifies the arrangements for monitoring compliance with an alcohol abstinence monitoring requirement (AAMR) which can be imposed as part of a community order or suspended sentence order. Specifically, this Order states that monitoring of compliance will be achieved through a transdermal electronic tag.

2.2 This Order is linked to The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2014 (S.I. 2014/1777) which comes into force on 31 July 2014 and provides that for a period of 12 months an AAMR can be imposed by courts in the South London local justice area, comprising Croydon, Lambeth, Southwark and Sutton.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 This Order is linked to The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2014 (S.I. 2014/1777) (the Piloting Order) which brings into force section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the 2012 Act). Section 76 of the 2012 Act inserts a new section 212A into the Criminal Justice Act 2003 (the 2003 Act) which allows an AAMR to be imposed as part of a requirement of a community order or suspended sentence order.

4.2 Before any national roll-out of an AAMR, legislation requires that it must first be piloted. The combined intention of both the Piloting Order and this Order prescribing arrangements for monitoring is to give effect to the first AAMR pilot. Specifically, the Piloting Order provides that an AAMR can be imposed for a period of 12 months, starting on 31 July 2014 in the South London local justice area. This comprises Croydon, Lambeth, Southwark and Sutton.

4.3 An offender who is subject to an AAMR is required to submit to monitoring for the purposes of ensuring compliance with the requirement placed on them. Under section 212A(1)(a) of the 2003 Act this provides that a court can order an offender to abstain from alcohol consumption for a specified amount of time or to not consume alcohol so that any point during a specified period the offender should not exceed a certain level of alcohol in their body. For the purposes of the South London local justice area pilot, total abstention from consuming alcohol will be required.

4.4 Section 212A(6) and (7) of the Act requires the Secretary of State to specify the arrangements for monitoring compliance with an AAMR. This Order therefore provides that for the purposes of the South London local justice area pilot, the method of monitoring compliance will be a transdermal electronic tag. These are tags fitted around the ankle of an offender that measure the level of alcohol in an offender's sweat at set points throughout a 24 hour period. The tag provides data to a central monitoring point where it is analysed to check for compliance. If there are indications that a breach has occurred or should be considered then the enforcement authority is advised accordingly.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and is restricted to the South London local justice area.

6. European Convention on Human Rights

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

7. Policy background

7.1 The pilot is being procured and run by the London Mayor's Office for Policing and Crime (MOPAC).

7.2 Section 76 of the 2012 Act allows an AAMR to be imposed as part of a community order or suspended sentence order for those offenders where alcohol consumption was an element of the offence, or associated offence, for which they are being sentenced, and was a factor that contributed to the offence. The AAMR cannot be used where the offender is dependent on alcohol and where an alcohol treatment requirement is specified in the order.

7.3 AAMRs are intended to tackle low level offending behaviour where alcohol has been a contributory factor in the offending. They are 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 sobriety they are designed to mitigate offending behaviour which is driven by alcohol. This pilot will be testing a technological solution to monitoring alcohol levels in offenders subject to an

AAMR, and how sentencers apply an AAMR to those offenders suitable for the requirement. Furthermore, as those subject to an AAMR will not be drinking during the lifetime of the order, they should not be undertaking any alcohol related crime, therefore making a saving to the public sector in managing and dealing with the outcome of that behaviour. This should have a positive effect across the wider community in the area the AAMR is being piloted and this will also be tested during the lifetime of the pilot.

8. Consultation outcome

8.1 This was debated by Parliament during the passage of the 2012 Act. The provisions include a statutory obligation to pilot before any national rollout. We are not therefore consulting on the implementation of a small scale pilot.

9. Guidance

9.1 Guidance to the Courts, National Probation Service and Community Rehabilitation Companies and offenders on the operation of AAMR within the South London Justice Area will be provided by MOPAC in conjunction with CJS partners.

9.2 Guidance to offenders who are placed on AAMR will be provided by the company contracted to fit the AAMR transdermal tag.

10. Impact

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

10.2 The impact on the public sector is limited in that there will be some offenders who are placed on an AAMR by the Court and breach those requirements, and so will be brought back to the Court for a breach hearing where the Court may make the Community Order or the community requirements of a Suspended Sentence Order more onerous, revoke the order and resentence the offender or fine the offender.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The pilot conducted by MOPAC will be subject to independent review and evaluation throughout its lifetime which will be used to inform future policy.

13. Contact

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email: richard.hutchinson@justice.gsi.gov.uk can answer any queries regarding the instrument.