EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE ACT 2003 (ALCOHOL ABSTINENCE AND MONITORING REQUIREMENT) (PRESCRIPTION OF ARRANGEMENT FOR MONITORING) ORDER 2017

2017 No. 537 (L. 7)

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 The Order specifies arrangements for monitoring compliance with an alcohol abstinence monitoring requirement (AAMR) which can be imposed by a court as part of a community order or suspended sentence order. Specifically, this Order (the "Prescription Order") provides for the monitoring of compliance to 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 2017 which comes into force on 1 May 2017 and provides that until the end of 30 April 2019 an AAMR can be imposed by courts in the specified local justice areas of Humber, Lincolnshire and North Yorkshire.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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 2017 (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 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 Section 77 of the 2012 Act provides that an order for the purposes of bringing into effect section 76 for the whole of England and Wales cannot be made until a piloting order has been made. This pre-condition has already been met by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Alcohol Abstinence and Monitoring Requirements) Piloting Order 2014 (S.I. 2014/1777).

4.3 The Piloting Order enables Crown and Magistrates' Courts in the local justice areas of Humber, Lincolnshire and North Yorkshire, for a period of 24 months from the 1st May 2017, to impose an AAMR. The combined effect of both the Piloting Order and the Prescription Order is to give effect to the pilot in the above local justice areas.

4.4 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. Section 212A(1)(a) of the 2003 Act 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 at any point during a specified period they exceed a certain level of alcohol in their body. The pilot will require total abstention from consuming alcohol.

4.5 Section 212A(6) and (7) of the 2003 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 Humberside, Lincolnshire and North Yorkshire pilot, the method of monitoring compliance will be a transdermal electronic tag. As required by section 212A(12) of the 2003 Act, courts will be notified as and when arrangements for monitoring of the specified kind are available in their relevant local justice area.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 By virtue of the Piloting Order, the local justice areas in which AAMR can be imposed under this pilot as part of a community order or suspended sentence order are: Humber, Lincolnshire and North Yorkshire.

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

What is being done and why

7.1 This pilot is being procured and run by the Police and Crime Commissioners of Humberside, Lincolnshire and North Yorkshire with additional funding from MoJ.

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. An AAMR can only be imposed for a maximum period of 120 days and cannot be used where the offender is dependent on alcohol or where an Alcohol Treatment Requirement is specified in the Order. AAMR tags will be recommended to sentencers following Pre-Sentence Reports prepared by the National Probation Service. The tool used to determine dependency within the Pre-Sentence Report is the same tool used when initially screening offenders for Alcohol Treatment Requirements. It is called the Alcohol User Disorder Identification Test (AUDIT Tool). The decision to impose an AAMR lies ultimately with the sentencer.

7.3 This Order prescribes that the monitoring arrangements for the pilot will be by transdermal electronic tag. These are tags fitted around the ankle of an offender that

measure the level of alcohol in an offender's sweat every 30 minutes throughout a 24 hour period. They maintain contact with the surface of the skin but are not invasive, and cannot be fooled either positively by the offender spraying perfume or negatively by attempting to cover the relevant area of skin.

7.4 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, the enforcement authority is advised accordingly. The Responsible Officer will determine the best course of action to take following discussion with the offender. There is no recourse to secondary alcohol testing equipment. The Responsible Officer could determine that a warning is the best course of action or, if the offender has already received a warning for alcohol consumption, they could instigate breach proceedings and bring them before the court, where the offender could be resentenced.

7.5 Before any national roll-out of an AAMR, legislation requires that it must first be piloted. The Mayor's Office for Policing and Crime (MOPAC) commenced a pilot in London on 31 July 2014, initially as a proof of concept, in three London Boroughs. The pilot was subsequently extended and expanded to incorporate 9 London local justice areas and will run until 31 March 2018. The pilot has been continuing in order to increase cohort volumes, which have been low, and offence mix, which has been narrow, and so provide adequate data for a robust evaluation.

7.6 Humberside, Lincolnshire and North Yorkshire Police and Crime Commissioners in partnership with MoJ, seeks to increase the learning from MOPAC's pilot through a separate AAMR pilot that will include a cohort (of up to 50%) of domestic abuse perpetrators and a different model for the tagging service and managing the offender. The evaluation of the pilot will inform the potential national roll out of Alcohol Monitoring.

7.7 AAMRs are intended to tackle offending behaviour where alcohol has been a contributory factor in the offending. They are meant to punish the offender by requiring them not to consume alcohol during the period of the AAMR, and through enforcing sobriety they are designed to mitigate offending behaviour which is driven by alcohol. As those subject to an AAMR should not be drinking during the lifetime of the order, the intention is that abstinence will deter offenders from undertaking alcohol related crime, with the consequent benefits to the community and offender.

7.8 As a standalone measure AAMR is primarily a punitive measure, this pilot will look at whether an enforced period of sobriety can increase offender engagement with other supportive interventions, and therefore contribute to rehabilitation and reducing re-offending. This pilot will guide sentencers against imposing AAMR as a standalone condition of a community order or suspended sentence order and recommend that it is ordered alongside other support programmes and requirements, specifically those that target alcohol use and domestic violence. The evaluation framework is designed to examine the outcomes of these rehabilitative ambitions.

7.9 The alcohol monitoring device and supporting technology is well established and has been used successfully at a number of locations in the United States of America. In the UK, transdermal tags were used as part of MOPAC's Alcohol Abstinence pilots, and have been used on a voluntary basis in Glasgow, Cheshire and Lewisham, and by Northamptonshire Police Force to test Sobriety Conditional Cautions. Over 360,000, subjects have been monitored in this way in the U.S. and over 300 in the MOPAC pilot.

7.10 MoJ has contributed £167,000 to this pilot, further costs are being met by the three Police and Crime Commissioners and the Cheshire and Greater Manchester Community Rehabilitation Company.

7.11 An independent academic evaluation will be undertaken, to evaluate in particular:

- How alcohol monitoring can be used alongside existing interventions for alcohol-related offending, and what outcomes the monitoring has.
- What the specific considerations and outcomes for alcohol monitoring when used in domestic abuse cases are.
- How alcohol monitoring was implemented in practice.
- Whether alcohol monitoring lead to changes in outcomes in the target groups, for example: reoffending, repeat victimisation, re-arrest, alongside non-crime outcomes such as health, employment, and relationships.
- Take up of and barriers to the AAMR;
- Compliance rates; and
- What decision makers and stakeholders perceive as 'good practice'.

Consolidation

7.12 No consolidation is required at present.

8. Consultation outcome

8.1 The design, development and set up of the AAMR pilot has been undertaken in consultation with relevant stakeholders across the criminal justice system.

9. Guidance

9.1 Guidance to sentencers, the courts, the National Probation Service, Community Rehabilitation Companies and offenders on the operation of AAMR within Humberside, Lincolnshire and North Yorkshire local justice areas will be provided in advance of and during the 24 month pilot.

9.2 Guidance will be provided specifically for the identification and management of the domestic abuse perpetrator cohort of offenders that fall within scope of the AAMR pilot.

9.3 Guidance to offenders who are placed on AAMR will continue to 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 remains limited in that there will be some offenders placed on an AAMR who might breach those requirements, thereby triggering enforcement proceedings 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 because of the small scale and localised nature of the pilot.

11. Regulating small business

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

12. Monitoring & review

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

12.2 The evaluation will be published as soon as is practicable.

13. Contact

13.1 Robyn Malan de Merindol at the Ministry of Justice, Telephone: 07970 306442 or email: robyn.malandemerindol1@justice.gov.uk, can answer any queries regarding the instrument.