EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE (ELECTRONIC MONITORING) (RESPONSIBLE PERSON) ORDER 2016

2016 No. 954

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 A person released from custody on licence may have an electronic monitoring condition as part of that licence. An electronic monitoring condition must include provision for making a person responsible for the electronic monitoring and this order specifies police officers of the Hertfordshire police force and others employed by that police force as amongst those who can act as responsible persons. This is part of a pilot of electronic tags that use the global positioning system (GPS) to monitor the location of the person wearing the tag (these are referred to as GPS tags) and Hertfordshire police will be monitoring those on GPS tags.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This order is laid in breach of the 21 day rule in part due to a failure on the part of Departmental lawyers to realise during the planning process for the pilot that this order is subject to the negative resolution procedure. This has delayed the process for securing Ministerial and cross-Government approval for the laying of the order. The Department has been working for some time with delivery partners on a structured and phased approach to the roll out of pilot activity and partners had expected pilot activity to start on 26th September 2016. While it is a matter of regret, the Department has decided to give Parliament limited notice of this order in order that the overall structured and phased rollout of the pilot is not unduly delayed and as the Department will also begin to incur financial costs associated with a delay to the commencement of the pilot beyond the original timetable. The Department has been working very closely with the police forces concerned in the relevant pilot areas to set up the arrangements for the pilot. Hertfordshire police force is, therefore, fully expecting those working for it to act as the responsible persons as part of the pilot.

3.2 The pilot will only affect a limited number of offenders in specified areas. Communications about the pilot will be made to all those who may become subject to the pilot. The offenders will suffer no detriment in respect of the breach of the 21 day rule as this order only sets out who is the responsible person to monitor the condition and has no effect as to whether the condition is or is not imposed. The responsible person is set out on the licence when it is imposed or varied but that can only be done after it is decided that the condition is necessary and proportionate for that offender.

Therefore, breach of the 21 day rule in this case will not have disadvantaged anyone affected by the order.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to negative resolution 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 There are a number of statutory powers under which a person on licence may be recalled to custody but whose licence is varied instead, or under which a person may be released on home detention curfew, released by the Parole Board or re-released following a recall. The relevant ones for the purposes of the pilot are as follows:

- Persons serving a determinate sentence released on home detention curfew under section 246 of the Criminal Justice Act 2003 ("the CJA");
- Persons serving a determinate sentence who may be recalled to custody but whose licence is varied instead under section 250 of the CJA;
- Persons serving an indeterminate sentence who are released by the Parole Board on licence under section 31(3) of the Crime (Sentences) Act 1997;
- Persons serving a determinate sentence who have been recalled to custody and are re-released under section 255B(2) and 255C(2) of the CJA.

4.2 Section 62(1) and (2) of the Criminal Justice and Court Services Act 2000 ("the CJCSA") provide that if the Secretary of State is required, or may, release a person from prison subject to conditions, those conditions may include an electronic monitoring condition. Under section 62(5A) of the CJCSA an electronic monitoring condition is one that requires a person to submit to either or both of the following: (a) electronic monitoring of the person's compliance with another condition of release; or (b) electronic monitoring of the person's whereabouts (other than for the purpose of monitoring compliance with another condition of release). The conditions that may be imposed under the pilot could be either type of condition or both.

4.3 Under section 62(2A) of the CJCSA if an electronic monitoring condition is imposed it must include provisions for making a person responsible for the monitoring. A person can only be made responsible for monitoring if he or she is of a description specified in an order under section 62(2B). This order is an order under section 62(2B).

4.4 Location monitoring may be imposed on a prison licence by the Parole Board or by the governor of a prison on behalf of the Secretary of State when a subject is released from a custodial term. Under the CJA (section 250), the licence period is to protect the public, to prevent re-offending and to secure the successful re-integration of the offender into the community. Licence conditions should be preventative as opposed to punitive and must be necessary and proportionate.

4.5 An offender who is subject to an electronic monitoring condition imposed as part of prison licence is required to submit to monitoring for the purposes of ensuring compliance with the condition. A GPS tag will be fitted to the ankle of the offender by Police Forces in the local area. The tag records the offender's whereabouts every

60 seconds (sooner if there is a breach) and transmits data to a monitoring system every hour. However, if there is a violation the tag will transmit the data to the monitoring system immediately. The monitoring centre is staffed only by Hertfordshire Constabulary who analyse the data to determine compliance and identify whether a breach of the electronic monitoring condition has occurred. A breach may warrant a warning or, if it is a serious breach, the National Offender Management Service will consider whether a recall to prison custody is appropriate.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

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

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 On 8th February 2016, the then Prime Minister announced the intention to launch GPS tagging pilots. The Ministry of Justice will be launching a GPS pilot on 10th October 2016 that will include the electronic monitoring (using GPS technology) of subjects subject to electronic monitoring requirements as part of court imposed bail, community orders, suspended sentence orders and conditions as part of release from prison on licence (excluding temporary release on licence). There are two pilot areas covering different cohorts with phased start dates. The first area to start will cover Bedfordshire, Cambridgeshire, Hertfordshire and Northamptonshire and will look at cases of those persons released on licence from custody. There will subsequently be a rolling approach to commencement across the second area, which includes a number of Midland counties. Commencement for this area will begin in Leicestershire, with Nottinghamshire, Staffordshire, and potentially West Midlands following in order. The second pilot area will look at cases of those persons on court imposed bail, community orders and suspended sentence orders as well as those prisoners sentenced to indeterminate sentences for public protection and life sentences released on licence by the Parole Board.

7.2 The pilot will run for 12 months with a 6 month follow up period. While no new GPS tags will be installed after 13th October 2017, monitoring arrangements will continue until 31st March 2018 for those individuals still subject to a relevant requirement as part of their bail/licence condition or community order/suspended sentence order. The pilot will test a range of factors including:

- how a GPS tag might impact on the behaviour of offenders released from prison on licence, suspects on bail and offenders sentenced by the Courts;
- how Courts, probation staff, Parole Board members, and prison governors respond when given the option of a using a GPS tag as part of a Court Order or prison licence;
- what other benefits GPS tagging might bring; and

- how GPS might best be implemented in practice, and the challenges of operating GPS tagging.

7.3 This order relates to those released on licence. The order does not refer to the pilot on its face. This is because the purpose of this order is to add to the list of those that may act as a responsible person for monitoring rather than limit those who may act. The decision on who will act as the responsible person for monitoring in a given case will be determined by the Secretary of State when the electronic monitoring condition is imposed on a particular individual.

7.4 The overall monitoring of the GPS tags will be conducted by one police unit based in Hertfordshire police. They will be responsible for the monitoring itself such as monitoring compliance or whereabouts and installing or arranging to install the GPS tagging equipment. However, the pilot has been organised on a locally-led approach, with police forces in the pilot areas having "field-service" roles such as carrying out the actual fitting and monitoring activity of those subjected to a GPS tag.

7.5 A code of practice will be published relating to the processing of data gathered in the course of electronic monitoring of those on these GPS tags.

Consolidation

7.6 This order is not appropriate for consolidation.

8. Consultation outcome

8.1 There has been no public consultation. The Department has been in close contact with the relevant police forces for the areas covered by the pilot, as well as Criminal Justice System (CJS) partners including the prisons from which individuals who may be subject to GPS tagging may be released, the courts who may consider cases that may form part of the pilots, as well as probation providers.

9. Guidance

9.1 Guidance has been issued to all relevant CJS partners including police forces, the relevant prisons and Parole Boards and the relevant courts, and probation providers. The guidance can be found at the following link: https://www.gov.uk/government/publications/electronic-monitoring-global-positioning-system.

9.2 Information will also be provided to those offenders and suspects who are tagged as part of the pilot.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. However, like all other subjects on an electronic monitoring condition, it will be open to electronic monitoring subjects to contact charitable organisations, including, but not limited to, the Samaritans, NACRO, Refuge, Shelter and Frank. This will be signposted as part of an offender's induction literature.

10.2 The impact on the public sector is limited although we expect an impact on those involved in imposing electronic monitoring conditions (courts, prisons, Parole Board) and the monitoring of compliance with and the enforcement of those conditions (probation providers, the Police, the National Offender Management

Service). Procedures have been worked up in consultation with those key stakeholders as part of a Working Group.

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

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 Department's plan is that no new GPS tags will be imposed after the 13th October 2017, though monitoring arrangements may continue up to the end of March 2018 and a full evaluation report will be available later in 2018.

13. Contact

13.1 Jon Vellacott at the Ministry of Justice

Tel: 07807509777 or Email: Jon.Vellacott@noms.gsi.gov.uk can answer any queries regarding the instrument.