EXPLANATORY MEMORANDUM TO

THE CRIME AND COURTS ACT 2013 (COMMENCEMENT NO. 18) ORDER 2018

2018 No. [XXXX]

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 purpose of this Order is to commence the provisions of section 44 and Part 4 of Schedule 16 to the Crime and Courts Act 2013 ("the Act"). The provisions of these sections allow Courts to impose a standalone location monitoring requirement as a requirement of an offender's community sentence. All other location monitoring requirements are for the purposes of monitoring compliance with another requirement of their sentence e.g. an exclusion zone. A standalone requirement is not attached to any other requirement and permits a subject's location to be actively monitored for up to 24 hours a day.

2.2 Section 44 and part 4 to Schedule 16 have only been commenced for location monitoring pilots run by the MoJ and, separately, by the Mayor's Office for Policing and Crime. These pilots have commenced the provisions for specific geographical areas. This Order will fully commence the provisions for England and Wales when the MoJ's new electronic monitoring service goes live in early 2019.

2.3 The evaluation from the Pilots will not be available at the scrutiny stage of the SI's passage. However, the Pilots' primary purpose is to inform the implementation of the Global Positioning System (GPS) functionality and they continue to demonstrate the value of location monitoring on an ongoing basis, including as an alternative to custody. Commencing this legislation will provide sentencers with an additional tool to help manage offenders risk in the community.

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 This entire instrument applies only to England and Wales.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

4.1 Section 44 of the Act gives effect to Part 4 to Schedule 16 to the Act. Part 4 to Schedule 16 amends the Criminal Justice Act 2003 (c. 44) to include a new type of electronic monitoring requirement for community orders and suspended sentence orders. This is a requirement that allows for an individual's movements to be tracked for reasons other than for monitoring compliance with another requirement of their community order or suspended sentence order.

4.2 Section 44 and Part 4 of Schedule 16 to the Act have been partially in force by virtue of the Crime and Courts Act 2013 (Commencement No. 15 Transitional and Savings Provisions) Order 2016 (S.I. 2016/962) and Crime and Courts Act 2013 (Commencement No. 17 Transitional and Savings Provisions) Order 2017 (S.I. 2017/236) in order to pilot the standalone provision.

4.3 When commencing such provisions, in accordance with the provisions of section 215A of the Criminal Justice Act 2003, the Secretary of State is required to issue a Code of Practice relating to the processing of personal data in the course of electronic monitoring of persons serving a community sentence with an electronic monitoring requirement. The Code can be found at the following link: https://www.gov.uk/government/publications/code-of-practice-electronic-monitoring

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 set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Crime and Courts Act (Commencement No. 18) Order 2018 are compatible with the Convention rights.

6.3 It is recognised that location monitoring engages Article 8 and of the European Convention of Human Rights i.e. the right to respect for private and family life. However, Article 8 is not an absolute right and public authorities are permitted to interfere with it if it is lawful and proportionate to do so.

6.4 Courts must only impose a location monitoring requirement as part of a community sentence where it is proportionate and necessary to do so.

7. Policy background

What is being done and why

7.1 The MoJ is in the process of delivering a new electronic monitoring service which will upgrade the existing curfew provision, introduce a better case management system providing greater visibility to offender managers of the detail of their subjects and provide a flexible platform to support potential future electronic monitoring innovation. It will also include the location monitoring of subjects who have such a requirement or condition imposed through a Court Order or a prison licence. The new service is expected to go live in early 2019.

7.2 To allow for the location monitoring of an offender to take place, where it is not ancillary to another requirement and where it is imposed as part of a community order or suspended sentence order, legislation creating the power for freestanding monitoring needs to be brought into force.

Consolidation

7.3 This Order does not seek to consolidate or revoke any existing Orders.

8. Consultation outcome

8.1 While there has been no public consultation, as part of the programme of work to deliver the new service, there has been, and continues to be, engagement with stakeholders, including, but not limited to, Her Majesty's Courts and Tribunal Service, the Police and probation practitioners. In addition, the Information Commissioner's Office and the Investigatory Powers Commissioner's office have been consulted on the content of the Code of Practice.

9. Guidance

9.1 Courts will be notified when the new service is able to support location monitoring and when such requirements may be imposed as part of a Court Order.

10. Impact

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

10.2 There is no significant impact on the public sector.

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 There is no intention to monitor or review this Order. However, the service and the use of location monitoring will be kept under review to inform the electronic monitoring service's contractor's compliance and future developments.

13. Contact

13.1 Toby Head at the Ministry of Justice Telephone: 07773 062867 or email: toby.head@noms.gsi.gov.uk can answer any queries regarding this Order.