EXPLANATORY MEMORANDUM TO

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (COMMENCEMENT NO.14) ORDER 2019

2019 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 instrument is to bring into force section 76 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which inserts the Alcohol Abstinence and Monitoring Requirement (AAMR) at section 212A into the Criminal Justice Act 2003. This enables AAMR to be imposed as a sentencing option for alcohol related offending where a community order or suspended sentence order is imposed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This draft Order is to be made under the special commencement provision in section 77 of LASPO (to which the affirmative resolution procedure applies) and is to be considered by both houses of parliament.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The instrument does not have any minor or consequential effects outside England and Wales.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument enables provisions that have been approved by Parliament to be brought into force by enacting them, no statement is required.

5.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

6. Legislative Context

6.1 This Order is linked to section 77 of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 which requires that Alcohol Abstinence and Monitoring Requirement (AAMR) is piloted before any national roll-out of AAMR. There have been two pilots; a pilot by the London Mayor's Office for Policing and Crime (MOPAC) commenced in 2014 and was extended and expanded to cover all London

Local Justice Areas in 2016, the power ended in June 2018. The second pilot in the Local Justice Areas of Humber, Lincoln and North Yorkshire (HLNY) was due to commence in April 2017 but was delayed until June due to the calling of a General Election, the power ended in April 2019.

6.2 These two pilots have shown that there is appetite amongst sentencers for AAMR as evidenced by around a total of 1,500 requirements being imposed. Compliance with AAMR was high at 94% for the MOPAC pilot and a sober day rate of 98%. Similar levels of compliance are indicated from the HLNY pilot, although at this time the findings have not been published.

6.3 Where sentenced to a community order or suspended sentence order with an AAMR the offender will be required to submit to monitoring for the purposes of ensuring compliance with the requirement placed on them. Under section 212A(1)(a) of the Criminal Justice Act 2003 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 at any point during a specified period they exceed a certain level of alcohol in their body. The pilots required total abstention from consuming alcohol.

6.4 Section 212A (6) and (7) of the Criminal Justice Act 2003 Act requires the Secretary of State to specify the arrangements for monitoring compliance with an AAMR. The Electronic Monitoring (Responsible Persons) (Amendment) Order 2018 provides that the method of monitoring compliance will be a transdermal electronic tag and the agreed Responsible Person is specified. The alcohol monitoring tags are fitted around the ankle of an offender and 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; they can distinguish between alcohol based products applied to the skin to mask alcohol consumption and actual consumption, and can identify when contact between the skin and the tag has been blocked, these measures are identified as a tamper that attempts to interfere with the electronic monitoring. This method of monitoring provides continuous assurance around whether the requirement is being complied with.

6.5 The tag provides data each day to a central monitoring point (identified in separate legislation as the Responsible Person as at 6.4 above) where it is analysed to check for compliance. If there are indications that a breach, such as the presence of alcohol or a tamper, has occurred the enforcement authority is advised accordingly. The responsible officer (likely to be the offender manager) responsible for enforcement will determine the best course of action to take. 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 or tampering, they could instigate breach proceedings and bring them before the court, where the offender could be resentenced. There is no recourse to secondary alcohol testing equipment, where the Responsible Person has confirmed a breach that will be the initial evidence required for enforcement or breach proceedings to commence, further evidence of breach available from the monitoring data will be supplied by the Responsible Person as necessary.

6.6 AAMR cannot be imposed where the offender is dependent on alcohol or where an alcohol treatment requirement is specified in the order. An AAMR will be recommended to sentencers, where deemed appropriate, in the Pre-Sentence Report prepared by the National Probation Service. The tool used to determine dependency on alcohol for the Pre-Sentence Report is the same tool used when initially screening

offenders for Alcohol Treatment Requirements, it is called the Alcohol Use Disorder Identification Test (AUDIT Tool). The decision to impose an AAMR lies with the sentencer.

6.7 AAMR can be imposed for up to 120 days.

7. Policy background

What is being done and why?

7.1 AAMRs are being introduced as an optional requirement for community orders and suspended sentence orders, they are intended to tackle offending behaviour where alcohol has been a contributory factor. 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 abstinence they are designed to mitigate offending behaviour which is driven by alcohol. Those subject to an AAMR should not be drinking alcohol during the lifetime of the order thereby removing a contributing factor or trigger to the behaviour of offenders who undertake alcohol related crimes. Reducing alcohol related crime will make public sector savings in terms of managing and dealing with the outcomes of such crimes, and should lead to fewer victims, we would also expect this to have a positive effect more broadly in communities and on individuals.

7.2 The department has supported two AAMR pilots, the MOPAC pilot and the HLNY pilot. These are both complete and have been successful in exploring and testing the suitability and effectiveness of the AAMR.

7.3 MOPAC have published four evaluations of their pilot at different stages, the latest report can be found via the following link: https://www.london.gov.uk/sites/default/files/aamr_final_process_performance_y2_report_final.pdf . The evaluation of the HLNY pilot is not due until February 2020 but sufficient learning has been shared with the department, through ongoing involvement with the pilot and its evaluation, to indicate findings consistent with, and complementary to, the MOPAC pilot. In addition, the department conducted a proof of concept for using the alcohol monitoring technology for suitable offenders released on licence. This has provided considerable insight into how alcohol monitoring can support the management of risk and rehabilitation. On this basis, we consider that we have a good evidence base around the utility and practice of AAMR which has informed our plans for England and Wales roll-out.

7.4 The contribution of the HLNY pilot has been significant in adding to the findings from the MOPAC pilot and has expanded our knowledge of the potential of the requirement, for example it asked sentencers not to order AAMR as a standalone requirement, so that abstinence was imposed alongside other rehabilitative conditions such as a Rehabilitation Activity Requirement (RAR), so that rehabilitative activity could take place alongside a period of sobriety. It also included offenders convicted of domestic abuse offences, where appropriate to do so.

7.5 MOPAC's published research evaluated the pilots positively, suggesting that the introduction of AAMR is supported and welcomed by CJS stakeholders; is seen as punitive as well as rehabilitative; that it has the potential to have a positive impact on the lives of the offenders, particularly around reducing their alcohol consumption; and that offenders were generally optimistic about the requirement and felt that the AAMR had a positive impact on their lives, particularly around their health, wellbeing

and offending behaviour. As above compliance with AAMR was high at 94% and had a sober day rate of 98% for the MOPAC pilot and similar levels of compliance are indicated from the HLNY pilot (unpublished).

7.6 The numbers of AAMRs imposed during the pilots indicate that courts have an appetite for AAMR. The CJS stakeholders involved would have liked the AAMR to continue to be available. AAMR provides the court with an additional disposal, specifically for alcohol related offending. The policy objective is to make this disposal available as soon as possible so that courts can achieve the positive outcomes outlined above.

7.7 Commencement as an affirmative order is to give the power to alter the legislation in light of the pilots. We are not proposing making any changes to the legislation as it stands because it has proved effective. If any useful changes are identified in the future we will bring these forward in primary and secondary legislation as required.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 No consultation exercise was conducted. However, the AAMR provisions were debated by Parliament during the passage of Legal Aid, Sentencing and Punishment of Offenders Act 2012 and include a statutory obligation to pilot before any national roll-out. This obligation has been fulfilled by the MOPAC and HLNY pilots.

11. Guidance

11.1 Guidance to the Courts, National Probation Service, Community Rehabilitation Companies and offenders on the operation of AAMR will be provided. In anticipation of national roll out all relevant guidance documents will be updated and briefings will be provided at local level to CJS partners.

11.2 Additional guidance to offenders who are placed on AAMR will be provided by the company contracted to fit the transdermal tags.

12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website www.legislation.gov.uk.

13. Regulating small business

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

14. Monitoring & review

14.1 The Order does not include a statutory review clause.

15. Contact

15.1 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.

15.2 Claire Fielder, Deputy Director for Bail, Sentencing and Release Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Buckland, Secretary of State for Justice can confirm that this Explanatory Memorandum meets the required standard.