EXPLANATORY MEMORANDUM TO

THE ELECTRONIC MONITORING (RESPONSIBLE PERSONS) (AMENDMENT) ORDER 2024

2024 No. 328

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 From May 2024, following the re-procurement of electronic monitoring contracts, Serco Limited will replace Capita Business Services Limited as the provider of electronic monitoring services in England and Wales. The purpose of this instrument is to amend Order 212 of 2018 (S.I. 2018/212) to name persons employed by Serco Limited as a Responsible Person for electronic monitoring and to remove persons employed by Attenti EM UK Limited and Alcohol Monitoring Systems Limited.

2.2 This instrument also amends the details of the G4S subsidiary company that provide electronic monitoring services in Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent and territorial application of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The amendment in this Order of the description of the person who can be made responsible for monitoring a person released on Home Detention Curfew to Scotland, is for the purposes of applying the release provisions in England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 In accordance with section 62 (2B) of the Criminal Justice and Courts Services Act 2000, a person may not be made responsible for electronic monitoring of prisoners released on licence unless the person is of a description specified in an order made by the Secretary of State. This Order adds Serco Limited as a responsible person to S.I. 2018/212 and removes Attenti EM UK Limited and Alcohol Monitoring Systems Limited.

7. Policy background

What is being done and why?

7.1 Prisoners may be released from custody into the community for a period of time to be spent on licence as part of their sentence and they will be bound by a number of licence conditions. The aims of the licence conditions are to protect the public, to prevent re-offending and to secure the successful re-integration of the offender into the community.

7.2 Licence conditions should be preventative as opposed to punitive and must be proportionate, reasonable and necessary. However, the exception is where prisoners are released early on Home Detention Curfew under section 246 of the Criminal Justice Act 2003 and are required by section 253 of that Act to be released subject to an electronically monitored curfew as a condition of the licence. For these prisoners the curfew also has a punitive role that reflects the fact that they are still serving the custodial element of the sentence.

7.3 Electronic monitoring may be imposed as a licence condition for the purposes of monitoring compliance with other conditions (such as a curfew, exclusion zone or alcohol monitoring condition) and/or to monitor a person's whereabouts.

7.4 This instrument names those employed by Serco Limited as a Responsible Person for electronic monitoring of such conditions.

7.5 Capita Business Services Limited, who are the current provider of the electronic monitoring services in England and Wales will remain named in SI 2018/212 until removed to allow for a smooth transition between providers.

7.6 Buddi Ltd will also remain on S.I. 2018/212 as they continue to provide an electronic monitoring service to the London Mayor's Office for Policing and Crime for pilot projects. Alcohol Monitoring Services Limited and Attenti EM UK Limited are being removed from S.I. 2018/212, as they do not currently carry out the role of a Responsible Person.

7.7 This instrument also amends the details in S.I. 2018/212 for the G4S subsidiary company that provide the electronic monitoring service in Scotland for those released from England and Wales to Scotland on Home Detention Curfew. S.I. 2018/212 and a previous instrument it replaced (S.I. 2014/669), listed G4S Monitoring Technologies Limited rather than G4S Care and Justice Services Limited (a subsidiary of G4S Plc.) as the Responsible Person for electronic monitoring in Scotland. It is unclear how this error occurred, but it may have been due to fact that G4S Monitoring Technologies were delivering part of the electronic monitoring service in England and Wales.

7.8 The value and length of the new contracts to deliver the field and monitoring service [1] and the monitoring device and systems service [2] are in the public domain.

7.9 This memorandum provides some historical information concerning the behaviour of Serco and G4S who were previously awarded contracts in 2005 for electronic monitoring services in England and Wales. Under those contracts, Serco and G4S overcharged the Ministry of Justice including multiple times for the same cases and for cases where the monitored person had died. This issue came to light in 2013,

[1] https://www.contractsfinder.service.gov.uk/notice/f88c4dcb-1403-4bda-9ccd-b987d75db8f1
[2] https://www.contractsfinder.service.gov.uk/notice/0e7ad9b3-c6fb-46ea-8f67-0a9f0391e22c

contracts were terminated, and the matter was referred to the Serious Fraud Office (SFO) for investigation.

7.10 A Deferred Prosecution Agreement (DPA) with Serco was approved by Mr Justice William Davis, resulting in a fine of £19.2m and the payment of compensation to the Ministry of Justice of £70m. The SFO agreed to the DPA in recognition of Serco's prompt and voluntary self-disclosure of the fraudulent conduct, its cooperation with the SFO's investigation and its significant remedial efforts, which included a complete change of senior management. Accompanying the DPA, was an undertaking by Serco to assume certain obligations, including ongoing cooperation with the SFO and further strengthening of its Group-wide Ethics and Compliance functions, as well as annual reporting on its Group-wide assurance programme.

7.11 A DPA with G4S was similarly approved by Mr Justice William Davis, leading to a fine of £38.5m and compensation to the Ministry of Justice as part of a £121.3m civil settlement. Again, the DPA was agreed to by the SFO in recognition of G4S's prompt disclosure, its past co-operation, it making substantial changes to its senior management, it subjecting itself to external review and it undertaking changes to strengthen assurance activities, operating practices, controls, policies and procedures.

7.12 The Ministry of Justice's recent procurement for new electronic monitoring contracts complied with the Public Contracts Regulations 2015. Although the Regulations allow suppliers to be excluded from bidding for new contracts in certain circumstances, such as certain criminal offences and previous poor performance, both Serco and G4S had entered into and complied with the terms of the DPA, had not been convicted of an offence, and had demonstrated sufficient evidence of self-cleaning (in the language of the Regulations) by taking measures to demonstrate their reliability. This meant that suppliers had to prove that they had: (a) paid or undertaken to pay compensation in respect of any damage caused by the misconduct; (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and (c) taken the appropriate concrete technical, organisational and personnel measures to prevent further criminal offences or misconduct.

7.13 Additionally, following a decision by the Minister for the Cabinet Office that both companies had met these tests and should not therefore be excluded from procurements, Cabinet Office conducted a period of enhanced monitoring of G4S to provide assurances that self-cleaning measures were embedded in the company. This was not considered necessary for Serco whose self-cleaning programme was more advanced at the point of assessment. On the basis of satisfying itself that sufficient evidence of 'self-cleaning' had been provided, and satisfactory reporting from Cabinet Office on their enhanced monitoring process, the Ministry of Justice was content to award contracts to the companies involved. Each bid was evaluated against the published criteria. Serco were selected as the preferred bidder for the field monitoring service and G4S were selected to provide the monitoring devices and systems service.

7.14 The new contracts are based on the Model Services Contract template, which brings improved consistency with current government requirements (such as performance publication and reporting for example). The new contracts are much closer aligned to the needs of the service than previous contracts, they consider the lessons learned and the strategy for improved data quality and understanding. Some of the improved features of the new contracts include:

- Increased frequency of monitoring and audit activities in the new contracts to allow for more robust control of the services.
- Introduction of the collaboration agreement that all parties must adopt and display in delivery, interface management, staff relationships and performance delivery.
- Live feed of the data, so data can be analysed by the Ministry of Justice via its own platform.
- Step-in rights, using an appointed individual/team to take over contract delivery to improve performance issues.
- The Ministry of Justice has rights to remove individual staff members (prime supplier or sub-contractor).
- Strengthened protections and remedies around performance, service credits, rectification plans, terminations and repeat obligation requirements.
- A clear approach to change in the context of multi-party delivery.

7.15 Unrelated to the Serco and G4S overcharging, the Public Accounts Committee (PAC) published a report in October 2022 into His Majesty's Prison and Probation Service's (HMPPS) programme of work to transform electronic monitoring services relating to subsequent contracts held with Capita.[3]

7.16 In summary, the report highlighted significant delays and setbacks and criticised the programme's high-risk and over-complicated delivery model, an overambitious timetable for delivery and a failure to introduce a new case management system. The Committee found that avoidable mistakes had wasted £98m of taxpayer's money. The report concluded with six recommendations all of which have or are being implemented.

7.17 One of the PAC's recommendations was for HMPPS to write to the PAC to set out how it would handle risks in the electronic monitoring programme once new contracts had been awarded. In October 2023, the HMPPS chief executive Amy Rees wrote to the PAC to explain that the service's approach to new contract arrangements had been informed by previous experience and lessons learned, as well as government best practice.[4]

7.18 Amy Rees explained that accountabilities, roles and responsibilities are set out in the contracts. During implementation of the new service, suppliers will be required to report on progress and risks through an implementation board. This board will oversee delivery of the integrated implementation plan and ensure risks are appropriately managed through the various phases of transition. The implementation board reports into a service delivery board, chaired by the head of electronic monitoring operations, where ultimate responsibility for holding the suppliers to account and dealing with any issues will take place. This will ensure there is senior-level oversight of progress and risks. Furthermore, in addition to their contractual obligations, suppliers have also signed a separate collaboration agreement setting out clear expectations on behaviours and ways of working. They have each appointed a suitably senior lead officer who is specifically accountable for ensuring their respective team adheres to the requirements set out in the collaboration agreement. These leads will attend the service delivery board.

[3] https://publications.parliament.uk/pa/cm5803/cmselect/cmpubacc/34/summary.html
[4] https://committees.parliament.uk/publications/42290/documents/210140/default/

8. European Union Withdrawal and Future Relationship

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 This Order does not seek to consolidate any existing Orders.

10. Consultation outcome

10.1 While there has been no public consultation, the Ministry of Justice has engaged with stakeholders, including, but not limited to, HM Prisons and Probation Service, the Police and the Home Office, regarding the re-procurement of electronic monitoring services. The Ministry of Justice continues to liaise with those stakeholders to ensure a smooth transition from the current provider (Capita) to the newly appointed provider (Serco).

10.2 The Ministry of Justice has also consulted with the Electronic Monitoring Contract and Policy lead in Scotland to ensure the correct details for G4S are reflected in this instrument.

11. Guidance

11.1 The Ministry of Justice continues to engage with stakeholders and will provide appropriate guidance to them on any relevant changes to the electronic monitoring service.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector as electronic monitoring services will continue to be delivered, stakeholders have been informed of the change of provider and all necessary steps are being taken to ensure a smooth transition.

12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact.

13. Regulating small business

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

14. Monitoring & review

14.1 As the instrument is only administrative no monitoring or review is felt to be necessary.

15. Contact

15.1 Toby Head, HMPPS, email: toby.head@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ken Everett, Deputy Director for Electronic Monitoring Operations, HMPPS can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Bacon at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.