



Management of Offenders (Scotland) Act 2019

2019 asp 14

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th June 2019 and received Royal Assent on 30th July 2019

An Act of the Scottish Parliament to make provision for electronic monitoring of offenders and as to certain other restrictive measures imposable on offenders; to make provision about periods and processes as regards disclosure of convictions by offenders; and to make provision concerning particular aspects of the system governing parole of offenders.

PART 1

ELECTRONIC MONITORING ETC.

Monitoring in criminal proceedings

PROSPECTIVE

1 Requirement when disposing of case

- (1) When making a person subject to a disposal listed in section 3(2), a court may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
 - (a) is to be monitored by a person designated under section 11(1)(a), and
 - (b) is bound by the obligations set out in section 12(2) and (3).
- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
 - (a) is complying with the specified aspects of the disposal, and

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(b) is fulfilling the obligations set out in section 12(2) and (3).

(5) The court must—

- (a) explain to the person the purpose mentioned in subsection (4), and
- (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).

(6) A requirement under subsection (1) is to be made by means of an order of the court (the form of which is to be prescribed by Act of Adjournal).

(7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the court when disposing of the person's case.

PROSPECTIVE

2 Particular rules regarding disposals

(1) If a person's agreement to a disposal mentioned in a particular paragraph of section 3(2) is necessary before the person can become subject to the disposal, the person's agreement to becoming subject to a requirement under section 1(1) is necessary before the requirement can be made in addition to the disposal.

(2) A requirement made under section 1(1) lasts for as long as the person is subject to the associated disposal, but a court which makes a requirement under section 1(1) may vary or revoke the requirement in conjunction with the variation or revocation by it under an enactment of the associated disposal.

(3) In subsection (1), the reference to agreement to a disposal includes agreement, consent or willingness to becoming subject to the disposal.

3 List of the relevant disposals

(1) Subsection (2) contains the list referred to in section 1(1).

(2) This is the list—

- (a) making an order under, or in any way altering an order made under, section 209(1) of the Criminal Procedure (Scotland) Act 1995 (relating to supervised release in certain cases under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993),
- (b) making an order under, or varying an order made under, section 245A of the Criminal Procedure (Scotland) Act 1995 (in that Act called a restriction of liberty order),
- (c) imposing a requirement restricting movements by virtue of, or varying such a requirement imposed by virtue of, section 234CA(1) of the Criminal Procedure (Scotland) Act 1995 (relating to a drug treatment and testing order within the meaning given by section 234B(2) of that Act),
- (d) imposing a restricted movement requirement by virtue of, or varying such a requirement imposed by virtue of, section 227A(2)(j) of the Criminal Procedure (Scotland) Act 1995 (relating to a community payback order under section 227A(1) of that Act),

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- (e) making an order by virtue of, or varying or renewing an order made by virtue of, section 104(1)(b) as read with section 104(2) and (3) of the Sexual Offences Act 2003 (relating to sexual offences prevention),
- (f) making an order under, or varying or renewing an order made under, section 11 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (relating to sexual risk or harm).
- [^{F1}(g) imposing conditions on bail under section 24(4) of the Criminal Procedure (Scotland) Act 1995,
- (h) varying the conditions imposed on bail—
 - (i) under section 28(4)(c) of that Act,
 - (ii) pursuant to a review under section 30 or 31 of that Act,
 - (iii) pursuant to an appeal under section 32 of that Act, or
 - (iv) under section 71(1C)(b) of that Act.]

Textual Amendments

- F1** S. 3(2)(g)(h) inserted (19.11.2020) by [The Electronic Monitoring \(Relevant Disposals\) \(Modification\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/309\)](#), regs. 1, 2

Commencement Information

- I1** S. 3 in force at 1.10.2020 by [S.S.I. 2020/283](#), reg. 2(a)

4 More about the list of disposals

- (1) The Scottish Ministers may by regulations modify the list in section 3(2) so as to—
 - (a) add, alter or remove an entry,
 - (b) limit an entry so as to specify a certain aspect of what a court may do.
- (2) An entry included in section 3(2) may relate to anything, at any stage in criminal proceedings—
 - (a) which can be made or imposed by a court with respect to a person, or
 - (b) to which a person can otherwise be made subject by a court,except something under which a person is to be detained in custody.
- (3) A general or specific reference to a disposal mentioned in section 3(2) is, in relation to a requirement under section 1(1), to be construed as being to the relevant order or other measure so far as concerning—
 - (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or
 - (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.
- (4) For the avoidance of doubt, anything listed in section 3(2) is to be regarded as a disposal for the purposes of this Part (whether or not it is the final disposal of a case).

Commencement Information

- I2** S. 4 in force at 1.10.2020 by [S.S.I. 2020/283](#), reg. 2(b)

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PROSPECTIVE

Monitoring on release on parole

5 Requirement with licence conditions

- (1) When imposing any conditions of a sort mentioned in section 7(1) in connection with release of a person on licence, the Scottish Ministers may additionally require the person to submit to monitoring by means of an approved device.
- (2) Section 8(1) describes what an approved device is in relation to a requirement under subsection (1).
- (3) A requirement under subsection (1) means that the person—
 - (a) is to be monitored by a person designated under section 11(2)(a), and
 - (b) is bound by the obligations set out in section 12(2) and (3).
- (4) Monitoring by virtue of a requirement under subsection (1) is for the purpose of ascertaining whether the person—
 - (a) is complying with the specified aspects of the conditions, and
 - (b) is fulfilling the obligations set out in section 12(2) and (3).
- (5) The Scottish Ministers must—
 - (a) explain to the person the purpose mentioned in subsection (4), and
 - (b) warn the person of the consequences of failing to fulfil the obligations set out in section 12(2) and (3).
- (6) The terms of a requirement made under subsection (1) are to be stated in the licence on which the person is released (with the licence being as referred to in the enactment under which the person is released).
- (7) In subsection (4)(a), the reference to the specified aspects is to the particular aspects specified by the Scottish Ministers when imposing the conditions.

6 Particular rules regarding conditions

- (1) Where a recommendation of the Parole Board for Scotland is necessary before any conditions mentioned in a particular paragraph of section 7(1) can be imposed on a person, the Parole Board's recommendation that there should be a requirement under section 5(1) in the person's case is necessary before the requirement can be made in addition to the conditions.
- (2) A requirement made under section 5(1) lasts for as long as the person is subject to the associated conditions, but the Scottish Ministers may vary or revoke the requirement in conjunction with the variation or revocation by them under an enactment of the associated conditions.

7 List of the relevant conditions

- (1) These are the conditions referred to in section 5(1)—

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- (a) a curfew condition as provided for in section 12AA(1)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which relates to release on licence under section 3AA of that Act),
 - (b) conditions under section 12(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (on release on licence under Part 1 of that Act (where sentencing is on or after 1 October 1993)),
 - (c) conditions under section 22(6) of the Prisons (Scotland) Act 1989 (on release on licence regarding certain sentences (where sentencing is before 1 October 1993)),
 - (d) conditions relating to temporary release in accordance with rules made under section 39 of the Prisons (Scotland) Act 1989 (known as prison rules),
 - (e) conditions relating to release from imprisonment or detention which arise on the basis prescribed in regulations made by the Scottish Ministers.
- (2) A general or specific reference to any conditions mentioned in subsection (1) is, in relation to a requirement under section 5(1), to be construed as being to the relevant conditions so far as concerning—
- (a) a person's whereabouts in some way (including being at, or not being at, a particular place), or
 - (b) a person's consumption, taking or ingesting of alcohol, drugs or other substances.

Devices, use and information

8 Approved devices to be prescribed

- (1) An approved device, in relation to a requirement under—
- (a) section 1(1), or
 - (b) section 5(1),
- is an electronic device of a type prescribed in regulations made by the Scottish Ministers.
- (2) A type of device that may be prescribed in regulations under subsection (1) includes—
- (a) a device for monitoring a person's whereabouts in some manner (including of being at, or not being at, a particular place), or
 - (b) a device for—
 - (i) detecting whether a person has consumed, taken or ingested alcohol, drugs or other substances, or
 - (ii) measuring the level of alcohol, drugs or other substances consumed, taken or ingested by a person.
- (3) Regulations under subsection (1) may include provision as to any apparatus to be linked to a device as well as prescribing the device itself.

Commencement Information

I3 S. 8 in force at 1.10.2020 by S.S.I. 2020/283, reg. 2(c)