

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Justice

Release and recall of prisoners

Section 7: Electronic monitoring following release on licence etc

156. *Section 7* makes provision for a mandatory electronic monitoring condition to apply to offenders released from custody on licence. The electronic monitoring condition may be for monitoring of compliance with other licence conditions or monitoring of whereabouts as a stand alone licence condition, or both. Under the legislation prior to the changes in this Act, contained in section 62 of the Criminal Justice and Court Services Act 2000, these conditions may be imposed but only on a discretionary, case by case, basis. In addition, by virtue of section 31 of the Crime (Sentences) Act 1997, conditions may only be attached to an indeterminate sentence prisoner's licence on the recommendation of the Parole Board.
157. *Subsection (2)* amends section 62 of the Criminal Justice and Court Services Act 2000 and provides that any electronic monitoring condition must also state who is responsible for the monitoring and gives the Secretary of State an order-making power, subject to the negative procedure, to specify a description of a person responsible for electronic monitoring.
158. *Subsection (3)* inserts new sections 62A and 62B into the Criminal Justice and Court Services Act 2000. Section 62A(1) provides for an order-making power, subject to the negative procedure, to allow the Secretary of State to provide that offenders released from custody on licence must be subject to compulsory electronic monitoring. Section 62A(2) allows for the Secretary of State to require electronic monitoring in particular cases and to specify the duration of the compulsory condition, which may be for a period shorter than the licence period. The period may be different for different groups of offenders (as provided for by section 76 of the Criminal Justice and Court Services Act 2000). Section 62A(3) allows for the Secretary of State to specify which offenders will be subject to electronic monitoring by reference to whoever is monitoring the offender. It also allows the Secretary of State to make provision by reference to whether a person specified in the order is satisfied of a matter. For example, it might refer to cases in which the Secretary of State is satisfied that the offender has a physical or mental health problem which renders the offender unsuitable for the licence condition, or cases in which a person is satisfied that it is impossible to make arrangements for the offender to recharge the battery in the tag. The Secretary of State may prescribe which offenders must be subject to compulsory electronic monitoring; for example, groups of offenders by type of offence, such as all burglars, or by type of sentence, such as all those serving an Extended Determinate Sentence.
159. New section 62A(4) has the effect that, if an offender is serving one of the specified sentences, a compulsory electronic monitoring condition cannot be applied

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

to that person. The sentences are certain custodial sentences available for young offenders. Under these sentences, electronic monitoring will still be available but on a discretionary basis.

160. The use of data, including location data, gathered under an electronic monitoring condition (whether one imposed for the purpose of monitoring whereabouts or one imposed for the purpose of monitoring compliance) is subject to the requirements of the Data Protection Act 1998. Section 62B imposes a duty on the Secretary of State to issue a code of practice on the processing of such data (which will include retention, use and sharing of data).
161. *Subsection (4)* introduces Schedule 2 which contains a number of consequential provisions.
162. *Subsection (5)* applies the provisions to offenders released from custody on or after the day on which they are commenced.