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Dear Convener,

Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019

Thank you for your letter of 28 January 2020 regarding the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019. You asked for further background on the laying of these Regulations, in breach of the 28 day requirement.

Firstly, I would like to put on the record once again that I would wish wherever possible to fulfil all the obligations within Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. That these Regulations were laid in breach of that requirement was a consequence of our assessment of the need to put in place a prudent contingency arrangement, in light of changes we were seeing in a demand-led service as we approached the Parliament's Winter Recess. The Interpretation and Legislative Reform Act 2010 and Parliament's Standing Orders **do explicitly recognise** that there will be occasions on which the 28 day rule will be breached and they put in place a process for dealing with that. I will turn now to your specific questions.

Can you give us precise dates when your civil servants first became aware of the spike in demand for the use of electronic tags? I believe you referenced November but when in November?

On 14 November 2019 as part of a routine contract management meeting with G4S there was discussion with Scottish Government officials about the higher than expected number of orders to be electronically monitored that G4S were receiving from the courts within November. A decision was taken to keep the number of orders under review to see if a pattern of increase was apparent. On 29 November 2019 my officials spoke with G4S where they established that the increases in electronically monitored orders were continuing.

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As a result of that discussion and in light of the increases in demand on the service, that same day my officials started to explore with Scottish Government lawyers whether the Regulations could be brought forward any sooner. It was decided to proceed with drafting the Regulations so that these were ready to use if necessary and if agreed by Ministers. Prior to that point it was anticipated that the Regulations would be laid to come into effect in around January/February 2020 as part of the preparations for transition to the new electronic monitoring contract, due to start from 1 April 2020. Exploring having the Regulations ready to bring forward sooner than planned was deemed to be an appropriate level of contingency to consider so that all the available monitoring equipment, including newer models, could be used if needed. My officials continued to assess the number of orders received, in parallel with drawing up the Regulations in case they were needed, during the first week of December. The emerging trend was sustained (and ended up being a 7% increase in orders in December compared to the previous month) and a submission was sent to me on 10 December 2019. That submission sought my agreement to lay the Regulations on 17 December and they came into effect on 20 December 2019.

In your evidence, you said that a decision was made in November to await further figures on RLO uptake in December before deciding whether you needed an SSI of this nature. What was your reason for this delay? Was any consideration given in November to informing Parliament and laying an SSI at that point and, if so, why was that ruled out?

A description of the timeline of actions is set out in my response to your question above. It is important that our public services are responsive, as they were in this case, to changes in the data that we see. There is an appropriate level of balance required, where we need to be certain enough that the data represent a continuing trend and not just a short-term variation. There was also some lead-in time required in order to prepare the Regulations themselves. As per the timeline above, the decision to explore bringing the Regulations forward sooner was taken at the end of November and the final decision to lay the Regulations was then taken in mid-December in light of the continued increases in orders.

As I set out for the Committee on 21 January when I appeared before you, monitoring equipment remained available throughout this period. This technical SSI added the serial numbers of updated models of equipment to the prescribed list and thus it removed a specific barrier to its use. It changed neither what could be monitored nor the circumstances where monitoring could be undertaken, and the policy note which accompanied the SSI set out that background.

What were the reasons behind the removal of Serco Geografix Ltd in s2.2(b) of the SSI? What services did this company previously provide to the Scottish Government?

Serco were the previous provider of the electronic monitoring service in Scotland until the end of their contract in 2013. Serco equipment was still being used when these Regulations were updated in 2013, as the service was in the process of transitioning across to G4S. The nature of a service transition between two different service providers, as last happened in 2013, meant that the equipment of two different service providers needed to be prescribed to enable transition. During transition one set of equipment is withdrawn from the service and another set of equipment is introduced. Serco have no ongoing role in the contract and have had no role since they completed transition of the service to G4S. The current provider, G4S, will also be the service provider during the next contractual period from 1 April 2020.

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Therefore, during the December update to the Regulations the opportunity was taken to remove references to Serco equipment from the list of prescribed equipment, as it is no longer used.

Is it a contractual requirement for the Scottish Government with G4S that the latter can only use electronic monitoring technologies produced or provided by itself or its subsidiaries? Is there no scope to use previously prescribed equipment from this or other companies?

When the procurement exercise was run for the electronic monitoring service in Scotland, the Scottish Government set out the requirement for the standards of service we wished to see and the standards of equipment (performance, manufacturing standards etc.) that we would accept as part of the service. Bidders can determine how they wish to configure their business to deliver the service to the standards required. Some may propose to use equipment that they themselves manufacture, some may propose that their service offering will utilise equipment manufactured by others. So, during the procurement process there is no requirement set out by the Scottish Government that a service provider only use equipment manufactured by themselves or their subsidiaries. G4S proposed as part of their tender bid that they would only use equipment provided by themselves or their subsidiaries for radio frequency and GPS monitoring during the next contractual period and for the avoidance of doubt they will not be using Serco equipment. Equipment used for electronic monitoring in Scotland needs to meet the dual requirement of being part of the contractual arrangements in place at that time, and prescribed in the Regulations.

In November 2019, G4S reported that the Scottish Government awarded it a 5-year multi-million pound contract for electronic monitoring services. No information on the contract value appears to be in the public domain. What is the total value of the contract awarded to G4S?

Further details about the procurement exercise for the new contract are available on the Public Contracts Scotland website, including an estimate of contract value.

https://www.publiccontractsscotland.gov.uk/search/show/search_view.aspx?ID=NOV372610

The Scottish Government is required to make an estimate of the approximate contract value for the purposes of procurement. As is made clear on the contract notice documentation, given the variable nature of this contract, the overall spend may be less.

Indeed, Scottish Government spend on the electronic monitoring contract has averaged at around £3m a year for the last five years. The service is demand-led and the exact cost of the service depends on usage (so it depends on the numbers of orders or licences given by the courts, Scottish Prison Service, and the Parole Board). Therefore, it is challenging to put an exact figure on the future cost. However, based on the tender prices provided, the new contract not only allows for the introduction of new technology such as GPS and remote substance monitoring but it would provide a saving of around £700k per year compared with the current contract.

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In your letter to the DPLR Committee, you said that “When the relevant sections of the Management of Offenders (Scotland) Act 2019 are commenced, prescription of individual pieces of equipment will no longer be required in this way so this specific issue is unlikely to reoccur.” The relevant Act received Royal Assent on 30 July 2019. Why has the Government not previously made a commencement order for the relevant sections of this Act, thereby removing the need for SSIs of this nature?

In general, the Scottish Government does not seek to commence single legislative provisions where there are related elements of the legislation that could also be commenced at the same time (so as to reduce the number of commencement orders being brought forward for the same legislation and make the process of implementation as straightforward as possible). There was no identified need to progress these provisions in the three months between Royal Assent at the end of July and the increases in orders that were seen in November. Therefore, the pace of commencement of Part 1 provisions was influenced primarily by stakeholder readiness across a wider range of Part 1 provisions, and those discussions are ongoing.

You have said previously that administrative changes to the operation of Home Detention Curfew were going to result in an increase in the use of HDCs. Was this information available before the end of November and, if that was the case, was any assessment made that an SSI might require to be lodged as a consequence?

I am not sure that this description fully reflects my comments on this matter as the likely impact of the administrative changes to HDC, in relation to both use of HDC and the resulting demand on the electronic monitoring service, was not certain. As you will be aware, our work in that area was driven by our desire to make improvements to the HDC risk assessment processes. An increase in those released on HDC as a result of any changes was a possibility and it added to the weight of the case for acting to manage that uncertainty so as to ensure that we were prepared for a range of scenarios and so that any further demands on the electronic monitoring service could be met.

In answer to your specific question, the proposed administrative changes to HDC were known about in November and as I have set out previously we had reserves of equipment to cope with fluctuations in demand on the electronic monitoring service. Our stock levels of prescribed equipment would have been able to accommodate even a hypothetical immediate increase in HDC back up to the pre-October 2018 levels. However, that unknown level of impact of the changes had to be considered alongside the sudden increasing trend in court orders that emerged in November and taken together it was felt prudent to respond swiftly to ensure that an even wider pool of available equipment could be drawn upon if needed. Predicting future demand on a demand-led service is challenging, and as you will be aware the numbers of those on HDC still remain at some of the lowest levels we have seen. To reiterate, we have not seen an increase in numbers of those release on HDC. I am content that the correct response when faced with those unpredictable components of a system is to take steps to mitigate any risks and to ensure arrangements are in place to ensure service continuity.

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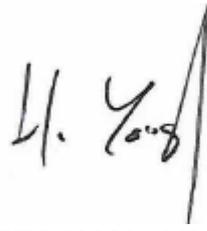


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I hope that this information is helpful to you and I am of course happy to provide any further details that would be of assistance to the Committee.



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