

# Criminal Justice Committee

**15th Meeting, 2022 (Session 6), Wednesday, 27 April 2022**

## Subordinate legislation

### Note by the clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
  - [The Electronic Monitoring \(Relevant Disposals\) \(Modification\) \(Scotland\) Regulations 2022](#) (SSI 2022/93) [see page 3];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **9 May 2022**.

#### Delegated Powers and Law Reform Committee Consideration

3. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 29 March 2022.
4. **The DPLR Committee agreed that it did not need to draw the instrument to the attention of the Parliament on any grounds within its remit.**

#### Procedure for negative instruments

5. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
6. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

7. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
8. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
9. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
10. Each negative instrument appears on the Criminal Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
11. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## **Guidance on subordinate legislation**

12. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-delegated-powers-and-law-reform-committee>

13. **The Committee is invited to consider the instrument.**

**Criminal Justice Committee Clerks  
April 2022**

# Policy Note

## **The Electronic Monitoring (Relevant Disposals) (Modification) (Scotland) Regulations 2022**

### **SSI 2022/93**

The above instrument was made in exercise of the powers conferred by section 4(1) of the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”).

The purpose of the instrument is to amend an entry on the list of relevant disposals in section 3(2) of the 2019 Act. This amendment adds two additional routes for bail and is a technical change to ensure that the policy intention of having electronically monitored bail includes specific reference to these two further ways in which a person on bail can have conditions varied.

### **Policy Objective**

These Regulations amend an entry on the list of relevant disposals in section 3(2) of the 2019 Act (entry (h), varying the conditions imposed on bail), to add two additional routes by which a requirement may be imposed under section 1 of the 2019 Act. When bail conditions are varied under sections 71B(9) and 72A(9) of the Criminal Procedure (Scotland) Act 1995 the individual subject to those conditions may be made subject to an electronic monitoring requirement under section 1 of the 2019 Act. This is a technical change to ensure that the policy intention of having electronically monitored bail includes specific reference to these two further ways in which a person on bail can have conditions varied.

### **Consultation**

The changes here are technical in nature but have been subject to consultation with the Scottish Court and Tribunal Service to confirm that they cover additional routes onto bail that are available to the courts.

### **Impact Assessment**

Extensive impact assessments were undertaken in the lead up to the introduction of the Bill leading to the Management of Offenders (Scotland) Act 2019. As a technical change to widen the definition of bail this change has very limited wider impact on the wider policy use of electronic monitoring of bail.

Scottish Government  
Justice Directorate  
15 March 2022