

T: 0300 244 4000
E: scottish.ministers@gov.scot

Graham Simpson MSP
Convener of the Delegated Powers and Law
Reform Committee
Scottish Parliament
By email

9 January 2020

Dear Graham,

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

Thank you for your letter of 7 January 2020 regarding the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019. You asked for further information about the laying of these Regulations to inform your consideration of the breach of the 28 day laying requirement.

I would like to put on the record 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 unexpected changes we were seeing in a demand-led service.

The increase in the number of electronically monitored orders was driven in particular by increases in the number of Restriction of Liberty Orders (RLOs). RLOs are imposed by the courts, and individual sentencing decisions are, of course, a matter for the court in each case. However, I have asked my officials to explore whether there may be any underlying drivers for the increase and I would be happy to provide an update on this in due course if that would be helpful.

With regard to the possibility of having predicted the increased pressure earlier, we do regularly review management information in relation to the electronic monitoring service. However, as can be seen in the table below, the increases in the number of those electronically monitored in November 2019 and, in particular, December 2019 were significantly outwith the level of increases we had previously seen.

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| Month | Month to month change in total number of individuals electronically monitored |
|----------------|-------------------------------------------------------------------------------|
| April 2019 | 1.6% increase |
| May 2019 | 1.9% increase |
| June 2019 | 1.2% increase |
| July 2019 | 3.2% decrease |
| August 2019 | 0.8% increase |
| September 2019 | 2.2% increase |
| October 2019 | 1.3% increase |
| November 2019 | 4.1% increase |
| December 2019 | 7.4% increase |

The electronic monitoring service provider does have equipment stock levels that allow it to cope with variations in the level of demand, and despite the increases in late 2019 being greater than are routinely experienced, it was able to supply equipment as required. However, given the trend from October to December 2019, we did have concerns that – should this trend continue or increase – issues could arise around the availability of equipment, particularly over the festive period. This risk was increased by the fact that, as outlined in our previous letter, there was a possibility that administrative changes to Home Detention Curfew (HDC) in December would have an impact on the number of electronically monitored individuals.

Given that the provider already had additional new equipment on hand - beyond its supply of existing equipment and which would fulfil exactly the same function – in preparation for the start of the new contract in April 2020, we considered it prudent to take steps to enable this readily available equipment to be used if necessary. As there is a legislative requirement that all equipment is prescribed in Regulations before it can be used, this required the laying of the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019.

Predicting future demand with certainty is challenging, and it was only when a further significant increase became apparent a few weeks before Parliamentary recess that we considered it necessary to act swiftly to make sure all the existing stock of equipment could be used as and when needed, and to ensure there was no interruption in the continuity of delivery of this important service. Given when this information was received, the need to be responsive to the emerging demand on the service, and the time required to prepare the Regulations, we did not consider there to be any reasonable option but to lay these in breach of the 28 day requirement.

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. However, notwithstanding that change, nor the specific circumstance that required us to act swiftly in this case, I have asked my officials to consider how any similar risks may be mitigated in future, in order to ensure that the laying requirements can be met and appropriate Parliamentary scrutiny maintained.

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I hope that this information is helpful and I am, of course, happy to provide any further details to the Committee if there are outstanding questions about this matter.



HUMZA YOUSAF

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