

# **Development of Electronic Monitoring in Scotland**

## **A Consultation on the Future Direction of the Electronic Monitoring Service**

**September 2013**

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ISBN: 978-1-78256-928-2

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Government by APS Group Scotland  
DPPAS14759 (09/13)

Published by the Scottish Government, September 2013

## MINISTERIAL FOREWORD



Electronic monitoring was first piloted in Scotland in 1998, before being rolled-out nationwide in 2002. Since that roll-out, electronic monitoring has played a significant part in offender management in this country. Electronic monitoring is a method of dealing with offenders that is available to Courts and prisons in Scotland to allow a sentence or part of a sentence to be served in the community. Electronic monitoring is flexible in the ways in which it can be used and it supports a number of the functions of the criminal justice system in Scotland, as well as being an option that the Children's Hearing system can use as an alternative to secure care. It is most often used as a community sentence disposal and also to support the process of transition from custodial sentence back into the community. Development of the service is important so that we can be sure that it is delivering the maximum possible benefit in the way in which we manage our offender population, in order to reduce reoffending.

Custody will always be the right option for some offences however the importance of having a robustly managed and effective community alternative to custody in Scotland is well known. There is strong evidence that community sentences are an effective alternative to short prison sentences with data on all community sentences imposed in Scotland showing that those released from a prison sentence of six months or less are reconvicted twice as often than those who get a community sentence. Electronic monitoring is an important tool in managing offenders in the community.

In Scotland, recorded crime is at its lowest level for 39 years and reoffending rates are at their lowest level in over a decade. However, despite the clear progress to date on reoffending rates, we know that we can never be complacent and that we have more work to do. It has been over ten years since the introduction of electronic monitoring in Scotland. April of this year marked the start of a new contractual period with a new electronic monitoring service provider so the time seems right for this consultation to review how the service has developed in Scotland over the years and to examine whether anything could be done to improve the existing service. The consultation will also look at possible options for future development of the electronic monitoring service so that it is part of a modern and effective Scottish justice system.

This will include looking at options made available by the advances in technology, such as: satellite monitoring technology and remote alcohol monitoring technology.

Technology on its own, as a solution, is unlikely to be able to provide all the answers to the complex problems faced by those in the criminal justice system. However, electronic monitoring has shown that it has a role to play in helping enforce curfews and in helping to provide structure to people's lives as it does so. It is important to remember, in considering how the service should develop, that electronic monitoring also has its limitations, such as some technological constraints as well as ethical implications that need to be very carefully considered. The extent to which electronic monitoring can continue to provide a benefit will depend less on the technology available now and in the future, than on how we might choose to apply it: with which groups, with which safeguards and to what end.

If we are to tackle some of Scotland's most enduring and complex problems, we must engage with this debate on the development of the electronic monitoring service as we continually look for ways to do things better, through harnessing new technologies and embracing new ways of working.

I urge everyone with an interest in this area of work to respond and I look forward to hearing your views on all the questions set out in this consultation.

A handwritten signature in black ink that reads "Kenny MacAskill". The signature is written in a cursive, slightly slanted style.

**Kenny MacAskill MSP**  
**Cabinet Secretary for Justice**

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## INTRODUCTION

In the early years of electronic monitoring, in 2002, tagging (as a restriction of liberty order) was imposed only by Courts and as an alternative to prison, providing an addition to the range of community sentences already available. As confidence in the use of technology increased, an understanding developed as to how it could be used more widely and electronic monitoring is now used to monitor a number of different community disposals as well as being included as a licence condition on release from prison. Remote electronic monitoring is versatile and since 2002 it has become a well-established feature of the criminal justice system in Scotland.

In Scotland the electronic monitoring service is provided by a private company under a contract held and monitored by the Scottish Government. In April of this year the previous contract with Serco came to an end and the Scottish Government, following an open tender process, entered into a new contract with G4S to provide the electronic monitoring service in Scotland for the next five years. For the first time the contract contains the capability for a satellite tracking service to be provided. This consultation will be part of the process of determining how that satellite tracking capability could be used. Using satellite tracking rather than just radio frequency technology to ensure offenders comply with the strict terms of their release into the community would be a significant step forward for the service and the issues involved are discussed in more detail in the sections which follow.

Electronic monitoring is a term used to describe a number of similar monitoring activities. Around the world various forms of electronic monitoring technology are used to supervise individuals, both pre-sentence and post sentence. In Scotland remote electronic monitoring is only currently used *post sentence*: as a community based alternative to custody for those at Court, as part of conditional release to support the transition from custody to community and as an option within the Children's Hearing system.

Current legislation allows for remote monitoring of offenders in Scotland to be used for the purpose of monitoring compliance with a:

- restriction of liberty order (RLO),
- restricted movement requirement (imposed as a sanction for breaching a community payback order (CPO)),
- release licence (such as for prisoners on home detention curfew (HDC) or licence conditions such as those recommended by the Parole Board),
- curfew condition in a Drug Treatment and Testing order (DTTO), and
- movement restriction condition within a compulsory supervision requirement<sup>1</sup>

Throughout this consultation it is important to try and be clear about what the purpose of electronic monitoring is in the way that it is used. Electronic monitoring is

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<sup>1</sup> This group are unique as they can be made subject to a movement restriction condition (MRC) through a Children's Hearing welfare referral rather than through an offending route. The criteria for placing a young person on a MRC is the same as required for placing a young person in secure care and the Children's Hearing should now consider a MRC in all cases before placing a young person in secure care.

a significant measure, it is a restriction on people's liberty and in financial terms it is not a cost free option as there is a direct financial charge to the Scottish Government for each person monitored. Therefore, it is important to be sure that electronic monitoring is effective in how it is used and that it is effectively targeted. Any proposed development of the electronic monitoring service must be clear about the anticipated target group and the anticipated benefit.

In assisting the debate about development of the service it may be useful to think more widely about the essential role that the criminal justice system has in protecting the community, delivering justice for victims and meeting the needs of offenders in order to reduce the risk of them reoffending. We need to consider how electronic monitoring might strengthen and support these criminal justice functions. The "4 Rs" model (below) is quite helpful to use as a characterisation of the constituent functions that a criminal justice system needs to deliver:

- **restriction** - punishing the offender for their crime by restricting their movements,
- **reintegration** - reintegrating the offender back into society,
- **rehabilitation** - rehabilitating the offender to reduce their chances of reoffending, and
- **reparation** - the offender paying back to society, either financially or through activities such as unpaid work in the community.

Different elements of each of these exist in different balances within a criminal justice system and there can be understandably divergent views amongst people as to what should be the correct balance of each. Throughout this consultation it will be useful to continually review and consider, with each proposed use of electronic monitoring, which is the function of the criminal justice system that is being performed in each instance and will a change to electronic monitoring help perform it in a better way?

Electronic monitoring is currently used in Scotland to *restrict* the movements of offenders and monitor their compliance with an order or licence condition(s) placed on them when in the community. While prison will always be the right place for certain types of offences there are others where an element of community punishment is more appropriate. Electronic monitoring can offer a restriction in terms of imposing time and locational limitations on offenders serving all or part of a sentence in the community.

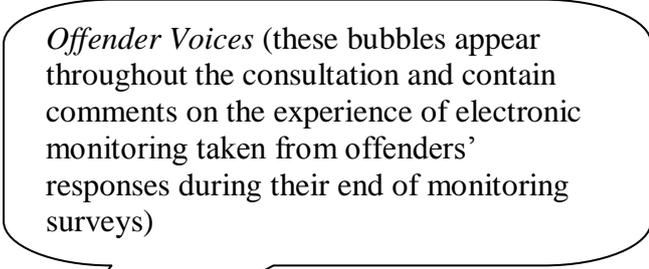
By virtue of allowing a sentence or part of a sentence to be served in the community electronic monitoring offers a way of managing *reintegration* back into the community. It allows those released on licence following custody to have a period of transition prior to full release and it can help reintegrate an offender to return physically to the community while still serving their sentence so that elements of supervision and control can still be put in place. This allows for the building and maintaining of connections with family, employment etc. - all of which are known to be factors which reduce the likelihood of reoffending.

In terms of *rehabilitation* electronic monitoring allows an element of structure to be introduced into the lives of offenders so that support services which address the reasons for the offending behaviour can be accessed in a timely and appropriate

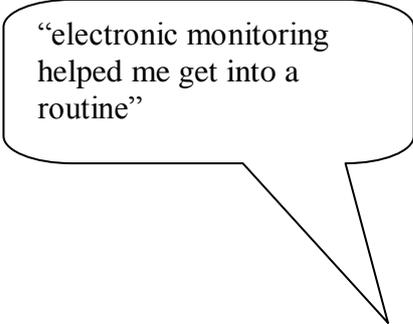
way. Used innovatively it can aid rehabilitation by disrupting specific patterns of offending behaviour to reduce the likelihood that the offender will re-encounter circumstances which have in the past led to offending.

The evidence for the *reparative* aspects of electronic monitoring as a stand-alone order is perhaps less strong, and any reparative benefits are arguably confined to the extent to which it can be used as a condition of breach for a CPO or as a standalone RLO (alongside a separate CPO) to help support an offender in undertaking unpaid work requirements to help payback to the community.

Overall, electronic monitoring helps support all the functions of a criminal justice system, some more strongly than others. As we move on in the next chapter to look at the current operation of the service, we need to keep in mind which function we wish the monitoring service to perform and how that restriction, reintegration, rehabilitation or reparation will contribute to a reduction in reoffending.



*Offender Voices* (these bubbles appear throughout the consultation and contain comments on the experience of electronic monitoring taken from offenders' responses during their end of monitoring surveys)



“electronic monitoring helped me get into a routine”

## SECTION 1: RADIO FREQUENCY MONITORING

### 1:1 The current service and how it works

This section will start with a brief overview of the technology and how it works before describing how it is used within the monitoring service.

#### *Overview of technology*



**The tag** is worn around the ankle and communicates with the home monitoring unit (below) via a radio frequency (RF) signal. The tag is robust, built with Kevlar strips and a fibre optic band running through it and it is designed to be tamper proof and also to register attempts to tamper with it. It is important to note though that it is not the case that it could not be removed by an offender. It is designed so that if it needs to be removed, for medical reasons for example, it can be cut. It is designed to be robust so that such an action to cut or remove the tag could not be taken accidentally and the tag will accurately register if such an attempt, successful or otherwise is made. The information the tag sends to the monitoring unit provides information about a person's movements within an agreed location. The locational information is essentially binary though: in other words in terms of "location" it can only indicate whether the tag is present (or is not present) within the range of the home monitoring unit. The tag only "communicates" with the monitoring unit and it is the monitoring unit that sends the information back to the monitoring company. So, the two pieces of equipment need to be within range of each other in order for locational information (such as whether the tag is present) or other information (such as whether the tag has been tampered with) to be registered by the monitoring unit.



**The home monitoring unit** is a data collection and communication device which is placed at the restricted location and continuously collects and stores data from signals sent by the tag. It has a signal detecting range which can be set to cover the size of most domestic dwellings. It then passes the data collected to a central computer at a monitoring centre via either a landline or mobile phone network. The monitoring unit has battery backup so it can continue to operate and can continue to store events even if the power or communications routes are interrupted. These recorded events can then be communicated back to the monitoring centre once the power or communications link is restored. The events communicated back to the monitoring centre are acted upon by the monitoring company. The monitoring unit has tamper and tilt recognition technology that will register and communicate any attempts to tamper with the box or move its location. The monitoring unit has a phone which can allow the company to call the restricted

location to speak to the offender or can allow the offender to call the monitoring company. The monitoring company then report on how each order is being monitored (compliance or non-compliance) back to the supervising officer or authorising agency (Scottish Courts, Scottish Prison Service, etc.) who will decide on the most appropriate action to be taken in response to each case.

### *Current legal basis for monitoring*

There is explicit authority in statute for the remote monitoring of compliance with certain categories of requirement that can be imposed on an offender, either as part of a Court's disposal, or as a condition of the release of a prisoner on licence. This includes restrictions on an offender's freedom of movement imposed through a curfew (and/or restriction from a place) as part of a: restriction of liberty order, a restricted movement requirement (imposed by the Children's Hearing system), a drug treatment and testing order, or a home detention curfew on early release. In the context of release on licence, section 40 of the Criminal Justice (Scotland) Act 2003 makes more general provision for the remote monitoring of compliance with licence conditions, and for the monitoring of an offender's whereabouts (other than for the purpose of compliance with a licence condition).

In view of the wide range of sentencing disposals available, these express provisions do not necessarily preclude the possibility that other sentencing powers might be interpreted by the Courts as allowing for the imposition of a remote monitoring requirement.

Both the methods of monitoring, and the devices (used for monitoring compliance with restriction of liberty orders, restricted movement requirements, and curfews imposed in drug treatment and testing orders) require to be specified in regulations. The current methods of monitoring are specified in the Restriction of Liberty Order etc. (Scotland) Regulations 2013 (SSI 2013/6). The specified methods are: the use of radio frequency technology, periodic telephone calls to the offender and random visits to the offender's place of curfew during periods of restriction. Changes to the method of monitoring or the equipment used (such as would be required to introduce GPS satellite tracking) would require to be set out in secondary legislation within regulations laid before Parliament. The method set out would have to be within the devolved competence of Scottish Ministers. It would therefore have to be compatible with the European Convention on Human Rights (ECHR), and with law on reserved matters, such as data protection.

The position with remote monitoring required as a condition of licence is slightly different. In these circumstances section 245C of the Criminal Procedure (Scotland) Act 1995 is applied for the purpose of specifying the devices used, and contracting out the monitoring role. However, there is no corresponding provision requiring the precise method of monitoring to be set out in Regulations. The arrangements put in place though, would still have to satisfy the same tests (ECHR compatibility etc.), and the contractual arrangements (including the arrangements for processing data) would have to reflect this.

The current legal framework therefore provides for the electronic monitoring of a range of existing orders restricting an offender's movement, compliance with licence

conditions, and the whereabouts of those on licence. It is likely that more substantial changes to the way electronic monitoring is to be done such as monitoring *either* a new type of curfew order *or* introducing a new use (for example: monitoring movements specifically for the purpose of preventing new offences) would require a change to primary legislation. In summary, broadly speaking, you could use different technology (e.g. GPS) to monitor the same things we currently have powers to monitor and that could be done through secondary legislation but to extend the monitoring beyond this to monitor something different would require changes in primary legislation.

There are also data protection considerations as to what use can be made of information. This is covered in more detail in the sections on GPS, but if GPS location information is “incidentally” gathered as a result of monitoring a curfew (e.g. information as to an offender’s movements during the day when the only restriction is a curfew is at night) it is likely that there would be consequences for the use that could be made of that information. It seems likely, in the light of recent case law<sup>2</sup>, that proper consideration would have to be given to establishing clear, preferably binding, rules about the use, retention and destruction of personal data to which monitoring might give rise.

### *Costs of Electronic Monitoring*

Over recent years the cost of electronic monitoring in Scotland has fallen. This may be as a result of the costs of the technology falling or it may be that competition between providers is driving costs down across the service. The Scottish Government when they procured for the current contract had an open competition which they assessed based on quality of service and price. The current electronic monitoring contract is estimated (estimated because it is demand led) to cost around £13m over the five years of the contract based on numbers remaining at broadly similar levels. That is an annual cost of around £2.6m which is around half the cost of the previous contract.

Over the last four years the average number of new orders imposed per year was 3125. The average costs, per order, of an electronically monitored order using that average is £832. On a per day basis there are typically around 700 people monitored on any one day in Scotland, which represents a costs per order, per day of around £10.17. This compares favourably in purely costs terms with custody where the yearly cost of a prisoner place in 2011-12 was £32371. This gives a daily cost per prison place of £88.69. Not all orders last a full year so the monitoring per day vs custody per day cost represents a better comparison than comparing full year costs. These numbers show that an electronically monitored order is around 9 times cheaper than custody.

### *Use of Monitoring in Scotland so far*

Set out below is some information about use of the electronic monitoring service in Scotland to date, including the numbers of orders and their completion rates over the last four years.

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<sup>2</sup> S & Marper v UK (2009) 48 E.H.R.R. 50

<b>Restriction of Liberty Orders (RLO)</b>			
	New Orders Imposed	Orders Completed	% Completed
2009-10	1069	794	<b>74%</b>
2010-11	935	710	<b>76%</b>
2011-12	897	609	<b>68%</b>
2012-13	1084	757	<b>70%</b>

<b>Home Detention Curfew (HDC)</b>			
	New Licences Monitored	Licence Complete	% Completed
2009-10	1908	1390	<b>73%</b>
2010-11	1836	1340	<b>73%</b>
2011-12	1965	1460	<b>74%</b>
2012-13	1915	1444	<b>75%</b>

<b>Other</b>			
	New Orders Imposed	Orders Completed	% Completed
2009-10	350	196	<b>56%</b>
2010-11	362	213	<b>59%</b>
2011-12	132	126	<b>95%</b>
2012-13	50	29	<b>58%</b>

<b>Overall</b>			
	New Orders Imposed	Orders Completed	% Completed
2009-10	3327	2380	<b>72%</b>
2010-11	3133	2263	<b>72%</b>
2011-12	2994	2195	<b>73%</b>
2012-13	3049	2230	<b>73%</b>

### Notes on Tables.

New orders or licence imposed represents the number of individuals made subject to an electronic monitoring curfew condition in that year.

Orders complete represents the number of individuals where their electronic monitoring curfew condition ends in that year (and therefore may include orders from the previous year where the orders run between years).

The "other" category includes Probation, licence (excluding HDC), DTTO, CPO and Intensive Support and Monitoring Service (ISMS).

HDC includes England and Wales HDC where orders are monitored in Scotland.

In 2011 the CPO was introduced to rationalise a number of existing community penalties, including probation orders, and only allows for electronic monitoring as a consequence of breach, so in the other category the trend in recent years of decreasing orders (and increasing percentage of completion which follows from that) is a likely consequence of fewer probation orders (which could be electronically monitored).

Reasons for non-completion include orders revoked, orders transferred, death, etc.

These figures illustrate that use of electronic monitoring has been steady in recent years in terms of order numbers, with completion rates comparable with other community orders<sup>3</sup>. The majority of electronically monitored orders are for RLOs and for HDC cases. Aside from usage and completion, what has been harder to assess to date for electronic monitoring, not just within Scotland but throughout Europe and the rest of the world, is the extent to which it is effective in reducing reoffending in the longer term, beyond the life of the order. Renzema<sup>4</sup> illustrates some of the challenges in getting clear results to conclusively show the longer term impact of electronic monitoring. In the short term, much like prison there is a restrictive element that can reduce the opportunity for offending. However, it has not in the past been possible, based on Scottish data, to draw strong conclusions about whether electronic monitoring alone results in reduction in reoffending in the longer term.

In Scotland, research on HDC<sup>5</sup> in 2011 drew together evidence on the operation of HDC in this country and looking across age and gender splits, identified that most recipients of HDC were men and recall rates were higher for younger offenders. Both elements are unsurprising given that the majority of offenders in Scotland are men and lower compliance rates are seen amongst younger offenders across most disposals. The research also looked at more qualitative evidence which examined the views of those involved in receiving electronic monitoring, and drew attention to the strong support expressed for HDC from offenders and their families. It also noted the need to have additional support available for families who might find having the offender back in the home stressful and a need to avoid any situation where families were being coerced into supporting an offender's application for HDC. Further qualitative evidence exists in Scotland as to the effect of electronic monitoring which has been gathered from offenders at the point of the completion of their orders. Findings from that type of study suggests electronic monitoring was a positive experience for offenders in terms of desistance including some less obvious benefits, such as the tagged individual valuing the "plausible excuse" the tag provided to not go out to associate with those that they knew may get them in trouble.

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<sup>3</sup> Nearly 70% of social work orders in 2011-12 resulted in successful completion: [Criminal Justice Social Work Statistics 2011-12](#), published 21 December 2012

<sup>4</sup> Renzema M (2012) Evaluative Research on Electronic Monitoring. in Nellis M, Beyens K and Kaminski D (eds) [Electronically Monitored Punishment: international and critical perspectives](#) London: Routledge

<sup>5</sup> Scottish Government Social Research, Armstrong et al, 2011, [Evaluating the Effectiveness of Home Detention Curfew and Open Prison in Scotland](#)

The balance of international and domestic evidence seems to suggest short term benefits from electronic monitoring for the period that the offender is monitored, even if the longer term benefits are as yet unproven. It will be important as part of the development of the service to increase the depth of information collected on electronic monitoring. Indeed, to better evidence how it supports work to reduce reoffending, the Scottish Government are already seeking to capture more data at an individual level rather than at an aggregate level in order to track an offender's interactions with the criminal justice system from one year to the next so that more can be known about their offender journey. That will allow us to see if an offender that previously received electronic monitoring shows up again in the criminal justice system at a later date. Reducing reoffending is a key Scottish Government objective in creating a Safer and Stronger Scotland, which is one of the Scottish Government's five key strategic objectives.

The Scottish Government electronic monitoring contract requires that the electronic monitoring company monitors the compliance of offenders with the curfew conditions imposed on them. It also requires that they report compliance or instances of breach of the terms of the order to the supervising officer or authorising agency. The contract includes a number of contractual delivery targets for when particular actions have to be taken (phone calls made, reports submitted etc.). Different types of order, for example, licence as compared to a restriction of liberty order, can have different timescale for how urgently the monitoring company need to communicate compliance back to the authorising agency and also different levels of immediacy of response as a result. For example a prison may wish to respond more urgently to a breach of licence conditions than a Court is able to for a breach of a restriction of liberty order. The monitoring company are responsible for the provision of all electronic monitoring service requirements including provision of a service 24 hours a day, 7 days a week in order to monitor compliance with orders and licences and they are obliged to deal with enquiries from the offender, their families and others (for example: Courts, social workers, prisons, police etc.). The Scottish Government audit the contract monthly to ensure that the monitoring company comply with the terms of the contract. The company also undertake other duties related to the service including providing a "technical assessment" or viability report of the suitability of premises for electronic monitoring, and engaging with the MAPPA<sup>6</sup> process to help manage that offender cohort.

So, having set out how the service works at present we will move on to look at options for development of the existing RF service. While these are options that don't explicitly look at new technology such as GPS (this is covered later) it is worth noting that it is anticipated that some suggested improvements may apply to electronic monitoring more generally so therefore might be applicable to either a GPS service and RF service or a mixture of both.

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<sup>6</sup> Multi Agency Public Protection Arrangements (MAPPA) is the framework which joins up the agencies who manage offenders.

## 1:2 Potential areas of development of the current service

We are keen that responses to this consultation are creative in their consideration of ways in which the existing electronic monitoring service can be developed and improved. Therefore, we would ask that respondents do not limit their responses to just the areas set out below. These are just a selection of possible areas for development. In looking at these potential areas we would again suggest that you give consideration to the extent to which electronic monitoring can provide *additional* value in better restriction, reintegration, rehabilitation or reparation in order to reduce reoffending. Making an improvement does not necessarily mean doing something completely new; you may just have suggestions as to improvements to the current service and systems in order to do what is currently done in a better way.

### *Better integration with other measures*

The available evidence does not conclusively show what electronic monitoring on its own can do to stop reoffending in the longer term. In the shorter term, it can provide an element of restriction for the period that an individual is on a tag. In October 2011, the Scottish Government's published: "*What works to reduce reoffending: a summary of the evidence*"<sup>7</sup> which suggests that multi-modal, holistic interventions, which address a range of problems, are more likely to be effective in reducing reoffending. This work suggests that the best chance of desistance is through making interventions "person centred", in other words specific to the needs of each offender. Therefore, to aid reintegration and rehabilitation of an offender, electronic monitoring would seem to need to be delivered in conjunction with other services in order to help with longer term desistance. Electronic monitoring needs to be aiding the way in which an individual's criminogenic needs are being addressed perhaps by providing the structure to an offender's lives that allows other services to address those needs. It is not to say that the current cohort of individuals receiving electronic monitoring do not receive services but it would be helpful to have views on whether these are the right services, at the right times and in the right way, or whether there could be more work done to improve things in this area?

RLOs for example are sometimes described as a "standalone" measure in that they don't automatically have another social work component in the same way as a Probation Order might have done previously. However, a Court can still hand down an RLO to run concurrently with another measure such as a CPO if they feel it is appropriate to do so. So, a supervision element could still be present in the community sentence, as could a treatment programme etc. Therefore, it is not necessarily the case that there are legislative barriers to integration but that may be an area where you think more could be done. Better integration could also come from a more operational perspective, perhaps by sharing of practice as to ways in which electronic monitoring and services can exist side by side or through better signposting to existing statutory or non-statutory services for those that are electronically monitored. Perhaps you have views as to the services that would provide a natural fit for those electronically monitored and that would aid their compliance with their order?

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<sup>7</sup> Scottish Government Publication, Sapouna, 2011 [What works to reduce reoffending: a summary of the evidence](#)

## Consultation Question

### 1. How can electronic monitoring be better integrated with other services, including statutory and third sector, in order to support a holistic approach to addressing offenders' needs?

#### *Breach*

Breach is a term used to describe non-compliance with an element of the order or licence that has been imposed. When circumstances that amount to breach occur then the monitoring company report the circumstances back to the authorising agency of the order (Court, prison etc.) who then decide on the most appropriate actions to take. The thresholds for breach are set nationally by the Scottish Government and are set out in the contract that they hold with the monitoring company.

Breach criteria fall into three categories;

#### Level 1

- Damage to equipment
- Missing during curfew
- Attempting to remove tag
- Withdrawal of consent
- Threatening behaviour to monitoring staff

#### Level 2

- Time violations

#### Level 3

- Entering an exclusion zone or geographical location

The different levels do not indicate an increasing or decreasing seriousness of breach, rather they are merely different categories. There can be different outcomes as a result of breach. Breach of HDC or licence conditions is likely to result in immediate recall by the prison to custody. Breach of a Court order necessitates the Court reconvening to consider the circumstance and while custody is a possible outcome there are other possible outcomes. It may be that the speed of response to breach or the certainty of punishment (or factors such as different offender profile) may have some impact on compliance rates between different types of order. How breach is dealt with is important not just for the effective operation of the service but in terms of perceptions of electronic monitoring more generally.

In thinking about development of the service in relation to how breach operates, it is worth considering all aspects of breach, which would include, but would not be limited to considering: whether the right things result in breach (should more added, some taken away), whether breach circumstances and the way that they are reported allow for the best decision making, whether the Scottish Government should change the trigger points for breach notification and whether there is adequate consistency/flexibility in how breach is handled.

### Consultation Question

**2. Please give your views on how breach operates under the current system and what, if any, suggestions you have for improvement or development of the current system of breach?**

#### *Greater use of electronic monitoring*

There are geographical differences across the country as to the numbers of electronic monitoring orders currently imposed. These are differences from what you would expect on a population based share of orders. While there may be practical reasons as to why electronic monitoring is used less in certain localities, it may be that up to date knowledge about how and when orders could be electronically monitored and exactly what the service can deliver could assist bodies in getting the most from the service available to them.

### Consultation Question

**3. Do you know of any barriers to increased use of electronic monitoring under the current system? What could be done to address those?**

#### *Incentivising compliant behaviour*

At the moment the default position is that Courts get updated on order compliance at the conclusion of the order (or during the order in the event of breach or a change to monitoring status) and these reports are provided by the monitoring company in accordance with the timescales set out in the national contract. Courts can ask for an update report at any time and some Courts ask for a specific frequency of update on the compliance of an offender during the duration of an order and the monitoring company provides these updates to the timescale that the Court have requested. It is at the discretion of the Court to vary an order in a way that is in the offender's favour, if they feel that compliance of the offender has been good. These orders are Court mandated so sanctions already exist for non-compliance. It is also the case that there will be an element of punishment/restriction involved in these orders so it may mean incentives are not appropriate or necessary to achieve compliance here. However, the discretion to reduce or vary monitored hours as an incentive to improve compliance exists and people may have views as to how that currently operates or could operate within the system.

#### *Improving the current service*

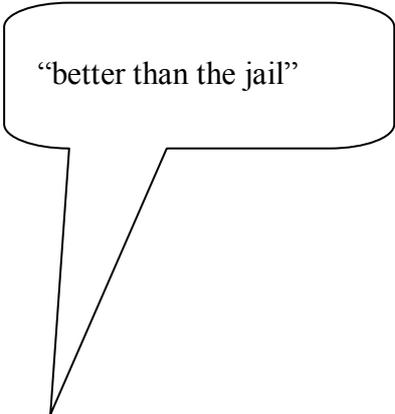
The following questions are just prompts for areas to think about in the operation of the current service, in order to answer the open general question below about how the current service could be improved.

- Should electronic monitoring be extended to any new areas?
- Do existing systems allow for the exchange of information on electronically monitored individuals at the right times and in the right format? What would improve information exchange?

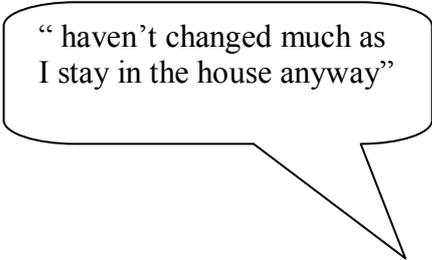
- Is electronic monitoring used with the right types of offender and have you views on which offenders should receive electronic monitoring?
- Curfew hours – are the current hours of restriction (a maximum period of 12 hours per day when restricting an offender to a specific place (between 9 and 12 hours for HDC), and 24 hours from a specific place) too long/too short?
- How well does the current system operate for young people as an alternative to secure care?
- Could the system better incentivise compliance with electronically monitored orders?

#### **Consultation Question**

**4. Considering all aspects of how electronic monitoring currently operates, what improvements and areas for development could you suggest for the operation of the current electronic monitoring service in Scotland?**



“better than the jail”



“ haven't changed much as I stay in the house anyway”

## SECTION 2: GPS (SATELLITE TRACKING)

### 2:1 How GPS technology works

Global Positioning System (GPS) is a space-based global navigation satellite system that provides location and time information in all weather, anywhere on or near the earth. GPS monitoring uses a network of 30 US maintained NAVSTAR satellites to calculate the physical position of the GPS tag. Although, other networks of satellites do exist (Glonass, Galileo, Compass) they are not yet ready for use.



The **GPS equipment** that is used in their other contracts by G4S (the electronic monitoring service provider in Scotland) is similar in size and scale to the radio frequency (RF) equipment currently used in Scotland. It is slightly larger and heavier largely as a result of the need to accommodate increased battery power but it is still practical to comfortably wear. The offender wears a tamper-resistant small transmitter around the ankle that receives transmissions from the satellites and triangulates the offender's location based on the relative strengths of the signals. The mobile phone network is then used to communicate that information on the offender's location to a central computer at a monitoring centre in "real time". The central control then uses Google maps to plot locations, which allows the movements of the tag to be plotted against locations and times. The mobile phone network can also be used on occasions where a GPS signal is unobtainable, to triangulate location using GSM cell based data (in other words if the satellites can't be used to pin-point a location the fall back system is to triangulate using proximity to the nearest mobile phone masts). However, it is important to note that although the mobile signal can pick people up in buildings and other locations where sometimes GPS cannot, the accuracy of the triangulation using this method may not be as reliable as with GPS. The GPS technology can be utilised to monitor the whereabouts of a tag (and therefore an offender) and it can also use satellites to monitor the perimeters of exclusion or inclusion zones.

Importantly the tag is also able to pick up RF signals as well so one device can utilise both monitoring systems. In the same way as the RF tags are, the GPS equipment is completely waterproof, has tamper resistant strap and has multiple tamper detectors.

## 2:2 Strengths and weaknesses of GPS

There are some significant potential advantages to GPS, some of which are set out below and are explored in further detail later on in this paper. For example, GPS:

- Can help protect the public and known victims (who can also be tracked) by monitoring the location of offenders,
- Can help supervising officers better understand a person's lifestyle and provide early indicators of possible recidivism,
- Can provide a deterrent to future offending as knowing that they can be tracked as being at the scene of an offence can be enough to discourage offending behaviour,
- Can provide (through web based monitoring) more immediate access to real time data which may allow swifter responses for those monitoring and may provide operational savings for supervisory organisations,
- Can be used to help the police quickly eliminate suspects from enquiries, and
- Can allow conditions of orders that were previously hard to monitor to be more effectively monitored and enforced.

However, it is important before going on to consider what GPS can and cannot do.

In considering any possible uses we need to be mindful of what the technology limits are. For example:

- GPS usually works in most domestic homes, but may not work inside all buildings,
- GPS usually works while travelling in cars, however may not work on trains,
- GPS drift (movement in accuracy of signal) might occur when static for long periods of time and near water,
- GPS accuracy is affected by nearby tall buildings and does not work underground, however,
- GSM Location Based Services (LBS) can be used to fill in where a GPS signal is unobtainable.

A perceived weakness of GPS is that it generates masses of data which can be difficult to interpret. However, that perception may in part come from those unfamiliar with electronic monitoring systems more generally as the level of data generated in essence is not all that dissimilar to the current data generated. In practice, there is the option to have secure Web Based access to the information so that service professionals could access the information themselves remotely, so for example an appropriately trained probation officer could access an immediate update on an offender's location if that would be beneficial. Alternatively, the monitoring company could "package" the information and communicate it on to the relevant parties in a way that is easily interpreted, such as a report.

The presentation of the locational information on the map allows the location of the tag to be seen over any date range and allows for multiple inclusion and exclusion zones. These zones can be of a number of different shapes (circles, rectangle, polygons etc.) any size, to different time schedules and with or without buffer zones

(buffer zones are areas that are set just outside an exclusion zone to which entry generates an early alert to possible boundary encroachment). So, you could be excluded from a specific space (for example, a football stadium on a Saturday), or excluded from any building (such as a public house on a Sunday), depending on the order or licence requirement.



Exclusion zone set of irregular shape, with buffer zone

There are no absolutes about accuracy or performance of any GPS device. However we can reliably say what the likely accuracy of any one “fix” is within a particular *range*. (A fix is where the GPS system locates the tag in a particular place at a particular time). Depending on the strength of signals to the nearest satellites a fix might be accurate to 2-5 meters, 5-10 meters, 10-20 meters etc. “No absolutes about accuracy” does not mean the data can’t be used it just means that whoever is using it needs to understand the difference between fixes that are accurate to 2 meters as compared to entries that are accurate to 20 meters. Additional assurance can be gathered from multiple fixes. So, if an offender has generated 20 fixes or data points at regular intervals on a map within 5 minutes, while any *one point* may be subject to drift, nineteen others all showing an offender proceeding in a certain direction gives you a great deal more certainty about the result showing his or her movements. The possibility of drift though means that GPS has some limitations as to how well it can be used to enforce a boundary. This is a major point to consider in thinking about possible uses of GPS. Any monitoring system that uses GPS therefore needs to make sure that the correct evidential weight is given to GPS information obtained.

For example, an individual skirting around the edge of a restriction boundary may be shown as encroaching on the boundary as a result of drift. This can be dealt with by way of buffer zones set up electronically around boundaries so that an entry into a buffer zone generates an early warning about a possible boundary encroachment. Similarly as outlined above, multiple data points would help eliminate the possibility that any one “fix” was as a result of drift. Furthermore, by using a combination of RF and GPS, you can use RF to monitor an offender curfewed to their home during the

night and GPS to track their whereabouts out-with that location during the day. The RF will give you a more certain curfew to the boundary of their house.

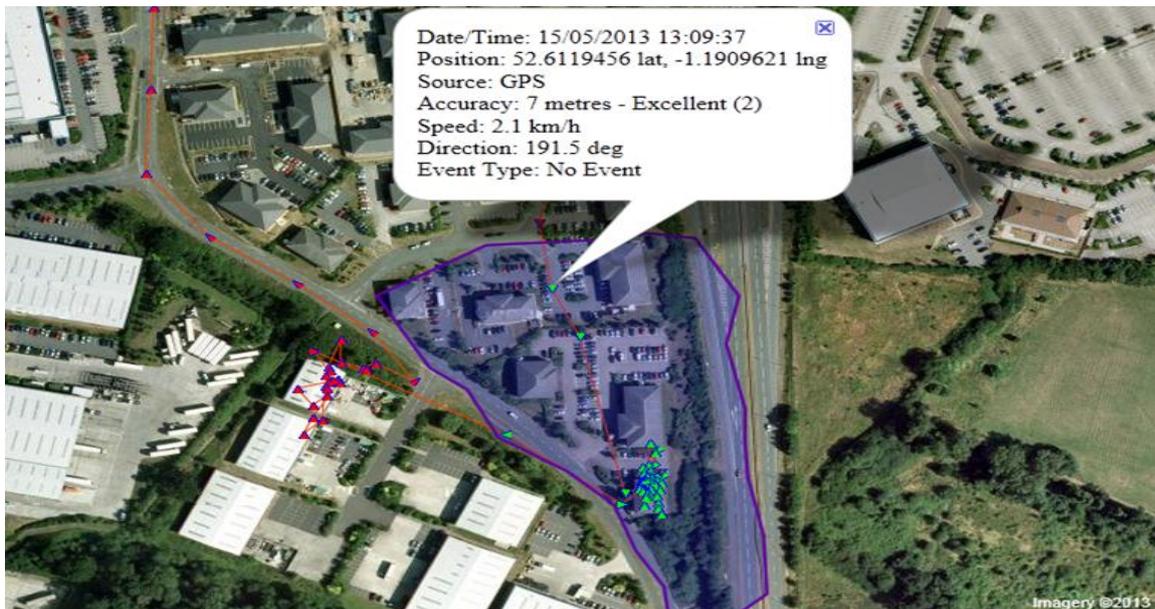


Illustration showing how GPS data displays on a map and demonstrating that each of these dots will have a measurable level of accuracy – making correct interpretation of the data very important.

While advances to battery technology have increased in recent years, GPS can be very draining on batteries and battery life depends on the frequency with which the system provides updates on locations (every 10 seconds, every 30 seconds, every minute etc.). The battery recharges from flat in 1.5 hours or for up to 1 hour every day. In practice, the tag would need to be charged daily. The development of an “on body” charger means this now becomes an easier task to perform whilst at the home address. As a consequence, the tag does not need to be “plugged in” or removed in order to charge it. Instead the “charger” is charged and then clipped over the tag to pass on the charge while the offender can move around within their property during this process. If in the course of ordinary operation the charge is low then the tag vibrates to give a low battery alert. The tag uses assisted GPS in order to get a faster initial locational fix and it contains sufficient memory to store over 1 week of data. Battery life can be remotely checked by the monitoring company.

It is important to note that charging equipment will involve the cooperation of the tagged individual. Therefore any GPS system without incentives to charge the equipment or sanctions for not charging the equipment would seem likely to encounter a high degree of non-compliance as a result of non-charging of equipment. This is a difference from the way the current RF system operates where there is less of an active role for the offender in maintaining the operation of the monitoring equipment.

## **2:3 How a GPS service might work**

Taking in the round both the strengths and the weaknesses of GPS, the Scottish Government believe there is still a good deal of scope to consider options for a robust and innovative electronic monitoring service using GPS which will help support a stronger and safer Scotland. We would like this consultation to be open to examination of these possible uses and we invite all suggestions about what a GPS service might look like and what it may seek to do. In considering options the following factors would also have to be taken into account.

### *Passive or active monitoring*

There are two potential ways of monitoring a GPS system: passive monitoring or active monitoring. Essentially the difference in a lot of respects is down to the timing of when the generated information is accessed and how quickly the data needs to be acted upon. A monitoring system can be set up so that the data is captured and stored to allow a retrospective check on an offender's movements. That is passive monitoring. In an actively monitored system there would be real time alerts that could be acted upon. So, if an offender entered an exclusion zone or a buffer zone around an exclusion zone then an alert might sound and the monitoring company might have to take actions to phone or report the offender's presence to the appropriate agency. In both systems the data would be stored to allow you to check the details in slower time if required.

### *Legal Considerations*

The legal issues are explored further within the individual sections which follow on possible uses of GPS but there are some quite significant considerations. In particular, compliance with the Data Protection Act 1998 is a significant issue here, as arguably this would be amongst the most sensitive type of personal data that a Government could collect on its citizens. Currently a good deal of effort is put into ensuring that the systems that hold the current electronic monitoring data are robust, that there are clear contractual arrangements and guidance covering how it can be used and disseminated. Any new system would also have to go through the same process of checking (Privacy Impact Assessments, penetration testing etc.) to ensure the systems were robust. Not only are there data protection considerations around how the information may be held but there would be data protection issues around what constituted legitimate uses of that data and again this is covered in further detail in the sections which follow.

### *Examples of possible uses*

To help illustrate the range of considerations that there are with possible uses of GPS, there are five areas of policy where there has already been some public debate as to the extent to which there may be a role for GPS, which have been worked up in slightly more detail in the following sections. The consultation does not express a view or preference for any of these options; these are just set out in more detail to help illustrate the types of issues that would need to be considered. Please feel free to give your views on these uses of GPS or any other uses of GPS monitoring that you feel should be considered.

### **2:3:1 GPS to monitor sex offenders.**

This section of the consultation will look at what potential there is to use a GPS satellite tracking capability to monitor sex offenders. In this section the sex offenders cohort considered is specifically sex offenders subject to local authority supervision on release from custody. These sex offenders are also subject to notification requirements and monitoring under the Multi Agency Public Protection Arrangements (MAPPA). Accordingly the vast majority are well managed with individuals and communities being safeguarded. Indeed recent crime statistics show that offenders who committed a sexual crime have the lowest reconviction frequency rate and the lowest reconviction rate. Whilst there is a high degree of compliance with their legal obligations, a small minority will attempt to evade these processes. Arguments for treating a sex offender cohort differently from other types of offenders can be made as a result of a different level of risk in terms of public protection and/or more generally a different set of needs in terms of offender management. Serious case reviews in Scotland have suggested that electronic monitoring using GPS may have a role to play in working with sex offenders. In looking at this proposal it is helpful to consider: what arrangements are currently in place, what is possible under existing legislative and technical constraints, what advantages would there be to introducing GPS and what next steps would be required for sex offender GPS service.

#### *What arrangements are currently in place?*

The decision on whether a sex offender on release from custody should be electronically monitored is one that is taken by the Parole Board, informed by the relevant agencies (police, local authority etc.) that have been involved with the offender. Electronic monitoring through RF currently provides a particular function in offender management for the relevant agencies. An offender can be restricted to and/or from an address. Violations are monitored electronically by the service provider (G4S) and are reported back to the supervising officer or authorising agency. Further details on the technical aspects of RF monitoring are contained in Section 1, however in general terms RF just creates an electronically measured zone around a property. Monitoring these zones lets agencies know whether an offender is in or out a property and at what times.

For some high risk sex offenders managed at the highest risk level they are deemed to be at such a high risk of re-offending that not only are they electronically monitored they also have a number of other restrictions including such measures as CCTV in their properties or supervising officer physically with them 24/7. Individual monitoring protocols will exist for these offenders so that in some cases not only are the authorising agencies contacted in the event of breach but the police are immediately informed. For these offenders electronic monitoring will be part of an existing supervisory condition. For many they are only in the community as the punishment part of their sentence has been served so there is no longer a legal basis to continue to hold them in custody. GPS may provide an enhancement of the

offender management capability of electronic monitoring but it will be a key consideration in looking at the capabilities that GPS has, that the proposed uses of the technology *enhance* the restriction, public safety and harm reduction capabilities of managing sex offenders, rather than diminishing any aspect.

Currently sex offenders are managed through the MAPPA process on release from custody. Under MAPPA arrangements, the responsible authorities<sup>8</sup> are required to make arrangements for the assessment and management of the risk posed by offenders subject to Part 2 of the Sexual Offences Act 2003. The fundamental purpose of MAPPA is public safety and the reduction of serious harm. All the agencies involved in dealing with these offenders come together to determine the most suitable set of monitoring arrangements based on assessments of risk.

In understanding the scope of how far GPS could play a role in assisting in the management of this offender cohort it is a key consideration that the information obtained by the Parole Board (from the electronic monitoring provider) could be shared with the responsible authorities within MAPPA. This information could then help the responsible authorities to decide how best to manage the individual. To further clarify the scope of any proposed electronic monitoring it is also worth noting that any electronic monitoring provision will have a statutory basis which is *separate* from MAPPA, and an offender may be managed through the MAPPA regime long after any electronic monitoring requirement has ended (for example, where statutory local authority supervision has ended but a notification requirement or similar is still in place). Therefore, as will be expanded upon below, electronic monitoring of sex offenders under existing powers could only extend as far as there was a statutory power for a form of monitoring.

*What kind of GPS service is possible under existing legislative and technical constraints?*

The technical possibilities of GPS are set out under the initial part of Section 2 of this document. However, any monitoring by a government of its citizens must also be lawful. The existing statutory framework is set out in the introduction. In summary, there is existing provision in statute for the remote monitoring of compliance with certain restrictions on freedom of movement (curfew), and this is subject to the methods of monitoring and devices used being specified in regulations. In the case of those released on licence, there are also more general provisions for the remote monitoring of compliance with licence conditions, and for the remote monitoring of an offender's whereabouts.

For GPS technology to be used as the *method* of remote monitoring, it would be necessary, in advance of any such cases, for the *devices* used to be specified by Parliament in regulations and, in certain cases, for the method of monitoring also to be specified. Regardless of whether or not the method of monitoring needs to be specified, the selected method must be compatible with ECHR requirements and the law on data protection. (New uses of remote monitoring that go beyond what is

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<sup>8</sup> the Management of Offenders etc (Scotland) Act 2005 place a statutory function on police, local authorities, and the Scottish Prison Service (the responsible authorities) to establish joint arrangements for assessing the risk from sex offenders including the effective sharing of information.

specified in these legislative provisions, whether or not involving the use of GPS technology, are likely to require changes to primary legislation.)

With the necessary provisions and safeguards in place it would be possible, within the existing legislative framework, for GPS technology to be used in place of, or along with, RF technology as a method of remote monitoring. However, where remote monitoring is only permitted for a specific purpose, such as monitoring compliance with a curfew, the existing restrictions would continue to apply. These restrictions mean, for example, that the remote monitoring of an overnight curfew might not justify the monitoring of the offender's movements more generally *outwith* that period. (Although, there are some instances where GPS could legitimately provide information outwith a curfew period, for example, monitoring an "away from" curfew by GPS would require 24 hours a day monitoring to ensure the "away from" address was not visited). For such a use it would therefore be necessary to address issues surrounding the gathering, processing and retention of such incidental information. Therefore, any use of GPS may provide greater functionality by monitoring under the more general powers to monitor licence conditions which exist. Consideration would also have to be given to operational questions of detail to make such a system work such as perhaps prescribing in licence conditions a requirement to keep the monitoring equipment charged so it could continue to operate.

It is worth also briefly touching on other legislation in relation to the management of offenders. Sexual Offences Prevention Orders (SOPOs) are provided for by Section 104-113 of the Sexual Offences Act 2003, as amended. SOPOs can place additional monitoring arrangements on sex offenders. Any offender subject to a SOPO will be managed within the MAPPA regime. The current SOPO regime provides that the person subject to the order must comply with the order's conditions (prohibitions and/or requirements). Legislation in Scotland is silent on whether or not Scottish Courts have the power to impose a remote monitoring requirement within a SOPO. However, that is not to say that if the capabilities of GPS were to offer improvements to SOPO that this could not be considered. Indeed a recent High Court judgement<sup>9</sup> in England and Wales, found that the general power to impose prohibitions in SOPO cases allowed for the power to impose electronic monitoring. It seems likely though that if this were to be an intended use that further legislation in this area could help ensure that ECHR requirements could be properly considered and addressed. This consultation invites views on monitoring SOPOs at the foot of this section.

*What advantages would there be to introducing GPS?*

Research<sup>10</sup> on electronic monitoring in other jurisdictions has found that electronic monitoring of offenders is in part based upon the '...premise that sex offenders will curtail their behaviours because they do not want to be caught'. Research suggests that the benefits of using electronic monitoring can be the enhancement of a supervisory regime. This might involve organising an offender's time to include structured and productive activities. Monitoring can also help aid police

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<sup>9</sup> Richards v Teesside Magistrates Court & Anr. [2013] EWHC 2208

<sup>10</sup> Thomas, T. (2011): 151: The registration and monitoring of sex offenders. A comparative study. Abingdon: Routledge.

investigations by pinpointing time and travel information. Research has also raised a number of issues regarding the use of electronic monitoring. Monitoring is often based on the underlying premise that sex offending is caused by opportunity and availability<sup>11</sup>. In other words, if the opportunity to perpetrate is limited and access to victims reduced by exclusion zones and curfews, sex offenders will not recidivate. A range of factors though, contribute to sex offenders' motivations to offend, e.g. low self-esteem, psychopathology, history of violence<sup>12</sup>. Care needs to be taken not to apply too narrow a definition of the cause of sex offending in determining how offenders are best managed effectively. There is arguably limited evidence that electronic monitoring protects the community from certain types of offenders (e.g. dysfunctional or impulsive personalities). Therefore, under all of the options considered, the authorising agencies would still need to take care in the selection of offenders as a stable home and sufficient emotional intelligence is required in order for an offender to link breaches with possible consequences.

In looking at possible uses of GPS we need to think about whether GPS offers anything *additional* in dealing with this offender cohort. Specifically that consideration needs to look at what is offered beyond what the existing RF service can provide, given that RF is currently used for monitor curfew to good effect. The technical constraints around what GPS monitoring can offer are expanded upon in more details in Section 2. However, GPS can broadly be described as offering real-time locational information on an offender's whereabouts. In relation to monitoring curfews that information could primarily be used to:

- Monitor a tighter location restriction around existing curfew orders

This could have some advantages. One of the additional functionalities of a GPS system beyond the current RF monitoring system, is that orders could be made more specific in their location based elements. So different types of geographical exclusion/inclusion and buffer zones could be set up all with different times. There is more on zones and the technological capabilities within Section 2. A practical application could be that GPS exclusion zones could be set up around schools, for example, or other geographical locations specifically associated with the offending behaviour. Using GPS could also provide an additional "check" on the performance of the RF service, so if an absence was denied you would be able to use two different technology types to prove the offender was absent. One of the limitations to using GPS just to monitor a static curfew would be the issue of GPS drift where an occasional drift in the signal into or outwith a curfew location, if not correctly interpreted, could show as a short absence or incursion. There is a cost to the public purse to GPS and we would need to be clear that any new use justified the extra cost for the benefit it provided. In all the examples considered below it is envisaged that GPS would be provided in conjunction with an RF service, so that all current benefits of RF would be retained.

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<sup>11</sup> Button, D.M., DeMichele, M. and Payne, B.K. (2009) Using electronic monitoring to supervise sex offenders: Legislative patterns and implications for community corrections officers. *Criminal Justice Policy Review*. 20 (4):414-436.

<sup>12</sup> Payne, B.K. and Gainey, R.R. (2005) *Family violence and criminal justice: A life-course approach* (2<sup>nd</sup> Ed.) Cincinnati, OH: Anderson.

In relation to monitoring whereabouts or other licence conditions, other potential uses of GPS could be:

- Better offender supervision/ identifying breach of order conditions
- Identifying/disrupting new offending

Except for the most high risk sex offenders where they are physically watched 24/7, it is not possible within existing resources for supervisors to monitor all licence conditions, for all community based orders, all the time. Therefore, a GPS service may enhance the quantity and quality of the existing monitoring of order conditions that takes place. Practitioners that work with this sex offender group are aware of the importance of monitoring “testing and escalation” behaviours. So, if the offender were prohibited from entering a specific area in an order and that offender were getting progressively closer to the restricted area, for example a school, they could be identified through electronic monitoring and their actions/behaviour acted on, if it were appropriate to do so. While GPS may enhance how effectively existing order requirements are monitored - even with an actively monitored system which arguably might be more automated, an element of human input would almost certainly still be required in order to understand the patterns of behaviour shown in more depth. This would especially be the case if there were not a clear “trigger” point for an automated system to electronically reach.

In relation to identifying and disrupting new offending, mapping software can correlate new offences notified to the police with locations of tagged offenders to quickly rule people in or out of contention for further investigation. This would have a number of advantages in speeding up the investigation of crimes for the agencies involved. Furthermore, knowing that you could be easily placed at the scene of an offence could have a deterrent effect that prevents offending in the first place which could be a benefit for use with this cohort.

*What next steps would be required for a sex offender GPS service?*

If the proposal to introduce GPS for management of sex offenders received support in this consultation, then piloting the use of GPS for sex offenders could be introduced relatively quickly, within potentially around 6 months. Further work would be required by the Scottish Government, the electronic monitoring service provider and other stakeholders to set out clearly the arrangements for data management, including information handling and retention arrangements. Secondary legislation would be required to enable GPS equipment to be specified (as equipment that could be used for remote monitoring) before it could be used. Further, more detailed engagement with MAPPA responsible authorities and other stakeholders involved in offender management would be required to work up in greater detail firm proposals for how such a use would operate.

There are legislative powers in place in this area already that would allow for use of GPS, but if a view emerged that further legislative powers in this area would be required (for example to extend monitoring explicitly to SOPOs), then any decision to legislate would have to be informed by a clear decision that monitoring in this way would be necessary, and in the interests of preventing disorder or crime or protecting others. Such a use would have to be proportionate to the harm that it aimed to

prevent and there would have to be adequate procedural safeguards put in place. In terms of timescale, if legislation were required then it would be dependent on a legislative opportunity being available which in itself would depend on a number of different factors. Although, it seems likely that a suitable legislative opportunity could be found within the lifetime of the current Parliament. Any legislative change to introduce a new monitoring regime would have to be ECHR compliant, particularly with reference to article 8, which provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### **Consultation Questions**

**5. What, if any, role do you believe GPS monitoring should have for use with a sex offender cohort? Why?**

**6. Should new legislative powers be sought (for example to cover SOPOs)? Why?**

**7. What, if any, other views do you have on use of GPS with sex offenders that are not covered in the questions above?**

### **2:3:2 Voluntary Pilots of GPS for persistent offenders**

This section of the consultation will look at what potential there is to introduce a voluntary pilot with GPS electronic monitoring of persistent offenders. This will help explore issues around a non-legislatively backed use as well as issues around using with a persistent offender cohort. In looking at this proposal it is helpful to consider: what arrangements are currently in place, what is possible under existing legislative and technical constraints, what advantages would there be to a GPS service and what next steps would be required.

#### *What arrangements are currently in place?*

The Scottish Government are committed to reducing reoffending. It can be seen from the available statistics that many crimes are committed by people with prior convictions. Around 2/3 of people convicted in any given year have at least one previous conviction (and 10-20% have more than 10)<sup>13</sup>. Each time someone is sentenced or convicted is an opportunity to help them desist from crime. From the evidence<sup>14</sup> we also know that to achieve this desistance requires the integration of multiple services to tackle the underlying reasons for offending behaviour. It may be that electronic monitoring can play a role in creating a more structured and less chaotic lifestyle for some persistent offenders to allow them to engage with those services, as well as providing a deterrent to reoffending. The problem of persistent offenders in Scotland is already well known. In Glasgow, Strathclyde Police and the Glasgow addiction service ran a persistent offenders project between 2006 and 2009 which offered a voluntary route for persistent offenders to engage with services. The project evaluation estimated that for each £1 spent on this cohort, £14 of benefit was gained in the form of reduced economic and social costs of crime. The scheme showed a 32 per cent reduction in recorded crime and an estimated 39 per cent fall in actual incidence. The Scottish Government have done work looking at prolific offenders (3 or more convictions) which shows a higher average cost of prolific offenders as compared to low frequency higher tariff offenders. It also showed the cost of prolific offenders as a cohort was an estimated £5 billion over 10 years.<sup>15</sup> There is therefore a good deal of evidence that targeting such a group could provide significant benefits. At a local level some Community Justice Authorities and local authorities are setting up specific initiatives to target persistent offenders. Any new work on electronic monitoring and persistent offenders could either be through a standalone project or perhaps by linking in with an existing project to tackle persistent offending.

#### *What is possible under existing legislative and technical constraints?*

The consultation process should help set a strategic direction for development of the electronic monitoring service, but if any of the options that emerge from the

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<sup>13</sup> Scottish Government Publication, [Reconviction Rates in Scotland: 2010-11 Offender Cohort](#)

<sup>14</sup> Scottish Government Paper, Sapouna 2011, [What Works to Reduce Reoffending: A Summary of the Evidence](#)

<sup>15</sup> Scottish Government Paper: Reducing Reoffending Programme Board Paper: Economic and social costs of reoffending – breakdown of offender types

consultation process require legislative change, then it could be that a *voluntary pilot* of GPS may offer an option that might have the potential to get some of the learning as to the advantages of a GPS system, but in an earlier timescale than having to wait for primary legislation. A voluntary pilot would mean that all uses of the equipment were on a purely voluntary basis so were not mandated by any statutory body. It would also mean you could not directly apply sanctions for lack of compliance. So that appropriate safeguards were in place such a pilot would still require guidance and guidelines to be developed to cover the use of the data captured and the way in which the system would be operated. Secondary legislation to prescribe the equipment used may still be required depending on whether use was on a completely voluntary basis or as part of a voluntary enhancement (GPS instead of RF) for a statutorily monitored order. Persistent offenders may be in the community under some sort of statutory supervision, under a range of different order types or may have served all outstanding disposals but still be known by agencies as a result of offending behaviour.

*What advantages would there be to a voluntary pilot of a GPS service for prolific offenders?*

In looking at possible advantages, it is perhaps worth starting by looking at where this approach has been piloted in other areas. In England, Hertfordshire Police have been running a pilot for around a year which has had some initial findings. Interestingly a number of persistent offenders were very keen to be involved in the pilot on the basis that they felt that there was a strong incentive for them to do so, as it could be used to rule them out of involvement in offences, and not just rule them in. As a group that were well known to the police as persistent offenders, they were accustomed to regular police involvement in their lives. The police were able to reassure them that the GPS tag would help reduce the number of times they would need to call at the individual's place of work or homes during any investigation into a crime. There was also an incentive to the offender to show to family and friends a desire to desist.

From the police point of view, it was suggested that there were strong potential operational savings from very quickly being able to rule out lines of enquiry, eliminate unnecessary visits to the homes of any suspects and correlate known crimes with a tagged offender's location to speed up enquiries. The police were also investigating uses with individuals that required persistent police involvement (albeit not offenders) and reported savings in use with vulnerable missing persons. Particularly they were looking at those with dementia. In close cooperation with the family of the individual involved, and with their cooperation the individual, they were asked to wear a tag which could locate them if they wandered off. This provided piece of mind for the family and freed up significant police search time for other crime prevention and detection activities.

From the pilot with the offender group it was not yet clear from the small sample size whether or not there was a desistence effect from wearing the tag. However, they did find, and this accords with the Scottish experience of electronic monitoring, that a number of people reported using the tags as a *plausible excuse* to remove themselves from as association with those they knew to be associated with offending ("I cannae come out with you, I have a tag").

There were challenges though that emerged from that pilot that were particular to use on a voluntary basis. As you might expect from using with a high risk group, without having a sanction available for non-compliance, some people just removed the tags. A large number also engaged in a more subtle form of non-compliance and “forgot” to charge the tag. There is also a risk that even if complying an offender may have substituted one type of offending behaviour for another less detectable type of offending. Findings for the pilot showed it worked better when phone calls were made as reminders to individuals to tell them to charge their equipment. From 8 months of operation of this pilot with 83 offenders:

- 40 removed the tag themselves. This was because they wished to withdraw from the scheme or deliberately tampered to test the equipment. Some were given a second chance and were re-installed.
- 7 withdrew but waited for an officer to remove the tag
- 17 were removed by the Police for not charging the tag despite multiple warnings
- 8 were not present for the install or refused and so never started
- 4 were remanded in custody for offences committed
- 2 moved out of the force area, 2 had accommodation problems

Only 3 individuals successfully completed a significant term of between 2 and 3 months and were removed by the Police by mutual agreement.

While this represents what seems like a very low “completion” rate, from a group that commit such a large volume of offences even a small number of people desisting may have a significant effect on reoffending rates. It might be useful to further explore how this rate of reoffending compares to a “control” group of persistent offenders that did not receive a tag or who received another form of intervention. That could be done by running a further pilot in Scotland although it should be noted that in Scotland, as there is a small offender population it may not be possible to get a sample size that gives statistically significant results. Therefore the learning from such a pilot in the short term might be more strongly around exploring how the equipment works rather than assessing how effective it is in restricting/rehabilitating offenders, although this in itself could still be beneficial in the development of the service.

*What next steps would be required?*

The electronic monitoring service provider in Scotland has indicated that they would need a few months of lead in time prior to any pilot, in order to train staff and ensure equipment stocks were in place. It would also take a few months to ensure that the pilot design was robust enough to address some of the issues identified in the Hertfordshire pilot to ensure that we were testing something new.

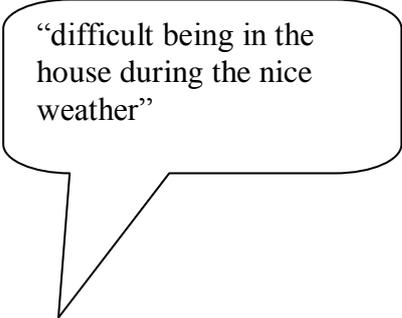
For example, it does seem from this initial work that using the tag without a sanction for non-compliance had an impact on whether those involved charged the devices and therefore on their overall compliance. Sanctions are not however the only way of motivating compliance and it may be that *incentives* for completing periods on a voluntary tag could have a positive effect.

### Consultation Questions

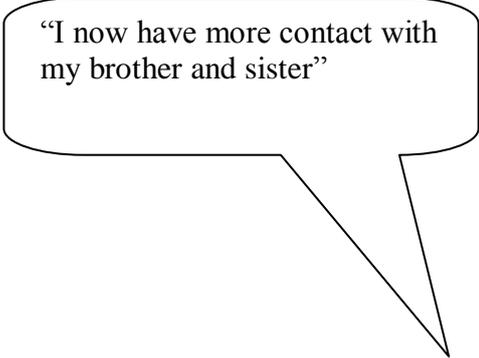
8. Should GPS monitoring be further explored as part of a *voluntary pilot* of tagging persistent offenders? Why?

9. Should GPS monitoring of persistent offenders be further explored on a *legislatively* (as opposed to voluntary) backed basis? Why?

10. Have you any further views on either other potential voluntary uses of GPS or use of GPS with persistent offenders?



“difficult being in the house during the nice weather”



“I now have more contact with my brother and sister”

### **2:3:3 Pilots of GPS for Domestic abuse**

This section of the consultation will look at what potential there is to use GPS electronic monitoring in domestic abuse cases. In looking at this proposal it is helpful to consider: what arrangements are currently in place, what is possible under existing legislative and technical constraints, what advantages would there be to victims of domestic abuse and what next steps would be required.

#### *What arrangements are currently in place?*

Ultimately, it is for Courts to determine what the most appropriate disposal is in a case and they can impose a custodial sentence if the circumstances of the case suggest that would be suitable. In cases where they determine a community sentence is more appropriate, under existing arrangements, Courts can impose curfew conditions within a RLO as a stand-alone community sentence or as an additional imposition to run concurrently with another community sentence. This additional community sentence might include referral to an offence specific diversion programme as part of a community payback order.

The existing RF monitoring system can be, and is, used in cases of domestic abuse. It can be used to restrict an offender away from a victim's home (or indeed, place of work or other physical location). A monitoring unit is placed in the restricted address such as the victim's home and it is set at the maximum range. If the tagged offender comes into range of that location an alert is generated on the monitoring system and appropriate action can be taken.

Monitoring is based on the underlying premise that offending is caused by opportunity and availability. By setting an exclusion zone around a victim's home the perpetrator is aware that they cannot approach a certain restricted area without detection and is potentially less likely to attempt to approach the victim.

To support this, there are a number of programmes available to help address some of the underlying issues which influence the domestic abuse perpetrators offending behaviour. One such programme is the Caledonian System which looks to address men's domestic abuse. It does this by working with men convicted of domestic abuse related offences while offering integrated services to women and children. Referrals to the Caledonian men's programme can be made as part of a programme requirement of the Community Payback Order.

#### *What is possible under existing legislative and technical constraints?*

There are a number of pieces of legislation the Scottish Government have taken forward which make harassment a clear offence, such as the Domestic Abuse (Scotland) Act<sup>16</sup> which came into force in July 2011. That introduced a new section to the Protection from Harassment Act 1997 which provides that every individual has a right to be free from harassment and, accordingly, that a person must not engage in conduct which amounts to harassment of another. It also introduced a new offence

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<sup>16</sup> [Domestic Abuse \(Scotland\) Act 2011](#)

criminalising the breach of an interdict with a power of arrest where domestic abuse is involved. In terms of how individuals could be monitored electronically as part of measures to reduce opportunity for further offending Section 1.1 of this document sets out the legislative position in relation to use of electronic monitoring by GPS and it makes clear that depending on whether it is used as part of an order or a licence it could be used to monitor curfew or licence conditions and/or whereabouts. There is also the potential that use could be on a voluntary use with this cohort but the section on persistent offenders shows potential issues with a voluntary use of this technology.

In technical terms, what is now possible is for both the victim and perpetrator to carry/wear a GPS enabled device. The victim carries a device, similar to a mobile phone in terms of size, which contains GPS functionality while the offender wears a GPS device around the ankle. If the tagged offender comes within range (and different ranges can be set) of the victim, the victim can be contacted to alert them so that they can take appropriate action. For example, the victim can be telephoned or texted and advised which route to take to prevent them from meeting the perpetrator.

*What advantages would there be to victims of a domestic abuse?*

By using a system similar to that outlined above, GPS tracking would allow a slightly more sophisticated restriction to be applied. Not only can you restrict an offender to a location and/or away from a location, but you can restrict them away from an individual. This could allow a victim greater flexibility in how they live their lives and peace of mind when they are away from their home address. Careful work with victims would be required here though, to ensure that this approach would be welcomed. Alerting the victim of all occasions where an offender is close could result in further anxiety and concern for the victim rather than providing the peace of mind intended.

Such a solution may work better in a larger location such as a big city rather than in smaller locations such as a rural hamlet where offender and victim may be more likely to interact. Practical concerns would have to be worked through such as how to deal with occasions when offenders are in transport (where a car may encroach on a restriction zone quickly meaning buffer zones may be required). These are not reasons not to progress such a scheme but are considerations that such a scheme would have to take into account. Given that the Domestic Abuse (Scotland) Act provides a power of arrest where domestic abuse is involved, GPS tracking could support this provision and may help inform part of a safety plan for the victim.

In summary, some of the key advantages of using GPS may be;

- Real-time mapping, displaying the current location and direction of travel of perpetrator and victim
- Immediate alarms, the monitoring centre are alerted immediately if the perpetrator enters an exclusion zone and tampers or removes their tag
- Automatic alerts can be forwarded to the victim if the perpetrator is nearby
- Buffer zones can be set to warn if a perpetrator is approaching an exclusion zone

- Better and more flexible monitoring of existing static exclusion zones where wider areas and different buildings could be specified.

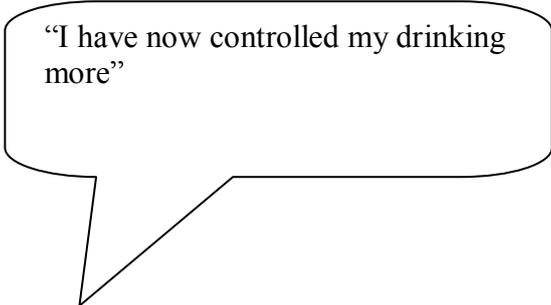
*What next steps would be required?*

If the use of GPS in this area were supported then it would depend whether support was indicated for use of GPS to monitor something similar to what we currently do (i.e. better way of defining curfew zones) or whether support was for something new like the remote monitoring of victims and offenders. If the latter were supported, then pilot proposals could be developed to test the use of this technology with a smaller group, prior to any wider use. This would allow the technology to be tested as well as working out practical details about how such a system would work in practice (such as how would Courts/Parole Board give effect to their intended restriction zones etc.). There would also be further work needed on data management guidance. If it were to be that there was a view expressed that primary legislative change in this area would be beneficial then there would be a requirement to identify an appropriate legislative vehicle.

#### **Consultation Questions**

**11. What, if any, role do you believe GPS monitoring should have for use with domestic abuse type offences? Why?**

**12. Have you any other views on the use of GPS for domestic abuse on either a voluntary or a legislatively backed use?**



“I have now controlled my drinking more”

### **2:3:4 Use pre-sentence – bail**

This section will look at the use of electronic monitoring by GPS with bail and will look at the following questions: what arrangements are currently in place, what kind of GPS service is possible under existing legislative and technical constraints, what advantages would there be to introducing GPS and what next steps would be required for a bail GPS service?

*What arrangements are currently in place?*

In Scotland it is for the Court to decide whether to remand an accused person in custody or grant bail which will allow them to remain in the community. In making this decision the Court will take into account the nature and seriousness of the case and the individual's history and circumstances. One of the main objectives of bail is to avoid the use of custody in cases where it is not appropriate or required in the interests of public safety.

A person released on bail must comply with five standard conditions. These are:

- To appear before the court on due date as directed
- Not to commit a further offence
- Not to interfere with victims or witnesses or in any other way obstruct the course of justice
- Not to behave in a manner which causes, or is likely to cause, alarm or distress to witnesses
- Make themselves available for interview as required for the completion of any reports requested by the Court

In the case of certain sexual offences there is a further standard condition – to seek any precognition or statement from a complainer only by means of a solicitor.

In addition to these standard conditions a Court may impose additional conditions as considered appropriate. These can include, for example: a requirement to stay at a designated address or a restriction on the movements of the accused prohibiting them from entering certain areas (for example: the scene of the alleged offence). Local authority criminal justice social work provide a range of services to support the bail process. These can include Bail Information Services which can provide more detailed information about the alleged offender and their circumstances.

Electronic monitoring is not currently used for bail in Scotland. However it is used in a number of other European jurisdictions and a pilot examining the use of electronic monitoring with bail was run in Scotland in 2005.

The 2005 pilot of electronic monitoring of bail in Scotland was introduced in the High Court sitting in Glasgow and the Sheriff Courts in Glasgow, Kilmarnock and Stirling, with the following aims:

- to reduce the use of custody for those accused deemed eligible for electronically monitored bail who would otherwise have been remanded; and

- to offer additional security to the general public against the likelihood of further offending or intimidation of witnesses by accused people who are seen as a potential risk if not remanded in custody.

A full evaluation of the pilot was conducted by Barry et al in 2007<sup>17</sup>. They judged the pilot to have been successful in organisational and inter-agency terms, stating: “there is nothing else that could have been done by way of management to create better outcomes than those achieved.” However, in legal and judicial terms the pilots were not felt to be a success, with the aims not fully being met. The evaluation concluded that: “The pilots are impacting minimally on the remand population and there is no apparent confidence that EM bail improves public safety any more than standard bail.”

In terms of costs, the evaluation found electronic monitoring of bail to be *more* expensive than remand, largely as a result of the different treatments of how time was spent pre-trial in the event of a subsequent custodial sentence. For people on custodial remand, a subsequent custodial sentence was likely to be backdated to the start of the remand period however there was no equivalent backdating for EM bail cases.

So, a number of issues emerged from that pilot that suggested that electronically monitored bail would not be a beneficial policy development at that point.

Partly in the light of these findings, Section 50 of the Criminal Justice and Licensing (Scotland) Act 2010 repealed sections 24A to 24E of the Criminal Procedure (Scotland) Act 1995. These were the provisions that enabled a Court to impose an electronically monitored movement restriction as a condition of bail (electronic tagging) as a direct alternative to custodial remand in certain circumstances. That now means there is currently no legislative basis to impose an electronically monitored movement restriction condition as a condition of a bail order. This is quite a significant obstacle to piloting a further test of bail with electronic monitoring in the short term. This was intentional: at the time of repeal of these provisions Ministers stated that “Repealing sections 24A to 24E of the 1995 Act will remove any concerns to the effect that the Scottish Government intends now, or in the future, to resurrect them.”

Against this, in their April 2012 report on women offenders, the Angiolini Commission on Women Offenders<sup>18</sup> looked at the issue of electronic monitoring and bail. The Commission noted that only 30% of female remand prisoners eventually receive custodial sentences, while they are less likely to have committed violent offences that present the most severe, immediate threat to the public. The Commission said that electronic monitoring “...may have a particular value in providing greater confidence and security to the Courts and the public that a person will comply with bail conditions”. They noted that the same costs found during the bail pilot have not been replicated within electronic monitoring in Scotland since and recommended: “...that the Scottish Government examine further the potential of using electronic

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<sup>17</sup> Scottish Government Social research, Barry et al, 2007, [An evaluation of the Use of Electronic Monitoring as a Condition of Bail in Scotland](#)

<sup>18</sup> Commission on Women Offenders Report, 2012, [Commission on Women Offenders](#)

monitoring as a condition of bail, taking into account the findings of the aforementioned evaluation”.

That recommendation to examine the potential was accepted by the Scottish Government. Electronic monitoring of bail is included in this consultation to help explore the issues involved.

*What kind of GPS service is possible under existing legislative and technical constraints?*

A couple of significant developments have occurred since the 2005 pilots. As well as the enabling legislation having been repealed, there have also been development in the available technology. The previous pilot used radio frequency curfew for bail. GPS monitoring is now available, and Sections 1 and 2 set out the capabilities of radio frequency and GPS monitoring in more detail. It may be that the increased functionality that GPS monitoring provides, would give greater reassurance of public safety and may alter the risk involved in decisions on bail.

Under the new contract that the Scottish Government have procured which started on 1 April of this year, the costs of electronic monitoring have fallen considerably, so comparisons in costs terms with custodial disposals may have changed.

*What advantages would there be to introducing GPS?*

One option could be to introduce a GPS service for the existing cohort of people who currently get bail (in other words: not taking any action to change the *decision point* on risk as to who currently is granted bail). This would in effect mean that electronic monitoring through GPS was being brought in to enhance the way in which existing bail conditions are monitored. The rationale for doing so would be that electronic monitoring may be able to offer a better method of monitoring bail conditions. So, in terms of effectiveness, GPS could involve setting up specific exclusion zones that can be monitored in real time to help prevent interference with victims and witnesses. It may also offer the possibility of faster detection of further offences. It may be that GPS could do a less resource intensive but equally effective job of monitoring existing bail conditions.

A blanket roll-out for all bail cases would inevitably have costs attached though, and these would apply even in the very many cases where bail conditions are not breached. If this idea were to be supported then more consideration would have to be given to whether the costs/benefits of this type of usage were justified. There are also questions as to whether such a regime would be proportionate, which would be a key consideration under European Convention of Human Rights (ECHR) obligations.

Another option could be that GPS could be used to expand the cohorts that currently receive bail to try and actively reduce the remand population. The re-assurance that an offender could be detected through GPS while wearing the tag may change the decision making about the risk of having that person in the community. Public protection would be a significant factor here, and it is likely that arrangements would have to be piloted and accepted in other areas of the justice system prior to looking

again at this area, in order to get the requisite level of confidence in the system. Furthermore, in considering what advantage there would be to altering the cohort that receive bail, very careful consideration would need to be given to the risks involved and it should be noted that the Scottish Government have since coming into office, deliberately tightened up bail conditions and pursued a bail policy which takes due regard of risk to the public.

*What next steps would be required for a bail GPS service?*

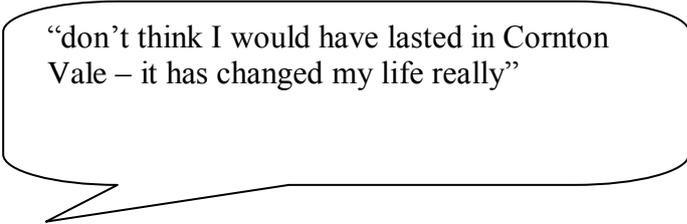
It is assumed that before any consideration could be given to a rollout of a GPS system for bail that a pilot would be required first to test the concept. Any further pilot in this area would require a change to primary legislation, to put in place the legislative powers to use electronic monitoring with bail. However, if the idea of electronically monitored bail were strongly supported and primary legislation were to be required in any event to support developments in electronic monitoring in other areas, then it is possible that in future consideration could be given as to whether enabling legislative powers could be sought so that a further pilot could be run. A detailed business case would have to be developed and then tested as to what the expected benefits would be and that case would have to consider the totality of work involved in the bail process, such as following up on breach etc. The deterrent effect of a tag and also the cost/benefit of potentially picking up on additional offences would also have to be quantified.

#### **Consultation Questions**

**13. What, if any, role do you believe GPS monitoring should have for use with bail? Why?**

**14. With reference to your answer above, do you believe your preferred use of GPS for bail can be covered within existing legal powers or should new legislative powers be sought?**

**15. Please give any other views you have on electronic monitoring and bail?**



“don’t think I would have lasted in Cornton Vale – it has changed my life really”

### **2:3:5 GPS used for all existing electronically monitored orders.**

This section of the consultation will look at what potential there could be to use GPS electronic monitoring for *all* electronically monitored orders in Scotland. In looking at this proposal it is helpful to consider: what arrangements are currently in place, what is possible under existing legislative and technical constraints, what advantages would there be and what next steps would be required.

*What arrangements are currently in place?*

The current RF service is described earlier in this document at Section 1. This proposal to use GPS for all existing orders would mean upgrading all RF tags so that they include both an RF *and* a GPS capability.

*What is possible under existing legislative and technical constraints?*

This would assume that no change in legislation was required (beyond secondary legislation to enable the GPS equipment and method of monitoring to be specified). There would still be a requirement for guidance to be produced on uses of GPS to cover the monitoring arrangements. The technology is available and ready to use.

*What advantages would there be?*

This option could be described as a “GPS max” option. It would be an extensive and un-targeted use of GPS. Given that there are a range of potential benefits from GPS across a number of orders (set out throughout this document) it could be argued that a more wide-scale use would accrue all the benefits across all the possible uses (flexibility of monitoring, better defined exclusion zones etc.). However, it would almost certainly also involve introducing an element of extra cost and redundancy to the system as, by being less targeted in who gets GPS, you would be extending GPS to some people who are otherwise being monitored perfectly successfully on an RF tag.

In looking at the business case for such a use, initial modelling by the Scottish Government has shown that replacing all the existing RF tags with GPS enabled tags, and assuming numbers remained relatively constant, would cost an estimated additional £400k a year. This represents an increase of around 16 per cent in the yearly tagging cost of the contract. In purely financial terms part of the consideration of such a use would be whether £400k or more of savings could be made from the GPS capability. A wider roll-out would have the advantage of increasing the numbers involved in any newly tested methods of monitoring and so would increase the chances of any evaluations being able to produce statistically significant results. Any GPS use though, would as always have to meet the tests of proportionality and ECHR compliance.

*What next steps would be required?*

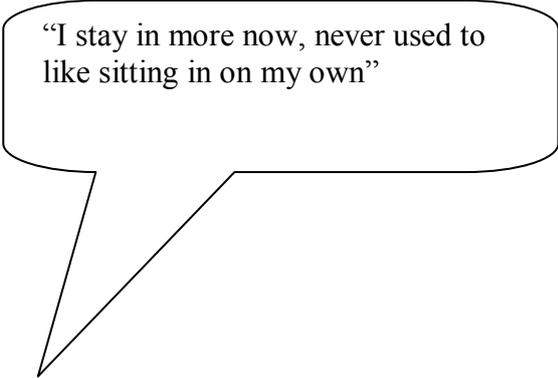
It is worth being clear that if the consensus that emerged from the consultation was in favour of a more widespread use of GPS, rather than a more target use, then it wouldn't preclude the Scottish Government from still having a stage of piloting the

technology with a small group so as to get the parties involved familiar with how the equipment operates. A more detailed business case could be tested, looking at, for example, the potential operational savings for the police. Specific legal advice would need to be sought on whether this would meet ECHR obligations.

### **Consultation Questions**

**16. Would you support a more widespread *roll-out of GPS* so that *all* currently monitored orders had an RF and GPS capability? Why?**

**17. Please give any additional views that you have on the use of GPS on such a “maximum roll-out” basis?**



“I stay in more now, never used to like sitting in on my own”

## SECTION 3: OTHER ELECTRONIC MONITORING ISSUES

### 3:1 Remote Alcohol Monitoring

One of the more recent technological developments in remote electronic monitoring is the capability to remotely monitor alcohol consumption. The technology and implications of its use are discussed in more detail below. In looking at this proposal it is helpful to consider: what arrangements are currently in place, what is possible under existing legislative and technical constraints, what advantages would there be to using remote alcohol monitoring and what next steps would be required.

*What arrangements are currently in place?*

Tackling alcohol misuse is a major priority for the Scottish Government. Since 2007 we have consulted on and published a bold package of measures to tackle alcohol misuse in Scotland through: '*Changing Scotland's Relationship with Alcohol: A Framework for Action*'<sup>19</sup>. We have placed a whole population approach at the heart of an Alcohol Framework which includes a package of over 40 measures to reduce alcohol related harm by helping to prevent problems arising in the first place, and includes improving support and treatment for those who are already experiencing problems.

The Framework identified the need for sustained action in four areas:

- Reduced alcohol consumption
- Supporting families and communities
- Positive public attitudes, positive choices
- Improved treatment and support.

Considerable progress has been made on implementing key aspects of the Alcohol Framework, including: a record investment in tackling alcohol misuse of over £237 million since 2008; delivery of over 366,000 alcohol brief interventions by NHS Scotland; the establishment of 30 Alcohol and Drug Partnerships; development of an implementation plan to deliver the recommendations of the Quality Alcohol Treatment and Support Report; the commencement of the Alcohol etc. (Scotland) Act 2010 and the passing of the Alcohol (Minimum Pricing) (Scotland) Act 2012 in May.

Responsibility is devolved to Alcohol and Drug Partnerships (ADPs) to commission (informed by robust needs assessment) evidence-based, person-centred and recovery-focused prevention and treatment services to meet the needs of their resident populations which includes offenders. Community Justice Authorities (CJAs) have a statutory duty to reduce re-offending in their localities and have an important role to play in partnership with ADPs in delivering improved health outcomes for offenders as part of the effort to reduce re-offending.

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<sup>19</sup> Scottish Government publication, 2009, [Changing Scotland's Relationship with Alcohol: A Framework for Action](#)

The relationship between alcohol and offending remains an issue though in the criminal justice system and so there is more we can still look to do. Alcohol sales in Scotland have grown by 6% since 1994 and are 19% higher per capita than in England and Wales. Alcohol-related deaths have fallen in 2012 but the fact remains that an average 20 Scots a week die prematurely due to excessive use of alcohol. The problem is further illustrated in this extract from the evidence paper for the Strategy for Justice in Scotland<sup>20</sup>:

*Alcohol is cited directly as a factor in 63% of violent crimes. Half of Scottish prisoners say they were drunk at the time of the relevant offence. Alcohol, along with drugs, is a very significant factor in homicides. For example, over half (56%) of the 138 persons accused in homicide cases in 2010-11 were reported to have been drunk and/or under the influence of drugs at the time. Moreover, an audit found that at least 70% of assaults presenting to emergency departments may be alcohol-related, with the majority of these being concentrated at weekends and involving young men. In relation to community safety, for 835 (16% of total) accidental house fires in Scotland in 2010-11, being under the influence of alcohol/drugs was suspected to be a contributory factor. This underlines the importance of the Scottish Government's work to tackle irresponsible drinking as a means to improve justice outcomes as well as other outcomes such as health.*

The criminal justice system has measures to help address alcohol issues from misuse to dependency. Measures include: the alcohol treatment requirement of the community payback order, alcohol treatment programmes for prisoners and locally run community justice alcohol interventions which at present can include breathalysing clients on a weekly basis. There has been some use of remote alcohol monitoring technology in Scotland on a voluntary basis in a pilot at Barlinnie Prison which is examining how the equipment could be used. Initial findings are not yet available at the time of publication of this consultation but will be taken into account when considering the future of remote alcohol monitoring.

*What is possible under existing legislative and technical constraints?*

Turning firstly to what is technically possible, there are a number of different companies that provide broadly similar alcohol monitoring technology. Because of the integration possibilities with the current "tagging" regime, this consultation will focus on the transdermal bracelet that can be worn by an individual. It is broadly similar in size and shape to an RF tag and it is worn 24/7 and takes alcohol readings by taking regular samples of the insensible perspiration coming off the offender's skin. The bracelet stores this data and, at pre-determined times, transmits it to a base station where it is communicated back to an end user (criminal justice social work/health professional etc.). The bracelets are similar to the tags currently used with electronically monitored offenders, they have a Kevlar strip running through them and a fiber optic strip, so they are designed to be tamperproof and so you can tell if they have been cut but they aren't designed to be unbreakable in case they need to be removed for medical purposes. They have introduced in the design, measures to make them waterproof and tamperproof. The remote alcohol monitoring tags can also have RF technology built in so that it has the functionality to operate as

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<sup>20</sup> Scottish Government publication, 2012, [Strategy for Justice in Scotland](#)

a curfew tag as well. The use of remote alcohol monitoring technology is not as widespread in Europe as is the use of locational monitoring technology, so if there is support for remote alcohol monitoring then further testing of the efficacy of the equipment would be required prior to use.

Under current legislation, at present a requirement to abstain from alcohol can be a condition of licence that the Parole Board includes on a licence prior to release. Therefore, it could be a condition that Section 40 of the Criminal Justice (Scotland) Act 2003 powers would allow to be monitored remotely. Such a use could have sanctions for a lack of compliance. There is also the potential for it to be used as part of licence conditions in a slightly more sophisticated way, not just as a standalone measure but perhaps to monitor compliance with a treatment programme. There is mixed evidence as to the effectiveness of compelling people into treatment as compared to having them engage voluntarily and there are a range of alcohol treatment programmes, some voluntary and some compelled which are currently available within the Criminal Justice setting in Scotland. With a voluntary use of remote alcohol monitoring, you again run into the issue of a lack of sanctions for non-compliance (not charging equipment etc.) however that does not rule out some sort of voluntary use if treatment professionals and the person in treatment felt the information it would provide would be beneficial. A compulsory use, alongside other support measures does not have to be seen as a purely punitive measure either, as the information gleaned could have different trigger points before sanctions were applied or other actions taken and those trigger points could be varied to help support the treatment.

#### *What advantages would there be to using remote alcohol monitoring*

Essentially what remote alcohol monitoring could give a treatment practitioner and/or the criminal justice system is information about whether the tagged individual has or has not been drinking alcohol. What is then done with that information would depend on the context in which the tag was used. The key question from a health perspective is how helpful would that information be as a tool to aid alcohol treatment and recovery? From some initial discussions with practitioners there seems to be a difference of views as to the extent to which it would be a useful additional tool to have available or whether it might be detrimental to the trust relationship between the practitioner and the client. If there was an emerging view from this consultation that that capability would be useful then the next steps would be to establish if it represented a costs effective way of monitoring those with alcohol misuse problems. Remote monitoring of alcohol consumption could also provide an element of restriction on those offenders whose drinking is closely related to their offending, which would help tackle the underlying reasons for their offending and make dealing with alcohol consumption a specific focus of their reintegration.

#### *What next steps would be required?*

The Scottish Government currently have a contract with G4S for the electronic monitoring of offenders in the criminal justice system. If the Scottish Government wished to introduce the technology then G4S would provide it under the existing contract. In advance of any such use, the Scottish Government would want to test the technology thoroughly to ensure it could deliver what it is supposed to deliver.

Beyond just the questions as to how to get the equipment in place, in a criminal justice setting we would have a number of issues to consider before you could (if you determined that you wanted to) *compel* a wider use of remote alcohol monitoring tags beyond use as a condition of parole/non parole licence etc. It would need primary legislation to make a new condition of existing orders such as an RLO or to make a new condition of an order such as a CPO.

### Consultation Questions

**18. What, if any, role do you believe remote alcohol monitoring should have for use with an offender cohort? Why?**

**19. Should remote alcohol monitoring service on either a voluntary or compulsory basis (and within or outwith the criminal justice system) be further explored? Why?**

### 3.2 Electronic Reminder service

While not strictly “monitoring” in the strictest sense of the word, there is a potential for an electronic reminder service to be provided by the electronic monitoring service provider. Electronic messages can be sent to the display screens on Home Monitoring Units and/or to the mobile phone of offenders using the contacts database and call scheduling software. Similar “nudge” schemes have decreased rates of missed appointments. Some local authorities in Scotland run similar schemes but there may be economies of scale to running such a service nationally if there was an appetite for one.

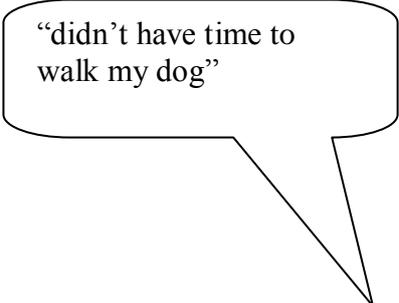
### Consultation Questions

**20. Should a national criminal justice appointments reminder service be introduced? Why?**

**21. Please give any additional views you have on any aspect of electronic monitoring, either GPS or RF, not covered elsewhere in this document.**



“gave me a chance to speak to my partner”

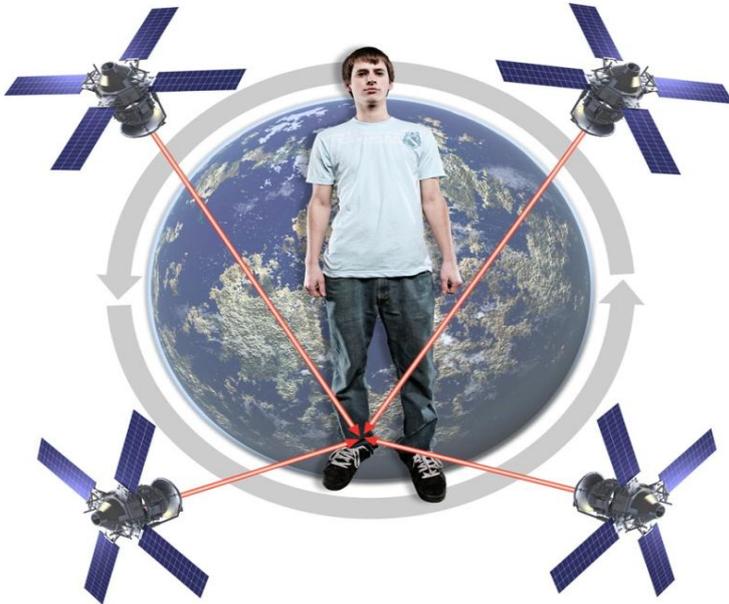


“didn't have time to walk my dog”

## SECTION 4: CONCLUSION

This consultation has been structured to show a few potential directions of travel in the development of the electronic monitoring service in more detail. By looking at a few examples we hoped to outline some of the considerations that need to be borne in mind when thinking about development of the service. However, please do not feel constrained to only commenting on the options outlined in this consultation we would like to invite you to give views on all the potential ways in which you think that electronic monitoring can be best used. There are other potential uses that have been explored in other jurisdictions that you may want to give a view on, such as: use in open prisons, for home leave, or within prisons in place of directly monitored zones. There are also potential uses in targeting specific offending cohorts (violent offenders restricted from town centres for example) or indeed any number of other options for development of the service. Question 21 of the consultation is completely open to allow you to give views on any aspect of electronic monitoring not otherwise covered here.

Please look over the following questions and respond with your views.



## SECTION 5: CONSULTATION QUESTIONS

1. How can electronic monitoring be better integrated with other services, including statutory and third sector, in order to support a holistic approach to addressing offenders' needs?
2. Please give your views on how breach of orders is handled under the current system and what, if any, suggestions you have for improvement or development of the current system of breach?
3. Do you know of any barriers to increased use of electronic monitoring under the current system? What could be done to address those?
4. Considering all aspects of how electronic monitoring currently operates, what improvements and areas for development could you suggest for the operation of the current electronic monitoring service in Scotland?
5. What, if any, role do you believe GPS monitoring should have for use with a sex offender cohort? Why?
6. Should new legislative powers be sought (for example to cover SOPOs)? Why?
7. What, if any, other views do you have on use of GPS with sex offenders that are not covered in the questions above?
8. Should GPS monitoring be further explored as part of a *voluntary pilot* of tagging persistent offenders? Why?
9. Should GPS monitoring of persistent offenders be further explored on a *legislatively* (as opposed to voluntary) backed basis? Why?
10. Have you any further views on either other potential voluntary uses of GPS or use of GPS with persistent offenders?
11. What, if any, role do you believe GPS monitoring should have for use with domestic abuse type offences? Why?
12. Have you any other views on the use of GPS for domestic abuse on either a voluntary or a legislatively backed use?
13. What, if any, role do you believe GPS monitoring should have for use with bail? Why?
14. With reference to your answer above, do you believe your preferred use of GPS for bail can be covered within existing legal powers or should new legislative powers be sought?
15. Please give any other views you have on electronic monitoring and bail?

16. Would you support a more widespread roll-out of GPS so that all currently monitored orders had an RF and GPS capability? Why?
17. Please give any additional views that you have on the use of GPS on such a “maximum roll out” basis?
18. What, if any, role do you believe remote alcohol monitoring should have for use with an offender cohort? Why?
19. Should a remote alcohol monitoring service on either a voluntary or compulsory basis (and within or outwith the criminal justice system) be further explored? Why?
20. Should a national criminal justice appointments reminder service be introduced? Why?
21. Please give any additional views you have on any aspect of electronic monitoring, either GPS or RF, not covered elsewhere in this document.

## **SECTION 6: EQUALITY IMPACT ASSESSMENT**

The public sector equality duties require the Scottish Government to pay "due regard" to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic

These three requirements apply across the "protected characteristics" of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation, marriage and civil partnership.

In effect, this means that equality considerations are integrated into all functions and policies of Scottish Government Directorates and Agencies.

A key part of these duties is to assess the impact of all of our policies to ensure that the Scottish Government do not inadvertently create a negative impact for equality groups, and also to ensure that the Scottish Government actively seek the opportunity to promote equality of opportunity and to foster good relations.

As part of our consultation process, the Scottish Government will seek the views of practitioners, managers and leaders working with offenders. The Scottish Government will also seek views from the wider public, including victims, local communities and service users and their families. The Scottish Government will seek views on the impacts of these proposals on different sectors of the population which will contribute towards the development of an Equalities Impact Assessment (EQIA).

More generally, the Scottish Government welcomes your feedback regarding the equalities impact of the proposals presented in this paper, and the effect they may have on different sectors of the population.

## **SECTION 7: BUSINESS REGULATORY IMPACT ASSESSMENT**

The Scottish Government is committed to consulting with all parties potentially affected by proposals for new legislation, or where any regulation is being changed significantly. All policy changes, whether European or domestic, which may have an impact upon business or the third sector should be accompanied by a Business Regulatory Impact Assessment (BRIA).

The BRIA helps policy makers to use available evidence to find proposals that best achieve the policy objectives, whilst minimising costs and burdens. Through consultation and engagement with business, the costs and benefits of the proposed legislation can be analysed. It also ensures that any impact on business, particularly small enterprises, is fully considered before regulations are made.

As part of our consultation process, the Scottish Government will seek the views of practitioners, managers and leaders working with offenders. The Scottish Government will also seek views from the wider public, including victims, local communities and service users and their families. The Scottish Government will seek views on the impacts of these proposals on businesses and will contribute towards the development of a BRIA.

More generally, the Scottish Government welcomes your views regarding the impact that the proposals presented in this paper may have on businesses.

## **SECTION 8: PRIVACY IMPACT ASSESSMENT**

*What is privacy?*

Privacy can be defined as follows:

'Interpreted most broadly, privacy is about the integrity of the individual. It therefore encompasses many aspects of the individual's social needs.' (Taken from the Information Commissioner's Office's PIA Handbook)

*What is a Privacy Impact Assessment?*

Any project that involves the collection of personal information inevitably gives rise to privacy concerns. A Privacy Impact Assessment (PIA) helps to identify privacy risks, anticipate problems and propose solutions. It is a relatively new self-assessment process for evaluating a proposal:

- to identify its potential effects upon individual privacy and data protection compliance
- to ensure that the project complies with the data protection principles and
- to consider how any negative effects might be overcome.

For the purposes of completing a PIA, the handbook identifies four aspects of privacy:

- the privacy of personal information
- the privacy of the person
- the privacy of personal behaviour and
- the privacy of personal communications.

Organisations with an interest in information management issues will be included in this consultation process and a Privacy Impact Assessment will be undertaken on any proposals arising from this consultation.

## **SECTION 9: HOW TO RESPOND**

The Scottish Government are inviting written responses to this consultation paper by **31 December 2013**.

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

### **[Electronic Monitoring Consultation - Response](#)**

or Susan Edington, The Scottish Government, Community Justice Division, Area GWR, St Andrew's House, Regent Road, Edinburgh, EH1 3DG. Telephone 0131 244 3532.

### **Handling your response**

The Scottish Government need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **[Respondent Information Form](#)** (contained at Annex A) as this will ensure that the Scottish Government treat your response appropriately. If you ask for your response not to be published the Scottish Government will regard it as confidential, and the Scottish Government will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Alternative formats and community languages**

If you require a copy of this paper in an alternative format or different language please contact **[Electronic Monitoring Consultation](#)**

or Susan Edington, The Scottish Government, Community Justice Division, Area GWR, St Andrew's House, Regent Road, Edinburgh, EH1 3DG. Telephone 0131 244 3532.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after the Scottish Government have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library and will also be on the Scottish Government consultation pages. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next?**

Following the closing date, all responses will be analysed and considered along with any other evidence, including feedback from the consultation events, to help us progress.

An announcement on the way forward is likely to be made in Spring 2014.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the Scottish Government at the above address.

## Consultation on Development of Electronic Monitoring in Scotland

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

#### 2. Postal Address

Postcode	Phone	Email

#### 3. Permissions - I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>	Please tick as appropriate	<input type="checkbox"/>

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes  No

Yes, make my response,  
name and address all  
available

**or**

Yes, make my response  
available, but not my  
name and address

**or**

Yes, make my response  
and name available, but  
not my address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

**Yes**

**No**

## CONSULTATION QUESTIONS

1. How can electronic monitoring be better integrated with other services, including statutory and third sector, in order to support a holistic approach to addressing offenders' needs?

Comments:

2. Please give your views on how breach of orders is handled under the current system and what, if any, suggestions you have for improvement or development of the current system of breach?

Comments:

3. Do you know of any barriers to greater use of electronic monitoring under the current system? What could be done to address those?

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Comments:

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Comments:

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Comments:

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Comments:

21. Please give any additional views you have on any aspect of electronic monitoring, either GPS or RF, not covered elsewhere in this document.

Comments:

Please return to [Electronic Monitoring Consultation - Response](#)

or Susan Edington, The Scottish Government, Community Justice Division, Area GWR, St Andrew's House, Regent Road, Edinburgh, EH1 3DG.



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ISBN: 978-1-78256-928-2 (web only)

This document is also available on the Scottish Government website:  
[www.scotland.gov.uk](http://www.scotland.gov.uk)

APS Group Scotland  
DPPAS14759 (09/13)

**w w w . s c o t l a n d . g o v . u k**