POLICY NOTE

THE ELECTRONIC MONITORING (USE OF DEVICES AND INFORMATION) (SCOTLAND) AMENDMENT REGULATIONS 2026

SSI 2026/XXX

The above instrument is to be made in exercise of the powers conferred by sections 9(1)(a) and 15(1) of the Management of Offenders (Scotland) Act 2019 ("the 2019 Act").

The instrument is subject to the affirmative procedure.

Summary Box

The 2019 Act allows a court, when making certain disposals, to require a person to submit to electronic monitoring of their compliance with a specified aspect or aspects of the disposal. It also allows the Scottish Ministers to require electronic monitoring of relevant conditions imposed on a person released from custody on licence.

Section 9 of the 2019 Act gives the Scottish Ministers power by regulations to make provision about the use of approved devices and the information obtained through monitoring. The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 ("the 2025 Regulations") currently regulate those matters.

These Regulations amend the 2025 Regulations to add circumstances in which a GPS approved device may be used for a court-imposed electronic monitoring requirement. The new circumstances apply where a sheriff, sheriff principal or summary sheriff in the Sheriffdom of Tayside, Central and Fife has imposed a monitoring requirement under section 1(1) of the 2019 Act in relation to a specified aspect of pre-conviction or post-conviction bail.

The Regulations also widen the circumstances in which monitoring information may be shared for local-authority functions. This will allow information to be shared for relevant reports made available by a local authority to a court, a procurator fiscal or the Lord Advocate, as well as for relevant supervision, advice and guidance.

Policy Objectives

Radio frequency technology can monitor whether a person is at, or away from, a specified location. GPS technology enables monitoring over a wider geographical area and can support monitoring of compliance with one or more exclusion zones. An exclusion zone may concern a particular address, street or wider area, depending on the terms of the condition imposed by the court.

GPS electronic monitoring was introduced in Scotland on 31 January 2025 for specified geographical conditions imposed on a person released on Home Detention Curfew licence. That was Phase 1 of the phased introduction of GPS electronic monitoring. These Regulations support Phase 2, concerning monitoring requirements imposed by a court in connection with bail.

The policy objective is to test whether GPS can provide a proportionate means of monitoring compliance with geographical bail conditions, initially exclusion zones, where radio frequency

monitoring does not provide an equivalent practical capability. The pilot will consider whether suitable cases can be identified within bail timescales, whether sufficiently clear and workable geographical conditions can be imposed and configured, whether apparent non-compliance and technical issues can be handled consistently, and whether GPS can support the use of bail in cases which might otherwise have resulted in remand.

The Regulations make GPS monitoring of geographical bail conditions legally available where the monitoring requirement is imposed by the relevant judiciary in the Sheriffdom of Tayside, Central and Fife. Operational introduction will be phased within the Sheriffdom, with the participating courts and commencement of operational delivery determined through the implementation arrangements.

Subject to final implementation arrangements, the initial operational scope is intended to include solemn and summary proceedings, pre-conviction and post-conviction bail, and the monitoring of exclusion zones. Where the court has imposed separately monitorable requirements, GPS and radio frequency monitoring may be used together where operationally appropriate. The Regulations do not permit GPS to be used for bail monitoring where the monitored person is under 18. This restriction does not alter the existing arrangements for radio frequency electronic monitoring.

The legal availability of GPS does not mean that it will necessarily be imposed routinely. The court will remain responsible for deciding whether bail is granted, the conditions imposed, whether electronic monitoring is required and that the specified aspect to be monitored. Ordinary bail, bail supervision, radio frequency monitoring where suitable and other available measures remain available, and in certain cases may be more effective than GPS monitoring. Legal enablement alone will not make GPS-monitored bail operational: the court must have sufficiently reliable and timely information to frame a clear condition which the monitored person can understand and the electronic monitoring provider can configure.

The GPS device will generate location and technical information while GPS monitoring is active, and this data will be gathered and stored by the monitoring provider according to clear data protection principles. Monitoring by GPS (or by any other electronic means) does not mean constant manual checking of whereabouts, and a GPS non-compliance alert will not, by itself, determine that a breach has occurred. Monitoring information must be assessed by the appropriate person or organisation before enforcement action or court reporting.

The 2025 Regulations permit information obtained through GPS or radio frequency monitoring to be retained for a maximum of 12 years from the date on which it was obtained. The statutory maximum does not, of itself, determine how long each category of GPS-bail information should be retained.

These Regulations also amend the 2025 Regulations to widen the circumstances in which monitoring information obtained from the use of approved devices may be shared by the Scottish Ministers with local authorities. Currently the Scottish Ministers may only share the information under the 2025 Regulations for supervision, advice and guidance services provided by the local authority in respect of the monitored person. This is being expanded to allow sharing for the purposes of other local authority functions in the criminal justice system, including for the purposes of providing reports to the courts, the Lord Advocate or a procurator fiscal.

Interaction with the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2026
The Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2026 amend the 2020 Regulations so that the approved devices for court-imposed monitoring include the GPS personal identification device and relevant charging equipment. These Regulations regulate the circumstances in which the GPS approved device may be used for the Phase 2 bail proposal.

The Phase 2 provisions are not intended to be time-limited. The operation and impact of the pilot will be evaluated. Any proposal to expand GPS use beyond the scope permitted by the Regulations, including any future proposal to make GPS monitoring available to people under 18, would require separate policy development, supported by appropriate consultation and impact-assessment work.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility
The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers are required to make a written statement about the extent to which, in their view, the Regulations are compatible with the UNCRC requirements as defined by section 1(2) of that Act. The Scottish Ministers consider that the provisions of the Regulations are compatible with the UNCRC requirements.

EU Alignment Consideration
This instrument is not considered relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
Consultation was undertaken during development of the legislation which became the Management of Offenders (Scotland) Act 2019. This included the potential use of new electronic monitoring technologies, including GPS.

Development of the Phase 2 GPS bail proposal has involved engagement with the judiciary, Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, Community Justice Scotland, representatives of Justice Social Work and the electronic monitoring provider.

The Scottish Government is consulting the Information Commissioner's Office under the Article 36(4) process.

Impact Assessments
Impact assessments have been prepared. The current position is:

- an Equality Impact Assessment has been prepared;
- a Data Protection Impact Assessment has been drafted and will be kept under review alongside the policy, legislation and implementation arrangements;
- a Child Rights and Wellbeing Impact Assessment has been prepared. The Regulations do not permit GPS to be used for bail monitoring where the monitored person is under 18.

The assessment identifies possible indirect effects on children and an overall neutral impact;

- an Island Communities Impact Assessment has been prepared;
- A Business and Regulatory Impact Assessment is not required, and agreement is sought from the Cabinet Secretary for Justice on this matter.

Financial Effects

The Scottish Government meets the cost of electronic monitoring from central budgets under its existing contract with the electronic monitoring provider. The contract provides for radio frequency and GPS monitoring. The contractual charge for GPS monitoring from 1 April 2027 is £6.14 per monitored person per day, compared with £5.20 per day for radio frequency monitoring. The single fee covering both installation and de-installation is £139.87 for either form of monitoring.

The overall cost of GPS-monitored bail will depend on the number of people made subject to monitoring and the duration of each monitoring requirement. The costs will be met through the existing electronic monitoring contract and from the electronic monitoring budget, and the financial impact will be monitored during implementation. Electronic monitoring of bail using radio frequency technology is undertaken now and all of these same partners have a role. The financial memorandum for the 2019 Act set out estimates for increased resource in support of electronic monitoring expansion. The phased introduction of GPS-monitored bail may have resource implications for Justice Social Work, Police Scotland, the Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service. These may arise from the assessment and administration of relevant cases, communication of court orders and monitoring information, consideration of apparent non-compliance, and any associated court or enforcement proceedings.

The scale of any impact will depend on the number and complexity of cases and the final implementation arrangements and cannot yet be quantified. The Scottish Government will continue to work with the relevant justice partners and local authorities as those arrangements are developed and during implementation and evaluation of the pilot.

Scottish Government
Justice Directorate

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