Draft Regulations laid before the Scottish Parliament under section 15(2) of the Management of Offenders (Scotland) Act 2019 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2025 No.

CRIMINAL LAW

The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025

Made - - - -	*2025*
Coming into force - -	*31st January 2025*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(1)(a) and (b) and 15(1) of the Management of Offenders (Scotland) Act 2019(**a**) and all other powers enabling them to do so.

In accordance with section 15(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 and come into force on 31 January 2025.

(2) In these Regulations—

"the 1993 Act" means the Prisoners and Criminal Proceedings (Scotland) Act 1993(**b**),

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995(**c**),

"the 2019 Act" means the Management of Offenders (Scotland) Act 2019,

"the 2020 Regulations" means the Electronic Monitoring (Approved Devices) (Scotland) Regulations 2020(**d**),

"RF approved device" means the types of electronic devices listed in regulation 2(2) and (4)(a), (c) and (d) of the 2020 Regulations,

"GPS approved device" means the types of electronic devices listed in regulation 2(4)(b) to (f) of the 2020 Regulations.

Use of a GPS approved device

2.—(1) A GPS approved device may be used when the circumstances in paragraph (2) or (3) apply.

(**a**) 2019 asp 14.
(**b**) 1993 c. 9.
(**c**) 1995 c. 46.
(**d**) S.S.I. 2020/308, as amended by S.S.I. 2024/354.

(2) The circumstances are—

(a) the Scottish Ministers have required a person to submit to monitoring by means of an approved device under section 5(1) of the 2019 Act,

(b) the monitoring is in relation to that person's compliance with a condition of a sort mentioned in section 7(1)(b) of the 2019 Act, and

(c) the condition is included in a licence granted under section 3AA(1) of the 1993 Act(**a**).

(3) The circumstances are—

(a) the Scottish Ministers have required a person to submit to monitoring by means of an approved device under section 5(1) of the 2019 Act,

(b) the monitoring is in relation to that person's compliance with conditions of a sort mentioned in section 7(1)(a) and (b) of the 2019 Act, and

(c) the conditions are included in a licence granted under section 3AA(1) of the 1993 Act(**b**).

Use of an RF approved device

3. An RF approved device may be used when a person is required to submit to monitoring of their compliance with a specified aspect of—

(a) a disposal listed in section 3(2) of the 2019 Act by a court under section 1(1) of the 2019 Act, or

(b) a relevant condition of a sort mentioned in section 7(1) of the 2019 Act by the Scottish Ministers under section 5(1) of the 2019 Act.

Use of information obtained through monitoring a person by means of a GPS approved device or an RF approved device

4. Information obtained through monitoring a person by means of a GPS approved device or an RF approved device may be—

(a) retained by or on behalf of the Scottish Ministers for a maximum period of 12 years beginning with the date on which the information was obtained,

(b) shared by, or on behalf of, the Scottish Ministers for the purpose of—

(i) the prevention, investigation, detection or prosecution of crime,

(ii) informing a court, a supervising officer or a relevant officer that the person being monitored has failed to comply with a requirement of an order made under sections 209, 227A(2)(j), 234CA(1) or 245A of the 1995 Act(**c**),

(iii) the consideration by the Parole Board for Scotland of that person's case referred to it by the Scottish Ministers under sections 17(3) or 17A(3) of the 1993 Act(**d**),

(iv) the provision by a local authority of a service in respect of that person under section 27(1)(b) of the Social Work (Scotland) Act 1968(**e**),

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(**a**) Section 3AA was inserted by section 15(5) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14).

(**b**) Section 3AA was inserted by section 15(5) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14).

(**c**) Section 209 was amended by paragraph 21(26) of schedule 1 of the Crime and Punishment (Scotland) Act 1997 (c. 48), section 86(2) and schedule 10 of the Crime and Disorder Act 1998 (c. 37), sections 4(1)(a) and (2) and 121 of the Criminal Justice and Court Services Act 2000 (c. 43), article 11(2) of the Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I. 2008/912) and by paragraph 1(2) of schedule 1 of the 2019 Act. Section 227A was inserted by section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp. 13). Section 227A(2)(j) was inserted by paragraph 2(2) of schedule 1 of the 2019 Act. Section 234CA was inserted by section 47(2) of the Criminal Justice (Scotland) Act 2003 (asp 7). It was amended by paragraph 7(3)(b) and (c) of schedule 1 of the 2019 Act. Section 245A was inserted by section 5 of the Crime and Punishment (Scotland) Act 1997 (c. 48). It has been relevantly amended by sections 43(2) and 50(3) of the Criminal Justice (Scotland) Act 2003 (asp 7) and section 121(2) and schedule 5 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(**d**) Section 17 was relevantly amended by section 36(4) of the Criminal Justice (Scotland) Act 2003 (asp 7). Section 17A was inserted by section 15(13) of the Management of Offenders etc. (Scotland) Act 2005 (asp 14).

(**e**) 1968 c. 49, as relevantly amended by paragraph 1(a) of schedule 2 of the Community Service by Offenders (Scotland) Act 1978 (c. 49) and paragraph 1(2) of schedule 2 of the Community Justice (Scotland) Act 2016 (asp 10).

(v) the assessment and management of the risk posed by that person under section 10 of the Management of Offenders etc. (Scotland) Act 2005(**a**).

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

(**a**) 2005 asp 14 as amended.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Management of Offenders (Scotland) Act 2019 ("the 2019 Act") makes provision allowing the courts when making certain disposals to require a person to submit to electronic monitoring of their compliance with a condition of their disposal. The Scottish Ministers can do the same for an individual being released from custody on licence. Section 8 of the 2019 Act gives the Scottish Ministers the power by regulations to prescibe "approved devices" which can be used for electronic monitoring. The types of electronic devices which are approved devices are prescribed in the Electronic Monitoring (Approved Devices) (Scotland) Regulations 2020. Section 9 of the 2019 Act gives the Scottish Ministers the power to make provision about how approved devices may be used and how information obtained through that use may be used. These Regulations do that.

Regulation 1 sets out, among other things, what is meant by a "GPS approved device" and a "RF approved device".

Regulation 2 provides that a GPS approved device may only be used in certain circumstances. Regulation 2(2) sets out the first set of circumstances in which it can be used. It provides that a GPS approved device can be used when (1) the Scottish Ministers require a person to submit to monitoring, (2) the underyling condition to be monitored must be imposed by the Scottish Ministers when the person is released on licence under the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act"), and (3) the person to be subject to monitoring must specifically have been released on a licence under section 3AA(1) of the 1993 Act (known as an HDC licence). Regulation 2(3) sets out the second set of circumstances in which a GPS approved device can be used. It provides that a GPS approved device can be used when (1) the Scottish Ministers require a person to submit to monitoring, (2) two or more underyling conditions are to be monitored must be imposed by the Scottish Ministers when the person is released on licence under the the 1993 Act", one of which must be a curfew condition imposed under section 12AA of the 1993 Act, and (3) the conditions must be included in an HDC licence.

Regulation 3 provides that a RF approved device may be used if either of two conditions are met. First, it may be used by the court to require a person to submit to monitoring of a court order, when the person is subject to a disposal included in section 1(1) of the 2019 Act. Or, second, it may be used by the Scottish Ministers to require a person to submit to monitoring of a relevant condition of a sort mentioned in section 7(1) of the 2019 Act.

Regulation 4 sets out that twelve years is the maximum period for which information obtained through the use of a RF or GPS approved device can be retained. It also provides that that information can be shared by, or on behalf of, the Scottish Ministers for a number of purposes. Those purposes are the prevention, investigation, detection or prosecution of crime, informing a court if the monitored person fails to comply with a restriction of liberty order or a local authority officer supervising the monitored person if the monitored person fails to comply with a curfew requirement of a supervised release order, or a restricted movement requirement of a community payback order or a drug treatment and testing order, the consideration by the Parole Board for Scotland of the monitored person's case referred to it by the Scottish Ministers, the provision by a local authority of certain social work services in respect of the monitored person, and the assessment and management of the risk posed by the monitored person under multi-agency public protection arrangements.

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