POLICY NOTE

THE ELECTRONIC MONITORING (USE OF DEVICES AND INFORMATION) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

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

Summary
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 when imposing conditions on an individual being released from custody on licence.

Section 9 of the 2019 Act gives the Scottish Ministers the power by regulations to regulate the use of electronic monitoring devices and the information obtained from them. These Regulations will limit the use of GPS enabled electronic monitoring devices to monitoring certain conditions imposed on an individual when released from custody by the Scottish Ministers on a home detention curfew ("HDC") licence. It will also allow existing radio frequency electronic monitoring devices to continue to monitor the court disposals set out at section 3 of the 2019 Act and the conditions imposed on an individual on their release on licence set out at section 7 of that Act.

The regulation also clarifies the maximum period for which information obtained through the use of radio frequency and GPS enabled electronic monitoring devices would be retained and the purposes for which the Scottish Ministers, or those acting on their behalf, may share that information.

Policy Objective

In Scotland radio frequency technology can be used to monitor compliance with a bail order, some court orders following conviction, or with a condition of a release licence from prison. This technology is an effective way to monitor an individual's presence at a place for up to 12 hours a day, or their remaining away from a place for 24 hours a day. Radio frequency technology in standalone mode or used with an integrated package of support remains a strong and suitable technology for electronic monitoring, but we also see a role for the introduction of new technologies to operate alongside the existing technology.

GPS technology enables the monitoring of movement over a wide area rather than the monitoring of presence at or absence from a single location. GPS technology allows additional capabilities in monitoring location, specifically it may allow broader areas to be specified as exclusion zones. These could be a house, a specific street, a neighbourhood, or a whole town or towns. GPS also allows more than one exclusion zone to be set for a person. Using GPS technology to monitor exclusion zones can help support safe spaces for victims of

crime, provide structure on reintegration and monitor patterns of behaviour linked to offending, where they relate to a location.

The current electronic monitoring service provider in Scotland (G4S) has a contract which covers the provision of both radio frequency monitoring and GPS monitoring once it is introduced. Only radio frequency monitoring is currently used and these Regulations, together with the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2024, implement the Scottish Government's intention to introduce the use of GPS monitoring on a phased basis – the first phase of which will be to extend this to Home Detention Curfew (HDC).

The new devices used would be a dual-enabled radio frequency and GPS location monitoring device and these regulations contain provision to enable this dual use in certain circumstances, or the single use of the GPS capabilities of the device. This is to ensure that the monitored person is only required to wear one electronic monitoring device when made subject to monitoring of both the curfew condition required in an HDC licence and another condition such as an exclusion zone. The GPS function will monitor compliance with geographical conditions outwith the monitored person's residence and the radio frequency function will monitor compliance with the monitored person's curfew condition.

The GPS function will operate 24 hours a day rather than being switched off while the monitored person is within their curfew hours. This is because the geographic licence condition, compliance with which is being monitored by the device, will be in place 24 hours a day. It will ensure that where there is any failure by the monitored person to comply with their curfew condition, their location can be monitored to ensure they are continuing to comply with any other geographical licence condition(s).

HDC allows some individuals sentenced to imprisonment to serve part of their prison sentence in the community, under strict licence conditions. The main aim of HDC is to provide those leaving prison with a managed return to their communities, whilst subject to curfew conditions.

It is not intended for GPS monitoring to be used for every HDC case – an individual will only be subject to a GPS tag when the Scottish Prison Service (SPS) consider that it is proportionate to monitor a condition in an HDC licence that requires an individual be excluded from certain areas upon release.

The Scottish Government is also committed to ensuring that all information obtained through monitoring a person by means of a GPS approved device both accords with the relevant legislative requirements in relation to the appropriate retention of information and to ensure that information can be shared with relevant organisations to enable the operation of HDC. The Regulations set out that information obtained through the use of the GPS devices can be retained for a maximum of twelve years. Further, they make provision clarifying that the information may be shared by the Scottish Ministers (or G4S on their behalf) with justice agencies (namely the Parole Board, Police Scotland, Crown Office and Procurator Fiscal Service, Scottish Court and Tribunal Service or any relevant Justice Social Work Department) for specified purposes in accordance with the Scottish Ministers' data protection obligations. The specified purposes are to allow those justice agencies to perform their functions in relation to the prevention, detection, investigation and prosecution of crime, the consideration of the revocation of an individual's HDC licence, the supervision of, and the

provision of advice, guidance and assistance for an individual released on HDC licence, and the assessment and management of the risks posed by an individual being released subject to multi-agency public protection arrangements. The provisions also extend to retention and sharing of information obtained through use of an RF device. In addition to the above purposes, that sharing may extend to 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 Scottish Ministers may also share information obtained by an RF device with the Parole Board to allow them to consider the revocation of a licence, other than an HDC licence, which an individual has been released from custody subject to.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, these Regulations are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

Consultation was undertaken for the Bill work leading to the Management of Offenders (Scotland) Act 2019 – this included the potential use of new technologies including GPS.

Significant engagement has more recently taken place with a range of stakeholders – including COPFS, Police Scotland and the Scottish Prison Service on the proposals for the introduction of GPS to HDC. The Risk Management Authority was also consulted to ensure any model of operation included risk management considerations

The ICO was formally consulted on these proposed amendments (under the article 36(4) procedure) on 23rd September. Scottish Government officials subsequently met with ICO staff who provided feedback on the DPIA, which was subsequently updated to reflect this.

Impact Assessments

Extensive impact assessments were undertaken in the lead up to the introduction of the Bill leading to the Management of Offenders (Scotland) Act 2019; including in relation to the use of new technology. New/updated assessment have since been carried out in relation to the Regulations and the associated impact of the planned phased introduction of GPS.

A revised Equalities Impact Assessment has been completed and its results will be published. A Data Protection Impact Assessment will also be published and has been shared with the ICO for their views.

A Child Rights and Wellbeing Impact Assessment (CRWIA) has been undertaken and no significant impact has been identified in relation to the rights and wellbeing of children and young people.

A full Island Communities Impact Assessment (ICIA) has not been completed, as a screening was undertaken (and will be published) which indicated that the Regulations are not likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

Financial Impact

Costs will be incurred by the electronic monitoring service provider G4S in implementing GPS. However their current contract requires them to be able to provide a GPS service, and the anticipated costs associated with the change have been included in financial planning for 2024-25.

Projected costs for the first year of the phase 1 rollout are likely to be around £210k, based on expected G4S IT change costs and a range of around 10-20 monitored persons with GPS at any one time. This reflects a number of a single time costs which is required for the development of the new GPS service. These costs fall to the Scottish Government who already hold a budget for electronic monitoring services.

The Cabinet Secretary for Justice & Home Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business beyond the currently outlined budgetary position.

Scottish Government
Justice Directorate
November 2024