POLICY NOTE

OFFENDER MANAGEMENT
THE MANAGEMENT OF OFFENDERS (SCOTLAND) ACT 2019

THE ELECTRONIC MONITORING (APPROVED DEVICES) (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/354

The above instrument was made in exercise of the powers conferred by sections 8(1) 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 for a condition imposed on an individual being released from custody on licence.

Section 8 of the 2019 Act gives the Scottish Ministers the power by regulations to prescribe "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 ("the 2020 Regulations").

The Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations amend the 2020 Regulations to approve GPS enabled devices as the types of electronic devices which are approved devices in relation to a requirement imposed by the Scottish Ministers on an individual being released from custody on licence. These Regulations will work with the Electronic Monitoring (Use of Devices and Information) Scotland Regulations 2025 to limit the use of GPS devices to monitoring compliance with certain conditions of a home detention curfew (HDC) licence. Specifically, a dual-enabled radio frequency and GPS location monitoring device would be added to the list of approved devices. Also ancillary equipment needed to install and charge the device are being listed as approved devices.

These Regulations enable the use of GPS monitoring devices for the first time in Scotland. Formal evaluation of the impact is planned for publication after a year of use, however a time limitation on use of the devices is not being set, as to do so may create uncertainty about use within the first year for what is already a cohort only monitored for a matter of months. Evaluation will determine next steps for the service and any need to revisit the legislative framework, which would be required in any event to further expand use beyond HDC release licences.

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 wider 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 set 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 the Scottish Government intend 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).

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 which may be electronically monitored.

It is not intended for GPS monitoring to be used for every HDC case – an individual will only be subject to GPS monitoring 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. Prior to release on HDC each individual undertakes a risk assessment, with input from a range of justice partners.

Interaction with the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025

These Regulations provide that new GPS enabled electronic monitoring devices can only be used when individuals are being released from custody by the Scottish Ministers subject to licence conditions set out in section 7 of the 2019 Act. They are being laid simultaneously with the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 which will, subject to Parliamentary approval, further regulate the use of GPS enabled electronic monitoring devices and the information obtained from them. They will further limit the use of the new GPS technology to monitoring conditions imposed on an HDC licence only (and not for other forms of release).

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 a draft data protection impact assessment prepared by the Scottish Government, which was subsequently updated to reflect their feedback.

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
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