

Analysis of Responses to Electronic Monitoring in Scotland

A Consultation on Proposals for Legislation - Summary

September 2017

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Linda Nicholson, The Research Shop, 2017

The Scottish Government believes that electronic monitoring has a role to play in supporting its vision for a safer, fairer and more inclusive nation. An Electronic Monitoring Working Group (2016) considered a range of issues including how to expand the use of electronic monitoring, the best way to support monitored individuals in the community while maintaining public protection, and what opportunities new technologies can provide. The Working Group made eight recommendations some of which require primary or subordinate legislation. On 2 March 2017 the Scottish Government published a consultation paper, seeking views in relation to legislative changes to extend the use of electronic monitoring in Scotland. 63 responses were received to the consultation. A summary of views from the responses to the consultation follows.

Main Findings

- All of those who provided a view agreed that the Scottish Government should introduce legislation to permit the use of Global Positioning Systems (GPS) technology for electronic monitoring.
- 88% of those who commented agreed that electronic monitoring should be an optional requirement of a Community Payback Order (CPO) when initially imposed; 60% considered that it should be introduced as an alternative to a fine; 96% agreed that it should be permitted as a condition of a Sexual Offences Prevention Order (SOPO); 92% envisaged electronic monitoring as a possible condition of a Risk of Sexual Harm Order (RSHO); and 74% agreed that it could be a possible sanction of a Structured Deferred Sentence (SDS).
- Of those who provided a view, 89% considered that electronic monitoring should be introduced as an alternative to remand; 66% agreed that it should be permitted as a condition of Police Liberation or Investigative Liberation; 95% of those commenting considered that electronic monitoring should be permitted as a condition of a temporary release from prison.
- Just over half of those who commented supported the proposal that data collected for electronic monitoring should be used for both monitoring compliance and for other purposes such as investigating crimes.
- Of those providing a view on who should be responsible for the safe return of the monitoring equipment, 46% suggested the person being monitored should be responsible; 38% suggested responsibility lay with the monitoring agency; and 16% had other suggestions such as joint responsibility.
- Positive impacts of electronic monitoring were identified, specifically in terms of safeguarding women in domestic violence cases; and enabling people with physical and mental health needs to continue with care in the community.

Background

The Scottish Government believes that electronic monitoring has a role to play in supporting its vision for a safer, fairer and more inclusive nation, in which those who have been victims of crime can feel safer and more reassured, and those with a history of offending can be supported to be active and responsible contributors to their communities.

Electronic monitoring was first piloted in Scotland in 1998, before being rolled out nationally in 2002 as a Restriction of Liberty Order (RLO), which is imposed only by courts. Since then, confidence has grown in the technology involved, and understanding has developed as to how electronic monitoring could be used more widely. It is currently used to monitor a number of different community disposals in addition to being included as a licence condition on release from prison.

Following a Scottish Government consultation in 2013, an Electronic Monitoring Expert Group was established to consider how electronic monitoring could be better used within the criminal justice system in Scotland. The Group reported in 2016¹ and set out a strategy with eight recommendations on how to take this forward. These recommendations were accepted by the Cabinet Secretary for Justice.

Some of the recommendations will require new primary or subordinate legislation to enact, or amendments to current provisions. On 2 March 2017, the Scottish Government published a consultation paper² seeking views in relation to legislative changes to extend the use of electronic monitoring in Scotland in support of broader community justice policy. Responses were invited by 19 May 2017.

Overview of respondents

63 responses to the consultation were received, 59% submitted by organisations and 41% from individuals. Organisations were representative of a wide range of stakeholders, with the largest category being partnerships, comprising 17% of all respondents. Other categories of respondent were: third sector; justice bodies; private sector; local authorities; social work bodies; health; and other.

Views on exploiting the opportunities afforded by the new technologies

All of the 56 respondents (89%) who provided a view agreed that the Scottish Government should introduce legislation to permit the use of GPS technology for electronic monitoring. The main reason given for this view was to improve victim and public safety.

Of the 56 respondents (89%) who commented, most considered that the judiciary should independently, or in collaboration with others, make the decision on which technology (radio frequency or GPS) to use in each case, with public safety a prime consideration in this decision.

The prevailing view was that response to an infringement of a buffer zone should be determined on a case-by-case basis, taking into account risk to public and victims; intent/reason for infringement; and frequency of infringement.

¹ <http://www.gov.scot/Publications/2016/10/8620>

² <http://www.gov.scot/Publications/2017/03/6021>

36 respondents (72%) of the 50 respondents who provided a view agreed that legislation should be introduced to permit a voluntary GPS scheme. Whilst some supported a case-by-case assessment of suitability for voluntary participation, others advocated a risk-based assessment. Most considered voluntary electronic monitoring appropriate for low-risk offenders, who have committed low tariff offences.

A common view was for a voluntary scheme to be managed by local statutory bodies with additional support from third sector organisations, according to the requirements of each case. Some concerns were expressed about voluntary schemes being used in cases of domestic abuse.

Of the 53 respondents (84%) who provided a view, 48 (91%) agreed that alcohol monitoring should be permitted as part of an electronic monitoring programme. The two key reasons for this view were that there are clear links between alcohol use and offending behaviour; and alcohol monitoring has the potential, within a wider package of support, to help offenders build control over their own misuse of alcohol.

A recurring view was that more development work is required in terms of research, defining objectives, and design of robust and tamper-proof equipment, before alcohol monitoring can be used as part of electronic monitoring.

Views on extending the use of electronic monitoring in a community setting

Of the 52 respondents (83%) who provided a view, 46 (88%) agreed that electronic monitoring should be an optional requirement of a CPO when initially imposed. The main reasons for this view were that this had the potential to reduce reoffending and support rehabilitation; it could strengthen the CPO and open up its benefits to a wider spectrum of people; and this would bring more cohesion to what was perceived to be a current inefficient and disjointed system.

Of the 50 respondents (79%) who provided a view, 30 (60%) agreed that electronic monitoring should be introduced as an alternative to a fine. The key benefit identified was that this could be deployed in cases where an offender cannot afford to pay a fine and the offender's wider family could be impacted due to the financial hardship a fine could bring. The most common view opposing electronic monitoring as an alternative to a fine was that electronic monitoring and fines are two different forms of sanction, serving different purposes and cannot be considered to be interchangeable.

Of the 52 respondents (83%) who provided a view, 50 (96%) agreed that electronic monitoring should be permitted as a condition of a SOPO. Many considered that this would bring strength to SOPOs and add value, for example, by providing the public and victims with more confidence; and increasing the chances of offenders complying with SOPOs.

51 respondents (81%) provided a view on whether electronic monitoring should be introduced as a possible condition of a RSHO. Of these, 47 (92%) agreed, the most common reason being that this enabled better risk management of offenders. Some called for regular reviews to ensure proportionality and the need for continued electronic monitoring.

50 respondents (79%) provided their view on whether electronic monitoring should be introduced as a possible sanction of a SDS, with 37 of these respondents (74%) agreeing. In particular, respondents considered that electronic monitoring could be usefully

introduced in this context as a tailored, individualised approach, where circumstances suggest that this could be helpful. Several of those opposed to the proposal expressed concern over electronic monitoring “up tariffing” SDS.

Views on electronic monitoring as an alternative to remand and support to pre-trial conditions

Of the 53 respondents (84%) who provided a view, 47 (89%) agreed that electronic monitoring should be introduced as an alternative to remand. The most commonly identified benefit was that this would avoid what was perceived to be the detrimental impact of custody on those not yet convicted. However, many of those supporting this proposal did so on the proviso that electronic monitoring should be applied only after robust risk assessment, involving not only the individual, but those they live with, and consideration of the likely impact on victims.

Electronic monitoring as an alternative to remand was viewed as most suitable where the alleged offence is low tariff; a first offence; non-violent; and would be unlikely to result in custody if the individual is subsequently convicted.

50 respondents (79%) provided a view on whether electronic monitoring should be permitted as a condition of Police Liberation or Investigative Liberation. Of these, 33 respondents (66%) agreed, although a general theme was that more information is required, and regulations developed, prior to further consideration of this proposal. Two particular concerns were over civil liberties where the person has not yet been charged, and proportionality where there are delays in proceedings.

55 respondents (87%) commented on the proposal to permit electronic monitoring as a condition of a temporary release from prison, with 52 of these (95%) agreeing. Main benefits were identified as: preparing the offender for liberation; facilitating day-to-day opportunities for the offender to maintain community networks; to test readiness for leaving custody; and to engender greater confidence in the risk management of the offender.

A common view was that offenders should be assessed on an individual basis in terms of risk, circumstances, and readiness to comply, prior to benefitting from this scheme.

Views on information and data sharing and retention

Just over half of the 51 respondents (81%) who provided a view supported using the data collected for both monitoring compliance with the order or licence condition, and using it for other purposes such as the investigation of a crime. However, many suggested that this should be permitted only where the individual provides consent at the beginning of the period of monitoring; and safeguards are put in place, including data protection protocol.

All except one of the 44 respondents (70%) who commented expected safeguards to be put in place for the collection, use, retention and destruction of data.

Views on electronic monitoring equipment

50 respondents (79%) provided a view on who should be responsible for the safe return of the monitoring equipment, with 46% considering that the person being monitored should be responsible, and 38% suggesting that responsibility should lie with the monitoring agency. 16% had other suggestions, such as joint responsibility between client and agency.

37 (76%) of the 49 respondents who provided a view were in favour of sanctions for not returning monitoring equipment safely. Most considered that the form of sanction should reflect the circumstances of each case, with financial penalties one key suggestion.

50 respondents (79%) gave their view on whether there should be a legal right of access to enter a property to recover equipment, where the sole key holder is not available. Of these, 40 respondents (80%) agreed that in these circumstances a legal right of access should be given to Scottish Ministers and their agents. 29 respondents (72%) of the 40 who commented, considered that access should only be via a court warrant.

Views on impact of the proposal on equality, costs and the environment

A recurring view was for a suitability assessment to be deployed each time electronic monitoring is being considered.

Where specific positive equality impacts were identified these related largely to benefits to women, with electronic monitoring perceived as providing a robust approach to safeguarding them in domestic violence and other cases; and benefits to health in terms of people with physical or mental health, or complex needs being more likely to be able to continue with care if they are “tagged” rather than receiving an alternative intervention.

Savings in prison costs and costs associated with dealing with re-offending and fines enforcement were envisaged as a result of the proposals. The most frequently identified potential costs were associated with social work and third sector services in supporting people through their monitoring periods.

An overarching view was that the proposals would have little or no impact on the environment, provided that the equipment is environmentally friendly, recyclable and biodegradable.



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