

# **Partial Business and Regulatory Impact Assessment**

# **Management of Offenders Bill – Electronic Monitoring Provisions**

**February 2018**

# Partial Business and Regulatory Impact Assessment

## **Title of Proposal**

Management of Offenders Bill – Electronic Monitoring Provisions

## **Purpose and intended effect**

### **Background**

The Scottish Government is committed to strengthening the delivery of community justice, ensuring we continue to focus on public safety, and breaking the cycle of reoffending. We believe that electronic monitoring has a role to play in supporting our 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.

At present legislation allows for electronic monitoring to be used in Scotland to monitor an individual's compliance with a curfew set by either the Scottish Courts and Tribunal Service, the Scottish Prison Service or the Parole Board for Scotland. At present, a person can be curfewed to an address for up to 12 hours a day or - more rarely - 'away from' an address for up to 24 hours a day.

Following our consultation on the development of electronic monitoring in Scotland 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 published a report in October 2016<sup>1</sup> which set out eight recommendations on how to take this forward.

On the back of the report of the Working Group we published a further consultation seeking views in relation to potential legislative changes to extend the use of electronic monitoring in Scotland<sup>2</sup>. The consultation closed on 13 May 2017 and 63 responses were received. Analysis of the responses received to the consultation<sup>3</sup> were published on the Scottish Government website on 12 September 2017

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

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

<sup>3</sup> <http://www.gov.scot/Publications/2017/09/2305>

**Objective**

The benefit of the expansion of electronic monitoring, including use of new technologies, is an increase in the options available to manage and monitor offenders in the community and further protect public safety. We have worked with partners to develop the new electronic monitoring legislation taking into account the recommendations of the Working Group and the responses to the consultation.

The expansion of electronic monitoring supports the broader community justice policies of preventing and reducing reoffending by increasing the options available to manage and monitor offenders in the community, and to further protect public safety. The introduction of new technologies, such as Global Positioning System (GPS) technology, presents opportunities to improve the effectiveness of electronic monitoring, for example through the use of exclusion that can offer victims significant reassurance and respite. This Business and Regulatory Impact Assessment relates only to Part 1 of the Management of Offenders Bill regarding the electronic monitoring provisions.

The Financial Memorandum for the Bill sets out the potential costs associated with the expansion of electronic monitoring in Scotland

**Rationale for Government intervention**

The expansion of electronic monitoring contributes to the Scottish Government National outcome that 'we live our lives safe from crime, disorder and danger'.

**Consultation****Within Government**

We have consulted with the Scottish Court and Tribunals Service and the Scottish Prison Service with regard to potential increase in costs which may arise due to the expanded use of electronic monitoring in Scotland. Further consultation may be required as the Bill progresses in particular we will consult with colleagues in the Scottish Prison Service to discuss what impact GPS monitored home leave from prison will have on them. We will also consult with Criminal Justice Social Work to discuss the potential increase in resource providing support to any rise in the number of monitored persons.

**Public Consultation**

On 2 March 2017 the Scottish Government published a public consultation which sought views on the potential legislative changes required to extend the use of electronic monitoring in Scotland. The consultation closed on 13 May 2017 and received 63 responses.

Question 16 in the consultation paper asked "Please tell us about any potential costs and burdens that you consider may arise as a result of the proposals within this consultation". 68% of the respondents answered this question..

The most frequently identified potential cost which respondents considered was that of supporting the person being monitored during the monitoring period. Twenty respondents, from a wide range of sectors, identified costs falling largely on social work and third sector services in connection with supporting compliance and

addressing breaches.

Other costs mentioned were:

- Social work costs associated with undertaking assessments of suitability for electronic monitoring.
- Court and other justice costs associated with additional court time for assessments; dealing with non-compliance; amendments to sentencing guidelines.
- Costs of service provider including set up/installation; data storage and processing.
- Cost of equipment: manufacturing; replacing lost equipment.

A few respondents considered that while there would be initial costs associated with implementation, savings might ensue.

### **Business**

Compliance with Electronic Monitoring in Scotland is monitored on behalf of Scottish Ministers and contracted to a private company until March 2020. The new legislation does not place any responsibility or regulations on businesses. Therefore there has been no requirement to consult.

### **Options**

**Do something:** This option involves the introduction of the electronic monitoring provisions of the Management of Offenders Bill to enable the expansion of electronic monitoring, including use of new technologies. This will increase the options available to manage and monitor offenders in the community and further protect public safety.

**Do nothing:** this would see the current legislation for electronic monitoring remain in place.

### **Sectors and groups affected**

As above, the sectors that will be affected by the introduction of the Bill are Government in the shape of the Scottish Government and the Scottish Court Service. There is also a potential business impact on criminal justice social work with additional assessments for electronic monitoring. There may also be an impact on the Scottish Prison Service with the introduction of GPS monitored home leave. There is no immediate impact across all of the sectors and groups with regard to the option of doing nothing.

### **Benefits**

The expansion of electronic monitoring supports the broader community justice policies of preventing and reducing reoffending by increasing the options available to manage and monitor offenders in the community, and to further protect public safety. The introduction of new technologies, such as Global Positioning System technology, presents opportunities to improve the effectiveness of electronic monitoring, for example through the use of exclusion zones that can offer victims significant reassurance and respite.

**Costs**

It is anticipated that the provisions of the Bill will lead to an increase in the overall cost associated with the electronic monitoring contract. These costs fall broadly into two categories those associated with new or amended uses of monitoring; and those associated with the introduction of new monitoring technology.

The potential costs for these two categories are fully explained in Part 1 of the Financial Memorandum for the Management of Offenders (Scotland) Bill. The financial memorandum sets out the forecast addition costs on the Scottish Administration, Scottish Courts and Tribunals Service and local authorities.

The precise financial impact of the new legislation is dependent on the uptake of the new provisions. The Financial memorandum for the Bill outlines the potential additional costs associated with the new legislation.

**Scottish Firms Impact Test**

This section is not applicable. The electronic monitoring provisions of the Bill do not impose any new duties or regulations on private business. Therefore there has been no requirement for face to face discussions with business. As detailed previously in this BRIA the Scottish Government policy officials have conducted two public consultations regarding the proposed legislation.

**Competition Assessment**

This section is not applicable. The management of electronic monitoring is carried out on behalf of Scottish Ministers by a private company under contract to 31 March 2020. There will be a procurement exercise for the new electronic monitoring contract carried out by the Scottish Government in advance of 31 March 2020.

The expansion of electronic monitoring in Scotland will have no impact or raise concerns on competition.

**Test run of business forms**

This section is not applicable. The electronic monitoring provisions of the Bill do not bring in any new forms for business.

**Legal Aid Impact Test**

It is not anticipated that the expansion of electronic monitoring will impact on the Scottish Legal Aid Board. The expansion does not bring additional people into the Justice System. It merely provides additional disposal options for the court and the introduction of new technologies. The legislation will not result in additional people seeking legal assistance or being taken through the courts. Nor will it give rise to increased use of legal processes or create new rights or responsibilities which could potentially impact on the legal aid fund.

A copy of the Bill can be found at **Annex A** of this Impact Assessment.

### **Enforcement, sanctions and monitoring**

The Management of Offenders Bill will introduce an expansion to the electronic monitoring options available as well as introducing new technologies i.e. GPS tracking. Once the Bill is introduced the decision of whether electronic monitoring is an appropriate disposal is the responsibility of the court.

Scottish Government will not be enforcing the use of electronic monitoring or using sanctions.

The current electronic monitoring provider produces [statistical information](#) on the number of monitored persons in Scotland. This information provides the:

- total number of monitored persons in Scotland,
- type of order received,
- duration of the order,
- number of orders completed,
- gender of the monitored person,
- age of the monitored person

### **Implementation and delivery plan**

The Management of Offenders Bill is currently going through stage one of the legislative process. Stage three of the bill is scheduled for November 2018 with Royal assent usually three weeks after that. It is expected that the provisions of the Bill will come into effect in early 2019.

### **Post-implementation review**

As the Management of Offenders Bill does not impact on business there is no intention to review the provisions of the Bill post implementation. However there may be wider reviews undertaken in relation to the delivery of electronic monitoring more generally

### **Summary and recommendation**

As detailed previously the expansion of the use of electronic monitoring in Scotland is derived from two public consultations and based around the recommendations of an Expert Working Group. The benefits of the expansion, including use of new technologies is that it will increase the options available to manage and monitor offenders in the community and further protect public safety. In some instances it will allow monitored persons to remain within the family unit, retain housing or employment which would not be possible with a short term prison sentence.

The Scottish Government has worked with partners to develop the new electronic monitoring legislation taking into account the recommendations of the Expert Working Group and the responses to the consultation.

The expansion supports the broader community justice policies of preventing and reducing reoffending by increasing the options available to manage and monitor offenders in the community, and to further protect public safety. The introduction of

new technologies, such as Global Positioning System technology, presents opportunities to improve the effectiveness of electronic monitoring, for example through the use of exclusion zones that can offer victims significant reassurance and respite.

It is anticipated that additional costs will be incurred by the Scottish Justice System in particular by the Scottish Courts and Tribunals Service and Criminal Justice Social Work and the Scottish Administration who pay for the electronic monitoring contract. These potential costs are set out in the Financial Memorandum which accompanies the Bill. The Financial Memorandum sets out the current average daily cost per monitored person (£8) and highlights where there are potential financial impacts. What is clear with regard to the financial impact of the expansion of electronic monitoring is that it is dependent on how much the courts use the new provisions. This has made it difficult to make a precise assessment of the impact and therefore the financial memorandum sets the impact out as a 10 % increase on the current electronic monitoring costs.

#### **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**



**Date:** 21/2/18

**Michael Matheson, MSP  
Cabinet Secretary for Justice.**

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