

# **Electronic Monitoring in Scotland**

## **Working Group**

## **Final Report**



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## Executive Summary

Although there has been considerable geographical variation in its use, electronic monitoring (EM) has been nationally available in Scotland since 2002, largely as a standalone measure, using radio frequency (RF) technology to enforce home confinement in the context of various legally specified orders. It has been delivered by a private sector service provider contracted to central government. Within the parameters originally set for it, EM has been delivered to a high standard, but it has not been used strategically to meet judicial, penal and social work goals. Crucially, only in some instances has its use been integrated with other criminal justice interventions. This lack of integration is anomalous when compared with EM use in mainland Europe, where EM is usually embedded in the work of probation services. The Scottish Government's desire for greater integration of EM and support services, both statutory and third sector, aimed at prevention, rehabilitation and desistance, was the starting point for review of and public consultation about EM in 2013. The present Working Group emerged from this review and consultation.

Consideration of the potential of two emerging EM technologies – satellite tracking using the Global Positioning System (GPS) and trans-dermal alcohol monitoring (TAM) – also underpinned the review. The Working Group reflected further on this, settling on the view that it is the penal, judicial and social work goals which technology can be used to achieve, rather than the technology itself. It was accepted that while the existing RF-based home confinement still served a useful penal purpose, it had not been used as flexibly or as creatively as it could have been. GPS technology offers new possibilities for monitoring movement-in-general (not just presence in a single place as RF does), as well as the creation and oversight of exclusion and inclusion zones, of variable size, to restrict movement and offer greater degrees of protection to victims of crime than are usually available in existing forms of community supervision. Trans-dermal alcohol monitoring can support and enforce prohibitions on alcohol use rather than monitoring locations and schedules, although it can also be combined with those.

The Working Group sought to envision a new strategy for EM-use in Scotland, utilising existing and new technologies and grounded in the needs, interests and aspirations of various agencies and organisations involved in the criminal justice process, including victims of crime. This envisioning was guided by a review of international research evidence on EM specially commissioned by the Scottish Government, and by the findings of an EU funded comparative research project on EM in which Scotland took part. Because EM (in all its forms) is itself a digital technology, some cues were taken from Scotland's existing <sup>1</sup>Digital Strategy for Justice. In deliberating on the just, proportionate and effective use of EM the Working Group drew on the Council of Europe's (2014) "ethical Recommendation" on EM, which is strongly, but not exclusively, grounded in the potential of EM to reduce the inappropriate use of imprisonment. The Working Group similarly emphasised EM's potential as a form of control to support the Scottish Government's desire to reduce the use of short custodial sentences, to strengthen rehabilitative

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<sup>1</sup> The [Digital Strategy for Justice in Scotland](#), published in 2014, sets out how digital technology is used to transform the way in which agencies deliver justice services in the civil, criminal and administrative justice systems.

and re-integrative measures and to offer hitherto unavailable forms of protection to victims of crime.

The new strategy, which will continue to be based on a nationally commissioned and contracted monitoring service, requires legislative change. It will make available all three EM technologies – RF, GPS and TAM – to sentencers and criminal justice agencies. There is an expectation of greatly reduced geographical variation in EM's future use. No assumption has been made – as some countries do - about the greater severity and intrusiveness of GPS tracking over RF-home confinement. The appeal of intensive GPS monitoring for high-risk sex offenders is intuitively clear, but not all such individuals may warrant its use: RF-home confinement has already worked effectively in a multi-agency public protection arrangement (MAPPA) context, and could continue to do so. GPS technology may also be used with lower risk individuals and “voluntary consent” models of GPS tracking have been used (in England and Wales), and are not without merit. For some individuals, including young people, both RF and GPS can have preventative and protective functions which empower them to resist adverse peer pressure.

In summary, the more strategic use of EM envisaged by the Working Group has three aspects:

1. To use EM in more integrated ways, alongside a range of supportive measures, to help prevent and reduce further offending and promote desistance among people with convictions
2. To enhance the protection and security of victims of crime in ways that other community interventions are unable to do
3. By offering a greater degree of control in the community, to make the use of electronic monitoring more appealing to sentencers as an alternative to custody, in particular short-term sentences and remand.

The Working Group strongly endorses an individualised rather than a categorical approach to the use of EM, based on a rounded risk-needs assessment, and a clear sense of the goals to which EM may, or may not, contribute. Proportionality is always an important consideration in any EM-intervention but this does not reside in the technology itself; rather, it resides in the intensity and duration of the schedules and requirements it is used to enforce, and the nature of the other supportive measures with which it may, or may not, be combined. Different intensities of EM and variable combinations with other measures can be used at different points on the sentencing tariff, to meet different goals for different individuals. The variety of new “community uses” of EM and specific legal frameworks in which it should in future be used are listed in Recommendations 5 and 7. The Group commends further consideration of the still underused “movement restriction orders” in a youth justice context.

EM is a versatile form of control which can be imposed either as punishment or to support rehabilitative purposes. The use of EM as a standalone punishment should remain a legitimate sentencing option. However, in its various forms EM should now become integrated with measures with a proven track record of preventing and reducing further offending which assist individuals to desist from crime. Some research evidence shows that EM has a crime reduction effect in itself, for the duration of the monitoring period, but that if longer term desistance is required it

must be combined with measures which help individuals to change their behaviour. In individual cases, EM should be used, by judicial and penal authorities, in a goal-oriented and person-centred way, tailored to achieve specific purposes, including the protection of victims of crime.

Against the background of a persistently high remand population, the new EM strategy should reconsider the use of monitoring at the pre-trial stage, using both RF and GPS technology as appropriate. Exclusion and inclusion zones enabled by the latter offer new possibilities for meeting the goals of bail. Whilst standalone use of EM at the pre-trial stage is wholly legitimate, experience suggests that bail support would be required in some instances to assist with compliance. The Working Group suggests that both forms of EM be considered for non-compliance with bail related offences, supervised bail, bail undertakings and investigative liberation.

EM is already available to penal as well as judicial authorities in Scotland, in the form of Home Detention Curfew (HDC) and Parole licence. This should continue, with all forms of EM available – RF, GPS and TAM – according to a risk-needs assessment. In addition EM could in future be utilised within the prison estate, to test those prisoners on the margins of acceptable risk, in order to facilitate work placement, home leave, female community custody units and community access from closed establishments. Given perennial public anxiety about all forms of prisoner release, the use of EM in this context could be an important means of increasing public confidence.

Compliance with and enforcement of monitoring requirements must vary both according to the nature of the violation and the purpose of the order. Where rehabilitative goals are being pursued, the response to a violation of an EM requirement must take account of the progress made towards those wider goals. A two tier approach for responding to violations, standardised and intensive, reflecting the above distinction, will be made available to sheriffs. Overall, evidence suggests that monitored people and their families can find the experience onerous but still to be preferred to imprisonment. Some evidence acknowledges that stand-alone EM can create undue stress and strain for co-residents which more integrated approaches may be able to reduce. As in other areas of community supervision, the “user voice” – in this instance, both monitored individuals and co-residents - can be an important source of insight into what makes a judicial or penal requirement legitimate and feasible to complete. Creative, evidence-based ways of incentivising compliance should be developed.

The implementation of the new EM strategy must build on the work begun in the Working Group to increase knowledge and capacity of how EM could and should be used. This has included the creation of a cross-sector champion’s group whose members have developed a deeper understanding of EM’s potential, although this does not preclude the need for additional training across all relevant agencies. CJSW Standards and IT systems have been revised to facilitate the potential of EM to contribute to the goals of supervision. More fundamentally, a communication strategy has been devised and agreed by all partners to better engage stakeholders in debate about future uses of EM, and to promote a common understanding of the goals that can be achieved with it. The Working Group seeks to change how EM has traditionally been considered and used in Scotland: this task must continue

beyond the life of the Working Group itself. This report is not the “final word” on the future of EM in Scotland, and beyond its specific proposals and Recommendations, it also aspires to stimulate further thinking among key stakeholders – especially sentencers, police, prison service, criminal justice social workers, youth justice social workers, third sector, victim advocacy organisations - as to how good practice with EM can be taken forward. In response to both this report and the Ministerial recommendations which will follow from it, the Working Group recommends that, each stakeholder group should be encouraged to develop formal “statement of intent” regarding EMs future use.

The EM in Scotland Working Group commends this report to Scottish Ministers and urges that early action be taken against the recommendations in a manner which is both ambitious and inclusive of all partners required to move the agenda forward at pace.

## Recommendations

### Recommendation 1: Technology

**Radio Frequency** is an effective monitoring technology which should continue to be used within the Scottish electronic monitoring service.

**GPS technology** should be introduced to the electronic monitoring service in Scotland. The Group recommends that the use of GPS should not be predicated by crime type. GPS technology is versatile and decisions on its use should be made as part of an individually tailored approach, including where it can aid public and victim safety and where it can be used supportively to strengthen the monitored person's desistance.

**Trans-dermal Alcohol Monitoring technology** is effective at remotely detecting the presence of alcohol and its use within a Scottish setting should be explored further. Work should, therefore, be undertaken to determine how alcohol monitoring might be used effectively and at which points within the Scottish Justice System. This work could take the form of a **demonstration project**.

### Recommendation 2: Future Service Delivery

To be most effective, the future model of service delivery for electronic monitoring in Scotland **must be more integrated** than it has been previously. **Stand-alone orders** will be suitable for some individuals and **should, therefore, remain** as a legitimate disposal.

However, in the majority of cases, whether a court order, HDC or as a condition of parole licence, electronic monitoring – having been based on a risk assessment - must be tailored to **reflect the personal circumstances** of each individual.

Where longer term desistance is the overarching goal, EM should be part of a **wider package of support**, delivered locally by statutory bodies with Third Sector involvement. Its use should not be restricted to particular crimes and need not be restricted to being an alternative to custody.

**The future model** will retain a nationally commissioned technology and monitoring service.

### Recommendation 3: A Goal-Oriented and Person-Centred Approach

For EM to be used **most effectively**, its use should be considered in line with the overarching **goals for each monitored person** and tailored to reflect the needs, risk and circumstances of that individual.

Where longer term **desistance** is the ultimate goal, EM should be **set within a wider package of support** provided by statutory bodies with Third Sector involvement.

To determine what 'support' may comprise of, how it is best delivered and, as far as possible, the associated resource implications, the Working Group recommends that a **demonstration project** is undertaken.

### Recommendation 4: Compliance

Ensuring that **effective structures and criteria** are in place to support compliance and manage non-compliance are crucial to contributing to a long term reduction in further offending, while maintaining electronic monitoring as a robust community sentence.

**For Court Orders**, to strengthen Shrieval confidence in electronic monitoring as a robust disposal, **two reporting options** for reporting non-compliance should be developed. This two tier approach (**standard and intensive**) would provide Sheriffs with an option to set more stringent reporting requirements for individuals as necessary while ensuring a more **consistent approach** to non-compliance reporting throughout Scotland.

**For HDC**, amendments should be made to **streamline** the current non-compliance criteria. The streamlined criteria should be accepted and utilised by all prison establishments in Scotland.

Supporting individuals to comply with electronic monitoring conditions is critical to reducing further offending in the longer term. Some instances of non-compliance should be seen as an opportunity to work more closely with the monitored person, recognising individual life circumstances and preventing every potential non-compliance instance being returned to decision makers. How compliance is best supported should be explored as part of the aforementioned **demonstration project**.

In partnership with individuals, agencies and organisations including the Judiciary, Police Scotland, SPS, the Parole Board for Scotland, Criminal Justice Social Work, Victims, the Third Sector and the service provider, response levels to non-compliance should be defined, agreed and set out in a **Response Framework**. This Response Framework will also be fundamental in determining how GPS technology should be incorporated into an individual's order or licence conditions.

## Future Uses of Electronic Monitoring

**There is significant scope to extend the use of electronic monitoring at various points in the Scottish Criminal Justice System, both within a community setting and within the custodial estate, where risk assessed as appropriate.**

The Expert Working Group recommends that the use of electronic monitoring is extended to include:

### **Recommendation 5: In the community:**

- Community re-integration following prison
- As an alternative to remand and support to pre-trial conditions
- As an alternative to short prison sentences
- Voluntary schemes for persistent offenders and those on the cusp of serious and organised crime
- Better support young people as part of alternative to secure care or as part of a step-down process from secure care
- As an alternative option to fines
- As a condition of a Sexual Offences Prevention Order
- As a condition of a Risk of Sexual Harm Order
- As a condition of a Structured Deferred Sentence.

### **Recommendation 6: Within the Custodial Estate:**

EM offers the opportunity to utilise technology to enhance public confidence in those individuals who are progressing through the prison system and provide additional options for prison managers to test those prisoners who remain on the margins of acceptable risk. This may increase the number of prisoners who progress to less secure conditions and provide them with the confidence to live successfully with the flexibility of an individual monitored plan.

EM may be utilised on some occasions for **work placement, home leave, future female community custody units and community access** from closed establishments. This may also include options for **Throughcare Support Officers** to help prisoners transition back to the community prior to release to attend community based appointments and as a support to a desistance model.

### Recommendation 7: Legislative Change

The Working Group recognises that amendments to primary legislation will be necessary to enable all of the recommended future uses, set out above, to be introduced. In addition, the following specific legislative changes are recommended:

- Removing **Section 16 and 17 Statutory Exclusions** for Home Detention Curfew
- Providing for electronic monitoring as a **requirement of a Community Payback Order**
- Introducing legislative changes to allow for the **introduction of GPS technology**, including the necessary amendments to Data Protection legislation
- Enabling legislation to provide for a demonstration project on **Remote Alcohol Monitoring**
- **Redefining an RLO** as a standard standalone community sentence - that is not only considered as an alternative to custody.

### Recommendation 8: Encouraging Ownership of Electronic Monitoring

To encourage greater ownership of Electronic Monitoring and its usage across Scotland, the Working Group would invite statutory and non-statutory organisations to draft their own statement of intent going forward on EM in a similar manner to that taken forward by Social Work Scotland, as a professional body as shown in Appendix A.

The timescales for introducing each new use is dependent on the timing of changes required to primary legislation

## Acronyms and Abbreviations

CJSW – Criminal Justice Social Work

CPO – Community Payback Order

DTTO – Drug Treatment and Testing Order

EM – Electronic Monitoring

GPS – Global Positioning System

HDC – Home Detention Curfew

HMU – Home Monitoring Unit

MAPPA – Multi-agency Public Protection Arrangements

MRC – Movement Restriction Condition

PASS – Presumption against Short Sentences

RF – Radio Frequency

RLO – Restriction of Liberty Order

TAM – Trans-dermal Alcohol Monitoring

## Glossary of Terms

**Away from** – A form of exclusion zone set up under current RF technology to prevent a monitored person from approaching or entering a specified address (temporarily, occasionally or permanently) over a set period of time. This requires a base unit/s being installed in the away from address but only small zones can be set using this technology.

**Curfewed Address** - set up under current RF technology to ensure a monitored person remains within a specified address (temporarily, occasionally or permanently) over a set period of time as detailed in their order. This requires a base unit/s being installed in the specified place.

**Desistance** – The process of giving up crime on the basis of a person's own desire to do so. Support from family members, friends, employers and the general community can support the individual in this journey. Statutory and third sector agencies can also help by providing rehabilitative measures which strengthen a person's commitment to give up crime. Desistance is not a smooth continuous and linear process; there can be set backs that should not be assumed to mean the person has ceased to desire desistance.

**Exclusion Zone** - area set up, under GPS technology, to prevent a monitored person from entering a specified place (temporarily, occasionally or permanently) over a set period of time.

**Goal Oriented** - encompasses both punitive and rehabilitative goals. Both can be individually tailored to the needs, risk and circumstances of the individual. Only rehabilitative goals, oriented towards desistance, can be considered person centred.

**Inclusion Zone** - area set up, under GPS technology, to keep a monitored person within a specified place (temporarily, occasionally or permanently) over a set period of time.

**Person centred approach** - is a way of supporting and working with both victims of crime and people with convictions that put the individual at the centre of the support they receive - and provides a framework for them to plan and set a direction for their life.

**Proportionality** – The match between the seriousness of an offence (or incident) and the severity or otherwise of the judicial (or administrative) response. EM technology can be used in a variety of ways, at different intensities, and is not therefore proportional in itself to any particular offence.

## A New Strategy for Electronic Monitoring in Scotland

### The Strategy is informed by seven elements:

- Inter-agency reflection on the needs and values which should inform a Scottish approach to future EM use within the Working Group itself
- A review of international research evidence on EM's effectiveness commissioned by the Scottish Government
- The findings of EU-funded comparative research on "Creativity and Effectiveness in EM" in five countries, including Scotland
- The Digital Strategy for Justice in Scotland
- The Council of Europe Recommendation CM/Rec 14(4) – a human rights-informed understanding of standards and ethics in EM
- The Scottish Government vision in which prison, and in particular short-term sentences, is used less frequently, with a stronger emphasis on robust community sentences focused on actively addressing the underlying causes of offending behaviour leading to the prevention and reduction of further offending
- Victims and Witnesses (Scotland) Act 2014 and "Equally Safe", the Scottish Government's strategy on violence against women and girls

The Working Group wishes to see a more extensive, more consistent and more strategic use of EM in Scotland. It does not see EM as more important than the existing array of community interventions, but it does believe that a better and more integrated use of EM across the criminal justice system could enhance those interventions. It does not seek to make EM into the dominant community intervention but it does wish to see it become more central, and more commonplace, in the practice of criminal justice social workers and sentencers. Discretion to use it, within frameworks established and promoted by the Scottish Government, will rest with them. The Working Group is clear, however, that in future there should be much less geographical variation in the use of EM than exists at present, whilst recognising that such variation is not unique to EM, and has complex causes in local criminal justice cultures.

The more strategic use of EM envisaged by the Working Group has three aspects.

1. To use EM in more integrated ways, alongside a range of supportive measures, to help prevent and reduce further reoffending and promote desistance among people with convictions
2. To enhance the protection and security of victims of crime in ways that other community interventions are unable to do
3. By offering a greater degree of control in the community, to make the use of electronic monitoring more appealing to sentencers as an alternative to custody, in particular short-term sentences and remand.

In different contexts, these elements may be pursued separately or in conjunction with each other. For example, the Working Group recognises that even standalone

RF EM can prompt thoughts of desistance while a person is being monitored, perhaps encouraged by concerned family members, without necessarily equipping them with the human or social capital to pursue it (<sup>2</sup>Hucklesby 2009). A belief that EM has been helpful in that respect is reflected in the exit questionnaires administered by G4S when orders are completed. It seems sensible, if EM alone can stimulate desistance thinking, for social workers or third sector workers to offer support that enables a monitored person's hopes and intentions to be translated into practice. Swedish research, which examined the effects of early release from prison, showed emphatically that a combination of RF EM and intensive supervision could yield very impressive reductions in reoffending over a three year follow-up period (<sup>3</sup>Marklund and Holmberg 2009).

In a Parole and MAPPA context, on the other hand, while the encouragement of desistance is not absent, considerations of public protection and victim interests may rightly over-ride all others, because of the high risk posed by the people being monitored. In the context of PASS all three elements may come together: sentencers will understandably require community alternatives to short custodial sentences to reduce reoffending and promote desistance, as well as offering forms of control (restrictions on movement) over individuals that other community interventions cannot achieve, even if they cannot entirely replicate the degree of control imposed by imprisonment itself. It is clear from responses to the PASS consultation that many victims' groups are not convinced that *any* community intervention will offer them the kind of respite from crime that even a short prison sentence accomplishes. It may be, however, that that very understandable anxiety is due to familiarity only with the community interventions that are available now, and unfamiliarity with the kinds of control that new EM technologies (not just RF) make available. There is an urgent need for further consultation with the full range of crime victim interest groups to ensure that the diverse ways in which EM can be used have legitimacy with them.

Preventing and reducing further offending reduces the number of people who become victims of crime. It is important to recognise that crime can negatively impact on a single person, a family, business or an entire community. Protecting the public and victims and maintaining public safety is a critical consideration of community justice and the approach must be even handed in its focus on the needs, rights and interests of both victims of crime and people with a history of offending (who may not of course be separate categories). Victims of crime do need to feel that measures taken to control and rehabilitate individuals have legitimacy in their eyes. Reducing the number of victims will be achieved through effective, evidence based policy and we need to understand how EM can play a better part in what works to support individuals and protect victims, recognising that not all victims of crime have the same needs and anxieties.

As noted previously, EM must now be thought of in the plural, as a range of technologies rather than a single technology, as it is now, with only radio frequency monitoring available. All of the monitoring technologies can be used to regulate a person's location and movement and to influence their behaviour, and at different points in the criminal justice system – pre-trial, sentence and post-release. They can

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<sup>2</sup> Prof. Anthea Hucklesby, 'Understanding Offenders' Compliance: A Case Study of Electronically Monitored Curfew Orders'

<sup>3</sup> Fredrik Marklund & Stina Holmberg, 'Effects of Early Release from Prison Using Electronic Tagging in Sweden'

be used as standalone measures and/or as part of a wider package of interventions to aid desistance and/or to support public protection. They enable individuals to remain in the community, maintaining family ties where that is appropriate, to access employment and other community services and to reintegrate gradually after a custodial sentence. They offer a degree of regulation and control that cannot be achieved by other forms of community disposals, and – in some forms - could be used to offer greater protection to victims and to create more viable alternatives to custodial sentences.

The three technologies which may be used to create a new strategy for EM in Scotland are radio frequency monitoring, GPS monitoring and trans-dermal alcohol monitoring. Each technology creates opportunities to regulate the location and movement of an individual and influence their behaviour according to the intended goals of the sentence or the supervision process. This is what is meant by a goal-oriented approach to EM. Those recommending EM should consider, for example, whether home confinement would be useful or whether a series of exclusion zones to protect a victim or to break links with certain influences is required.

Wearing an ankle bracelet alone cannot be relied upon to change the attitudes of the monitored person in the longer term. To aid desistance monitored persons may need to be supported to understand how the regulation of their schedules and locations can become a constructive experience – helping with self-discipline, helping to sustain avoidance of criminal opportunities or criminogenic places. If punishment is the sole intention of monitoring then compliance with specified requirements – obedience - is arguably all that matters. If desistance and rehabilitation are the over-riding purpose, monitored individuals should be encouraged to take responsibility for their own behaviour and embrace the opportunities that EM and other interventions gives them to change their behaviour, or to demonstrate that their behaviour is changing.

Compliance with requirements remains important, even where desistance is the supervisory intention, but not as a punitive end in itself, and where non-compliance occurs it should be judged proportionately and contextually to the nature of the violation and the original offence committed.

Similarly, again, the seriousness of the offence or the risk posed by an individual should not predicate the type of technology used. The intensity, duration and combination (or not) with other interventions should determine the level of EM-imposed. The use of EM as a sentence, part of a sentence, or licence condition or bail is a legitimate consideration across all offence types - low intensity, short duration uses of EM are legitimate and should be considered.

A **goal-oriented approach** to EM can encompass both punitive and rehabilitative goals. Both can be individually tailored to the needs, risk and circumstances of the individual, but only rehabilitative approaches, oriented towards desistance, can, strictly speaking, be considered person-centred. Making EM more person-centred is an important part of our new vision to better integrate EM with other community justice interventions: it needs to be seen as something that actively helps the individual with desistance rather than something that only punishes them. This will require community justice partners to learn new ways of speaking about EM to

individuals, so that they come to appreciate the opportunities it affords them. These include ensuring that people attend pro-social activities, or reducing daily curfew hours as a means of incentivising good behaviour. Such an approach arguably requires a more flexible and sensitive approach to violations and non-compliance than is achieved by a purely punitive approach, or indeed may be being applied to those looking to aid reintegration

Securing the confidence of the judiciary, Social Work Scotland, Scottish Prison Service (SPS), the Parole Board for Scotland, Police Scotland and general public in electronic monitoring as a robust and effective technology will be crucial to increasing its use in a flexible and effective way. Developing and implementing a communications plan which clearly sets out the versatility of the technology and the benefits this affords will continue to be a strong focus as we move forward.

Our vision is for electronic monitoring to make a significant contribution to the Scottish Government's goal to reduce the number of individuals sentenced to prison, to increase the number of people serving their sentences in the community and to further prevent and reduce offending.

- That electronic monitoring is seen as a robust and effective community sentence by the general public, sentencers, victims of crime, Community Justice Partners and other stakeholders
- That electronic monitoring is more frequently used as part of a goal-oriented approach and, where appropriate, as part of a person centred approach within a much wider package of support and control

**This vision drives the recommendations in this report.**

## Background

Electronic monitoring has been widely available in Scotland since 2002. Following a [consultation in 2013](#), and subsequent [Scottish Government response](#), an Expert Working Group was established to consider how electronic monitoring could be better used within the criminal justice system in Scotland, and to align it with existing efforts to aid desistance, support integration, protect victims, support public protection and help reduce further offending.

The aim of the Working Group was to:

Take forward a range of activities designed to increase awareness of current provisions, improve current guidance, identify and affect improvements where required and identify and implement opportunities for greater integration in support of both the desistance journey and public protection.

Following which, provide Scottish Ministers with options and recommendations for:

- improving the current electronic monitoring service for public protection & rehabilitative purpose
- reducing the use of short term custodial sentences
- the use and effectiveness of new technologies
- longer term desistance from crime
- combining with other professional interventions and supportive measures aimed at the social reintegration of people with convictions.

Recommendations would be mindful of the need for risk-based approach and the use of appropriate risk assessment tools.

The Working Group first met on 10 November 2014, with the membership of:

- Sheriff Cubie, Judicial Institute for Scotland
- David Denny, Managing Director, G4S Monitoring Technologies & Services Scotland
- Nigel Ironside, Scottish Prison Service
- Calum Martin, Head of Parole Unit
- James Maybee, Social Work Scotland
- Karyn McCluskey, Violence Reduction Unit
- Temporary Detective Superintendent Gail Johnston, National Offender Management Unit
- Professor Mike Nellis, Strathclyde University
- Peter Conlong, Scottish Government, Justice Analytical Services.

Sheriff Cubie stood down from the Group meetings but has continued to receive all papers and correspondence.

The following members joined during the lifetime of the Working Group:

- Angela Smith, Service Director, G4S Monitoring Technologies & Services Scotland, replacing David Denny
- Louise Johnson, Scottish Women's Aid
- Colin Spivey, Head of Parole Unit, replacing Calum Martin
- Representatives from Police Scotland's Specialist Crime Division
- Representatives from the Centre of Youth and Criminal Justice.

The Group was Chaired by Arlene A Stuart, Head of the Community Justice Operational Unit, Scottish Government and policy and secretariat support was provided by Scottish Government Officials.

Based on the results of the consultation, as part of its work-plan the Group set up four sub-groups to consider:

- the end to end process and non-compliance
- EM as a tool to assist in rehabilitation and reintegration
- communications
- a review of the existing guidance.

The work undertaken by the end to end process, rehabilitation and reintegration and communications sub-groups have informed the information and recommendations contained within this report. The guidance sub-group has completed its work and has reviewed already published revised guidance.

This work is set against the Scottish Government's vision for fairer justice for victims and people with convictions in Scotland; moving towards a society where those who have been involved with the justice system as victims of crime can feel safer and more reassured and those with a history of offending realise their aspirations and be supported to be active, responsible contributors to our communities as fellow citizens.

That vision reflects the values of a modern and progressive nation:

- in which prison (and in particular short-term sentences) are used less frequently, recognising where prison remains absolutely necessary for public safety
- where there is a stronger emphasis on robust community sentences focused on actively addressing the underlying causes of offending behaviour leading to the prevention and reduction of further offending
- where public safety and the protection of victims of crime is prioritised.

The Working Group recognised that there is on-going policy consideration relating to the presumption of short term sentences and have not commented in this report on that matter. Members of the Working Group held divergent views on any extension of the current presumption period and did not reach a consensus view.

## Current Uses of Electronic Monitoring in Scotland

Since 2002, EM has been available in Scotland as a Restriction of Liberty Order (RLO) and since 2006 for those released from prison on Home Detention Curfew (HDC). EM is also used by:

- the Parole Board for Scotland as a condition of licence
- courts as a Restricted Movement Requirement for breach of a Community Payback Order
- as a Movement Restriction Condition for young people
- as a condition of a Drug Treatment and Testing Order.

Currently Scotland only utilises radio frequency technology, monitoring approximately 900 people each day. Radio frequency has proven to be an effective technology to monitor when an individual enters or leaves a specific address, either as part of a curfew to a specific address or – much less frequently - where an away from exclusion zone has been set up to protect a victim, be that an individual or, in some cases, a business.

In essence Scotland has predominantly used EM in a limited fashion, with adults, and solely as a punishment. Its two flagship measures – RLO and HDC - are standalone interventions which are intentionally not integrated with other support services.

During 2015, 1806 new RLOs were imposed and 1 restriction ‘away from’ was made. 86% of these orders were for males and 14% were for females.

For those coming out of prison, 1426 new HDC licences were imposed, 89% of which were for males and 11% of which were for females.

RLO and HDC licences make up the vast majority of electronic monitoring cases in Scotland.

EM is used as a condition of other orders i.e. Restricted Movement Requirements, Parole licence, Drug Treatment and Testing Orders and Movement Restriction conditions as imposed by the Children’s Hearing System. In total these orders equate to 53 cases or 3% of the total orders.

With young people, EM is currently used somewhat differently as part of Intensive Support and Monitoring through the Children’s Hearing System and Movement Restriction Conditions (MRCs). These seek to use EM to reduce the number of young people under 18 within the prison and secure care populations, offering an intensive package of support in addition to the restriction through the “tag” element.

Within the children’s hearing system MRCs are used in three ways;

- where young people place themselves at risk/ are at risk through absconding, self-harming behaviours (e.g. substance misuse) or may experience risk to self through other means (Children’s Hearing (Scotland) Act 2011 - Secure Criteria)

- as a direct alternative to placement in secure care or custody
- as part of reintegration into the community and “step down” from secure care.

Where a children’s hearing wishes to make a young person subject to an MRC, they must be satisfied that the young person meets the criteria for secure care and that all other community alternatives have been exhausted. An assessment of the young person’s suitability for an MRC should include the views of the young person, their parents or carers.

In the original 2002 legislation, it was possible to have EM as a requirement in a probation order. Although this was eventually well used, EM was not set as a requirement of a Community Payback Order (CPO), when this replaced probation orders; – instead EM is used only as a response to breach of a CPO. It is however currently possible to impose a CPO and an RLO concurrently, providing for a robust community sentence where the monitored person would experience both monitoring and criminal justice social work support simultaneously, for all or part of their sentence.

Similarly, in the context of MAPPA, an individual on non-parole licence may be subject to monitoring and additional supervision and support from police and criminal justice social work. Nonetheless, while there is some experience of combining EM with other measures in Scotland it has not been considered as something to formally integrate with other forms of support as a means of promoting desistance and rehabilitation.

In this respect, Scotland is something of an outlier in Europe where the vast majority of EM schemes are integral aspects of Probation Services. In Europe, except as a pre-trial measure, EM is rarely used as a stand-alone intervention. There are two advantages of this. Firstly, international (predominantly US) research strongly suggests that reduced reoffending occurs during the period of monitoring itself (while the tag is being worn) but not necessarily beyond it. Secondly, social work can capitalise on the period of reduced reoffending to support the individual on his or her desistance journey after the point at which electronic monitoring ends.

Since 2002, private service providers have delivered an efficient and professional service to the courts and other criminal justice agencies. Take-up of EM by sheriffs has, nonetheless, been very variable geographically, with some individual sheriffs making frequent and indeed creative use of it. The methods of communication between the service provider and criminal justice social work have changed over time. Both criminal justice social work and the current service provider – G4S – have reflected that integration was more successful when EM was discussed at the pre-sentence stage as part of the pre-sentence information form. There are a number of potential reasons for limited integration, including workload pressure, limited resource and scepticism towards the benefits of EM (because of lack of familiarity with it). EM has been seen, therefore, as “someone else’s business” – the private sector service provider - rather than something that is professionally owned by criminal justice social work. In that sense, criminal justice social work in Scotland has been in a very different position to that of its counterpart European probation services, where EM is understood as a resource to be used for supervisory purposes and, when integrated with social work support, a constructive alternative to custody.

In 2013, the Scottish Government recognised that EM was not being used as strategically or effectively as it could be. The approach in the past had not been sufficiently goal-oriented, either in respect of individuals or in regard to the national scheme as a whole. In addition, newer monitoring technologies, notably GPS satellite tracking and trans-dermal alcohol monitoring (alcohol bracelet) have become available and are being successfully deployed in other European countries.

These considerations informed the public consultation on the future uses of EM undertaken in autumn 2013. Forty-eight bodies and individuals responded, indicating an appetite for change and improvement albeit there was no clear consensus on the nature of that change. In response, the EM in Scotland Working Group was established to explore the issues, and from this work a new vision for EM in Scotland has emerged.

There were in addition a number of other factors shaping the climate in which the Scottish Government was making its decisions about EM not least the publication of an ethical recommendation on the use of EM by the council of Europe and the establishment of a comparative research project on the use of EM in which Scotland was represented and as part of which it commissioned a review of the evidence of EM effectiveness.

## Using New Electronic Monitoring Technologies

The Working Group is clear that the technology, in itself, should not dictate how and in which circumstances electronic monitoring should be used. However, the availability of new technology, namely GPS and Trans-dermal Alcohol Monitoring (TAM), does present increased opportunities to use electronic monitoring in different ways and at different points in the Scottish criminal justice system.

### Radio Frequency Technology

Since 2002, Scotland has used radio frequency (RF) technology as an effective way to monitor an individual's presence at an address, in line with set curfew requirements, or to monitor when an individual enters an "away from" exclusion zone. To date, RF technology has proven to be an effective method of monitoring individuals within the current service although "away from" have not been widely used and are in fact quite a limited way of setting up exclusion zones.

However the principle of confining people with convictions to their own homes was none the less a valid one and the working group sees no reason to dispense with it.

The [SCCJR Scottish and International Review of the Uses of Electronic Monitoring](#), (2015 SCCJR research), carried out by Gill McIvor & Hannah Graham found that:

*"GPS may complement radio frequency, but there is not a clear case for GPS to totally replace radio frequency for use with all monitored people."*

The [European Project: 'Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states'](#) drew the same conclusion:

*"Radio frequency and GPS technologies have complementary advantages and uses"* (Hucklesby et al 2016)

This finding draws on the Council of Europe recommendations for the principles of proportionality and the Working Group therefore recommends that the use of RF technology remains within the Scottish electronic monitoring service.

### GPS Technology

GPS technology enables the monitoring of movement over a wide area rather than the monitoring of presence at a single location. It is widely available and used throughout Europe – although nowhere on a large scale - to monitor an individual's compliance with specific requirements set by the Courts, Probation Services or the Prison Service. GPS works, in conjunction with the mobile phone network, to monitor the movements of individuals, rather than their location at a single place.

GPS offers five behavioural possibilities which can be used separately or together:

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<sup>4</sup> Anthea Hucklesby and Ella Holdsworth 'Electronic monitoring in England and Wales'

- If constant and immediate deterrence is required then real-time tracking, 24/7 is warranted. If less immediate deterrence is required, retrospective tracking (maps of trails provided at a point later) may suffice
- If keeping a monitored person away from an individual victim, or from an area where he/she frequently offends, exclusion zones may be created, and GPS used to monitor their perimeter
- An alternative way to restrict a monitored person spatially – and to keep them away from a former victim - is to create an inclusion zone which limits the places to which they can travel or requires that they be at a certain place
- Hybrid systems which combine retrospective tracking with a switch to real-time tracking if an exclusion zone perimeter (or surrounding buffer zone) is approached or crossed can also be created
- Intelligence gathering via close observation of monitored people's movements and the discernment of patterns within them. Notably though, the Council of Europe Recommendation, which is discussed later in this section, expressed concern that this should never become a major feature of GPS monitoring schemes.

The popular image of GPS is of “*real-time tracking, 24/7*” but this is by no means the only use to which it can be put: other capabilities may be more useful for supervisory purposes.

At the Scottish EM national conference on 26 August 2015, the Cabinet Secretary confirmed Scotland's commitment to introduce GPS technology ***alongside*** RF technology. At that time no commitment was made on which groups of individuals GPS technology would be used for, but the Cabinet Secretary tasked the Working Group with preparing recommendations for its usage.

An important conclusion of the 2015 SCCJR research was that GPS technology, if used as a punishment within the Scottish justice system, must be provided for in statute. In addition, significant consideration should be given to the collection, storage and use of data collected as a consequence of GPS monitoring. The Group agrees with these conclusions and in particular extends the requirement for legislation to underpin any use of GPS.

Recognising the versatility of the technology, the Group agreed that the technology should not be restrained to one risk level or one crime type but that public safety and risk to victims should be a factor in determining suitability for EM, the intensity of use and the type of EM used. EM can be used at different levels of intensity it is never the technology which is proportionate to the offence itself but the rigour and duration of the schedules which is used to support and enforce it, and the other interventions with which it may or may not be combined. Low intensity uses of EM can be used with low risk individuals and higher intensity with higher risk individuals, where consideration of victim safety and public protection will be more important. The focus should be on determining how the technology can be best used to achieve the required level of supervision. This could mean real time monitoring with an immediate response from Police Scotland or the Scottish Prison Service, for public protection purposes or the protection of a victim or it could mean using monitoring

data retrospectively to assist statutory partners in the management of an individual's behaviour. For example an RLO could be used as an alternative to a fine rather than an alternative to custody.

### GPS Technology, Exclusion and Inclusion Zones

In order to consider how the goals of exclusion and inclusion might be helpful in supervision it is important to note that it has been possible to include "away from" conditions in RLOs, in effect creating places from which individuals can be excluded, however, these have never been used widely or systematically. They use the same RF technology as curfews, placing home monitoring units (HMUs) at the entrances or exits (or simply around) the prohibited spaces which will register an alert if the monitored person comes into proximity of the perimeter. Only small spaces like a shop or school can be zoned in this way. The larger the excluded space the more HMUs would be needed to surround and monitor it and this could become prohibitively expensive.

GPS technology creates new and more efficient ways of creating larger and more intricately shaped exclusion zones, tailored, if necessary, to specific street patterns. Any size is feasible - from a house, to a neighbourhood, to whole city if deemed appropriate (as has been used in Germany). For any given monitored person, more than one exclusion zone is possible. The sizing, number and duration of zones raise interesting questions of proportionality. Internationally, the rationale of such zones has primarily been to create safe spaces for victims of crime, or specifically to protect them, so that they are not likely to encounter, or fear encountering, the person who offended against them. Exclusion zones have also been used to temporarily "seal off" areas with which an individual is familiar and where he/she has frequently committed crimes – or the kinds of area where they are likely to commit them. In the first English GPS pilots in 2004-06 a person who had sexually offended and who was known to approach children in play areas in parks was prohibited from entering all the parks in a northern city (over 200 of them). Three particular parks were "geofenced" (had electronic boundaries placed around them), but the person was deliberately not told which three; he was in fact caught in one of them.

It is possible with GPS technology to create neighbourhood exclusion zones in the vicinity of where individuals themselves live, by restricting access to their homes to one particular set of streets – they are prohibited from entering it from any other direction. This model was used in the English GPS pilots with persistent and prolific offending individuals: the exclusion lasted for three months after a period of imprisonment, but was progressively relaxed on occasional days and weekends in the second and third months if the monitored person complied with *all* their supervision conditions, not just the exclusion itself but also keeping appointments with a police or probation officer, and submitting to random drug tests. It proved to be a surprisingly successful motivator of compliance.

GPS technology can also be used to create inclusion zones of varied shapes and size (bigger than the home in which curfews are served) – these too can be neighbourhood or whole town-sized. They impose a spatial restriction on an individual, setting up an external perimeter in which, for a specified period of time, they are contained. Inclusion zones are, over and above a restriction of an

individual's own movements, another possible way of keeping an individual apart from a victim.

GPS technology can be – and from some standpoints should be - combined with a requirement for an overnight curfew (or shorter period), to ensure that a person wearing a tracker is obliged to return home to charge it. While the public image of GPS tracking is literally one of “anytime-everywhere” monitoring of movement, usually in real time, this may not be the best – and certainly not the only – way to help manage individuals in the community. The federal GPS scheme for released sexual and violent individuals in Germany only uses inclusion and exclusion zones: the moment by moment monitoring of their movements and the recording of their trails is considered disproportionate and not strictly relevant to the safeguarding of former or potential victims (people who may have been threatened by the individual). Information about the person's movements is available to the police for investigatory purposes only by request, and requires judicial approval.

### Trans-Dermal Alcohol Monitoring Technology

There are two forms of remote alcohol monitoring; one breathalyser based for use with home confinement the other ‘trans-dermal’ for use on mobile subjects. The Working Group considered the use of Trans-Dermal Alcohol Monitoring - or sobriety bracelets - and how that technology might be used within the Scottish justice system.

Trans-Dermal Alcohol Monitoring uses ankle bracelets to detect the presence of alcohol when it is sweated out through the skin (trans-dermally). All available evidence suggests that trans-dermal alcohol monitoring requires to be set within a legal framework to be effective; experimental voluntary schemes in Scotland have not been successful, and experience seems to suggest that without a legal framework, and responses to non-compliance, it is too easy to yield to impulse to temptation and give up on the monitoring.

Violence Reduction Unit statistics state that from January to September 2015 Scotland had the following number of offences committed where alcohol had been involved:

Serious violence	2416
Common Assault	17965
Disorder/Antisocial	46792
Acquisitive	40052

This is not to say that alcohol is the unique denominator in the crime - but it was a factor. Any individualised approach to addressing alcohol related offending does not preclude the need for broader cultural factors to be pursued.

The 2015 SCCJR research considered how remote alcohol monitoring was used internationally. The report considered reliability and accuracy compared with other methods, impact in terms of reduced alcohol consumption and desistance from crime, cost effectiveness and how remote alcohol monitoring might benefit the Scottish Justice System.

The research concluded that, as a technology, Trans-dermal Alcohol Monitoring had advantages over other alcohol monitoring technologies as it was:

*“less prone to cheating, provides continuous, round the clock monitoring and ....can provide samples regardless of where the monitored person is.”*

The 2015 SCCJR research also highlighted a number of other advantages including as a deterrent to alcohol consumption during the period of monitoring, enabling individuals to proceed to a recovery stage.

In terms of its use within the Scottish Justice System, the research suggested potential for use as a diversion from prosecution, as a condition of bail, as a condition of a community sentence and as a condition of early release from prison.

The Working Group concluded that there was convincing evidence that the technology was effective and that the possibilities for using remote alcohol monitoring in a Scottish setting should be explored further.

Overall, the Working Group concluded that new and improved technology presents further opportunities to use electronic monitoring in different ways and at different points within the Scottish Criminal Justice System. In considering electronic monitoring technology, the Working Group reviewed the evidence for RF, GPS and TAM technology. The timescales for introducing new technology would be dependent on the timing of changes to Primary legislation.

### **Recommendation 1: Technology**

**Radio Frequency** is an effective monitoring technology which should continue to be used within the Scottish electronic monitoring service.

**GPS technology** should be introduced to the electronic monitoring service in Scotland. The Working Group recommends that the use of GPS is not predicated by crime type. GPS technology is versatile and decisions on its use should be made as part of an individually tailored approach, including where it can aid wider public and victim safety and where it can be used supportively to strengthen the monitored person's desistance.

**Trans-dermal Alcohol Monitoring technology** is effective at remotely detecting the presence of alcohol and its use within a Scottish setting should be explored further. Work should, therefore, be undertaken to determine how alcohol monitoring might be used effectively and at which points within the Scottish Justice System. This work could take the form of a **demonstration project**.

## The Council of Europe Recommendation

In 2014, the Council of Europe made a recommendation ([Recommendation CM/Rec \(2014\) 4](#)) about Electronic Monitoring with the aim 'to define a set of basic principles related to ethical issues and professional standards enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned'.

The Recommendation contained 40 principles including;

- Reiterating that prison overcrowding and prison population growth constitute continuing challenges to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions
- Recognising that electronic monitoring, as a restriction of liberty, used in the framework of the criminal justice process, can potentially help reduce resorting to full deprivation of liberty, while enabling, as a standalone or integrated measure, effective supervision of suspects and offenders in the community, and thus helping prevent crime
- Recognising at the same time that electronic monitoring technologies can be used in better and worse ways, and insisting that they are used in a well regulated, evidence-based and proportionate manner in order to reduce unwarranted adverse effects on the life of a monitored person and of concerned third parties, including their families
- Insisting that the use of EM is always subject to judicial authority, or is at least subject to judicial review
- The type and modalities of execution of EM shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances of the suspect or offender and shall be regularly reviewed, and
- Where there is a victim protection scheme using EM to supervise the movements of a suspect or an offender, it is essential to obtain the victim's prior consent and every effort shall be made to ensure that the victim understands the capacities and limitations of the technology.

The Working Group considered the Council of Europe's principles and recommendations in the context of the current service and were satisfied that the electronic monitoring process in Scotland largely comply with these, without being as integrated as it could be. With regards to the future development of the electronic monitoring service, the Working Group was mindful of the European principles throughout their deliberations, in particular around the uses of newer, upcoming technologies to ensure standards were met. The Working Group considers that its recommendations are fully aligned with the European principles and recommendations.

These principles and recommendations will be further considered in the following months, with particular reference to data sharing and retention, in order to ensure that Scottish practice accords with the following European principle: "Data collected in the course of the use of electronic monitoring shall be subject to specific

regulations based on the relevant international standards regarding storage, use and sharing of data.”

## Future Service Delivery

Since its introduction in 2002, the model of service delivery for electronic monitoring in Scotland has remained relatively static. A private service provider is contracted nationally, by the Scottish Government, to provide the monitoring equipment and to install that equipment in line with specified time periods. The service provider then monitors compliance with curfew times set by the Court, Children's Hearing System, Parole Board for Scotland or the Scottish Prison Service (SPS), reports non-compliance to the issuing authority within set timescales and removes the equipment on the date specified by the issuing authority. The service provider's compliance with the contract is monitored by the Scottish Government.

To date, this model of service delivery has provided a robust and effective monitoring service within the terms set for it. Many of the people who have worked for this contract have been with the contract since 2002 and have built up considerable experience and have undoubtedly provided a professional service. However, compared to many other European countries there has been limited integration with criminal justice social work (CJSW) or the third sector or with emerging support offered by the Scottish Prison Service. With both Scotland and England and Wales in mind, the recent EU comparative research on EM states clearly that "Private sector involvement in EM is associated with less integration into broader criminal justice structures" (Hucklesby et al 2016). This clearly has implications for the ways in which Scotland pursues a more integrated approach to EM.

The 2015 SCCJR research suggested that for EM to be most effective in aiding a reduction in further offending there was:

*'moderately strong consensus in the international empirical literature that electronic monitoring should be used in tandem with more rehabilitation-focused supervision and reintegrated support options....in order to effectively maximise opportunities for compliance and desistance from crime.'*

How Scotland could adapt its current service to achieve this integrated approach, while maintaining and indeed building upon existing standards was a key consideration of the Working Group. Even with the limitations of private sector service delivery it is clear that capacities for integration have not been maximised: more could have been done and could still be done within the existing framework.

To ensure that the future service would be fit for purpose, the Working Group considered a number of potential models for future service delivery. These included:

- the status quo
- a centralised model whereby the supervision and support elements were provided by a national group of electronic monitoring experts with statutory/third sector involvement and enhanced IT
- a more local model where the supervision and support was delivered locally by statutory organisations, the third sector, enhanced IT, local expertise and governance.

The Group was not asked to consider whether the technology and monitoring solution should be delivered by the statutory sector.

The Working Group concluded that for the service to be most effective and evidence based, the future model of service delivery for electronic monitoring in Scotland must be more integrated than it has been previously and the more local model/approach adopted. Stand-alone orders which confine people to their own homes will continue to be appropriate for some individuals and should, therefore, remain as a legitimate disposal, but sometimes lower down the tariff. However, for the majority of court orders, for HDC and for EM as a condition of Parole Licence a service should be created where electronic monitoring is better tailored to the personal circumstances of each individual. In addition, for EM to be effective at aiding desistance in the longer term it should be used within the context of a person-centred approach as one tool within a wider package of support.

The future service delivery model would retain a nationally commissioned technology and monitoring service.

To underpin this approach and to build knowledge and capacity within the existing services the Group recommended that:

- **Electronic monitoring champions** should exist within each of the appropriate statutory organisations, the Third Sector and other organisations as appropriate
- **The CJSW Standards** be revised to include robust standards on the use of EM
- **Additional training** is provided to all organisations/agencies as appropriate
- **Existing IT systems** are enhanced to support CJSW to consider EM as a disposal, in line with the Scottish Government's Digital Strategy for Justice
- **A communications strategy** is developed and agreed by all partners. This strategy should identify stakeholders and the most appropriate ways of communicating with those stakeholders as well as setting out a common language which can be used by all partners when communicating about electronic monitoring.

This more local approach would complement the new model for Community Justice in Scotland, encouraging each of the Community Justice Partners to consider EM within their wider planning for community justice; strengthening relationships with critical partners, including the Third Sector.

## Recommendation 2: Future Service Delivery

To be most effective, the future model of service delivery for electronic monitoring in Scotland **must be more integrated** than it has been previously. **Stand-alone orders** will be suitable for some individuals and **should, therefore, remain** as a legitimate disposal.

However, in the majority of cases, whether a court order, HDC or as a condition of parole licence, electronic monitoring must be tailored to **reflect the personal circumstances** of each individual.

Where longer term desistance is the overarching goal, EM should be part of a **wider package of support**, delivered locally by statutory bodies with Third Sector involvement. Its use should not be restricted to particular crimes and need not be restricted to being an alternative to custody.

**The future model** will retain a nationally commissioned technology and monitoring service.

## A Goal-Oriented and Person-Centred Approach

For EM to be used most effectively, its use should be considered alongside the overarching goals for each monitored person and individually tailored to reflect the needs, risk and circumstances of that individual. The versatility of the existing technology and the introduction of new technology provide opportunities for EM to be tailored to each individual's circumstances for example:

- to set exclusion zones for the protection of victims
- as a means of control to assure that an individual is present at an address
- to break a pattern of offending behaviour
- to set curfew times around employment and training schedules.

If the ultimate goal is to use EM to aid longer term desistance, we must recognise that it is most effective when used as part of a person-centred approach and set within a much wider package of support. For example, the introduction of GPS technology presents the opportunity for new forms of electronically monitored control and the positive, pro-social activities that can be used around them.

Some international evidence tentatively suggests that electronic monitoring has a crime reduction effect for the duration of the monitoring period but not necessarily afterwards. This is plausible, because an awareness of being monitored is likely to act as an immediate deterrent, without necessarily enabling or fostering changes in attitudes and behaviour. We know from evidence that EM is a versatile tool which can and should be tailored to reflect an individual's personal circumstances and that if longer term desistance is required, EM should be used as part of a more person-centred approach, within a wider package of support.

The 2015 SCCJR research of the uses of EM recommended that even in terms of risk:

*“one size does not fit all” and that “EM should [also] be tailored in response to the diversity and vulnerability of the monitored person.”*

This has to be read in conjunction with consideration of public safety and risk to victims.

Since its introduction in Scotland, the use of electronic monitoring has largely been used as a punishment to curfew individuals to an address for 12 hours a day, usually from 7 p.m. to 7 a.m. There has also been some limited use of electronic monitoring to exclude individuals from an address, for 24 hours each day.

Scotland is currently an outlier in Europe, in that the vast majority of electronic monitoring court orders and HDC licences in Scotland are stand-alone. In most cases these are set with standard curfew conditions of a restriction to an address from 7 p.m. to 7 a.m. each day.

While a standalone approach will be suitable for some individuals, and therefore should be retained as a legitimate option, it should not be the default option as in the past.

Over recent months, there has been an increased recognition among some Sheriffs and Social Workers that the more flexible use of EM can be used to incentivise good behaviour. For example, progressively reducing the number of hours a person is curfewed to an address, within the period of a court order, provides an element of reward and incentive for the individual. This approach is also true for those leaving prison on HDC.

There is evidence to suggest that providing individuals with person-centred support through the transition phase from custody to community has a positive impact, extending the length of time between offending and ultimately contributing to a reduction in reoffending. Supporting individuals to find suitable housing, to register with a GP, and to access welfare support are fundamental to successful reintegration. For short term prisoners (4 years and under), voluntary throughcare can be requested and is available dependent on local resources; SPS has appointed Throughcare Support Officers who offer support to individuals from 6 weeks before release to 6 weeks post release and mentoring services are available to support young males and women through current Public Social Partnerships (PSPs). Long term prisoners (over 4 years), people convicted of a sexual offence and short-term extended sentence prisoners receive statutory throughcare delivered by CJSW and the Third Sector.

Due to these existing interventions by CJSW, Throughcare Support Officers and the Third Sector, HDC therefore presents a real opportunity to support staged access back to the community.

The Group, therefore, concluded that a goals-oriented approach where EM is tailored to each individual's personal circumstance should be encouraged. Where longer term desistance is the goal, set within a wider package of support always with consideration to public protection and the protection of victims.

Defining what 'support' looks like within a person-centred approach and who is best placed to provide that support requires further scoping. The Working Group recognises that the levels and types of support required will differ from individuals and may encompass:

- motivating and supporting an individual to desist from further offending
- preparing and implementing a case management plan
- keeping said plan to schedule
- organising levels and types of contact and resources to support each individual
- supporting the individual to achieve the intended outcome of each intervention
- Referral to treatment or intervention programme.

### **Recommendation 3: A Goal-Oriented and Person-Centred Approach**

For EM to be used **most effectively**, its use should be considered in line with the overarching **goals for each monitored person** and tailored to reflect the needs, risk and circumstances of that individual.

Where longer term **desistance** is the ultimate goal, EM should be **set within a wider package of support** provided by statutory bodies with Third Sector involvement.

To determine what 'support' may comprise of, how it is best delivered and, as far as possible, the associated resource implications, the Working Group recommends that a **demonstration project** is undertaken.

## Compliance and Enforcement

EM technologies can be used to *encourage* compliance with the requirements of an order, and the data generated used to *inform and enable* enforcement decisions in the event of violations. Violations always require a response but, dependent on the nature of the non-compliance, enforcement need not mean the imposition of more punitive measures.

### Supportive Monitoring and Assisted Compliance

Integrated approaches to EM can take two forms. Firstly, EM can be used in ways which are supportive of the broader rehabilitative aims of an order. This is “supportive monitoring”. Secondly, because EM can be an onerous and demanding experience for monitored people and their families, support may be needed to assist completion of a period of monitoring. This is “assisted compliance”. The two approaches may overlap in practice but are in fact distinct:

*“Supporting compliance should not in itself be confused with the support and help necessary to achieve longer-term rehabilitation and desistance. Social work with those who offend should have a larger purpose than enabling compliance with EM”* (<sup>5</sup>Nellis, 2015).

The Working Group was unanimous in its support for effective management of compliance to help the individual and their family, where it is appropriate and safe, to comply with Order requirements. Non-compliance criteria should be seen as an opportunity for the individual to understand their responsibilities and to learn something that could enable progress. While placing trust and holding the monitored person to account for not complying can nudge them towards desistance, the monitored person should be given the kind of support which enables them not just to comply with the order but to change their behaviour for the longer term. Distinguishing and understanding different causes of non-compliance (for example drift in motivation, a lack of confidence, an unanticipated event or crisis, or wilful refusal) can enable a graduated and tailored response.

Supporting individuals to comply with electronic monitoring conditions is critical to preventing and reducing further offending in the longer term. Depending on the risk posed, non-compliance may be seen as an opportunity to work with the individuals, recognising individual life circumstances and preventing every potential non-compliance instance as being regarded as an opportunity for punishment by the higher authority.

### Incentives for Compliance

Requiring compliance ought to be more than a demand for obedience and the threat of more severe punishment. If monitored people experience EM as helpful, and consistent with the expectation that they desist from crime, they are more likely to regard it as legitimate. Offering incentives to compliance may reduce frustration and

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<sup>5</sup> Mike Nellis, [‘Standards and Ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of Electronic Monitoring’](#)

increase commitment to completing an order. The two obvious ways of creating incentives to, and rewarding, compliance with EM as a sentence would be:

- to permit the possibility of early revocation of an EM requirement if compliance in the early and middle stages of it are acceptable
- to make the curfew hours progressively less restrictive towards the end of the order.

For it to work as a motivator for compliance, the possibility of early revocation would need to be known in advance to the individual and be accepted by sentencers, SPS and the Parole Board for Scotland. Making an order or Licence less onerous has the double advantage of creating an incentive/giving a reward and helping the individual adjust gradually to life without the tag/curfew. Indeed, it may be that the latter is a better rationale for graduated restrictions – rather than any incentive or reward - particularly where people are being subject to EM for a long period of time.

There is no direct empirical evidence that EM works better this way simply because it has not been specifically researched, but experiential evidence from a number of jurisdictions suggests it has value. If Scotland was to adopt this approach, this is an area where Scotland could inform the International research by creating a Scottish evidence base.

Similar issues about incentives and rewards apply to the use of EM in the context of HDC and parole licence.

It should be borne in mind that the idea of “early revocation” may be tied to a punitive model of EM use, premised on the idea that it is something which an individual will want to give up as soon as possible. This may be less true if a more rehabilitative model is in operation, where an individual has been encouraged to think of EM as something that helps with self-discipline and desistance, and has experienced it as such. Such a person may be reluctant to give up EM, if they (and their families) feel that it gives them a constant reminder not to offend. Dependency of this kind may never be common with EM, but it has arisen on voluntary GPS schemes in England, and the issue then becomes one of helping people to anticipate and prepare for life without it.

Short, graduated periods of freedom – removing or switching off the ankle bracelet for a few days, allowing people to develop confidence in its absence, then putting it back on – may be the way to do this. It must be recognised that this approach may incur additional cost and will not always be appropriate, subject to risk and other considerations.

Punitive models of EM use deliberately make the regime onerous and compliance difficult. Curfewed individuals, for example, are usually restricted to their accommodation. A more rehabilitative model of EM-use might see such restrictions as gratuitous. A more relaxed regime may help an individual to understand that EM is being used to assist and support their desistance efforts; this too may be an incentive to comply and thereby providing evidence to decision makers of the benefits of the rehabilitative approach.

The Working Group agreed that the future approach to compliance must include an adequate and proportionate response to non-compliance as well as supported compliance building in a degree of flexibility and trust which recognises individual life circumstances as well as preventing all potential non-compliance instances being returned to decision makers.

The Working Group noted that assisted compliance might be best delivered by statutory organisations in partnership with the Third Sector. To support this, common data sharing protocols will need to be in place and will encompass the Scottish Courts and Tribunal Service, SPS, the Parole Board for Scotland, Local Authorities, the EM service provider and the Third Sector.

## **Non-compliance**

The current non-compliance criteria for EM have been in place for some time. During the process of review, the Working Group took a number of points into consideration. In particular members were keen to ensure that amendments to the non-compliance criteria would result in a more consistent approach to managing non-compliance, which could be adopted throughout Scotland. The new approach would need to be robust and proportionate enough to provide protection for victims, support public safety as well as give confidence to the Judiciary and Governors.

For RLOs, amendments to the non-compliance criteria would need to be robust enough to be accepted by Sheriffs, particularly those Sheriffs who currently set more robust reporting requirements (approx. 30% of the current caseload is made up of Sheriffs who set more robust reporting requirements).

For HDCs, amendments to the non-compliance criteria would need to be streamlined, flexible, simplified - and for consistency - accepted and utilised by all prison establishments in Scotland. The response to HDC non-compliance has, in the past, lacked consistency. These inconsistencies are being addressed with additional training for HDC Co-ordinators as well as night and weekend duty managers. Simplified and consistent non-compliance criteria will also help address this issue.

#### **Recommendation 4: Compliance**

Ensuring that **effective structures and criteria** are in place to support compliance and manage non-compliance are crucial to contributing to a long term reduction in further offending, while maintaining electronic monitoring as a robust community sentence.

**For Court Orders**, to strengthen Shrieval confidence in electronic monitoring as a robust disposal, **two reporting options** for reporting non-compliance should be developed. This two tier approach (**standard and intensive**) would provide Sheriffs with an option to set more stringent reporting requirements for individuals as necessary while ensuring a more **consistent approach** to non-compliance reporting throughout Scotland.

**For HDC**, amendments should be made to **streamline** the current non-compliance criteria. The streamlined criteria should be accepted and utilised by all prison establishments in Scotland.

Supporting individuals to comply with electronic monitoring conditions is critical to reducing further offending in the longer term. Some instances of non-compliance should be seen as an opportunity to work more closely with the monitored person, recognising individual life circumstances and preventing every potential non-compliance instance being returned to decision makers. How compliance is best supported should be explored as part of the aforementioned **demonstration project**.

In partnership with individuals, agencies and organisations including the Judiciary, Police Scotland, SPS, the Parole Board for Scotland, Criminal Justice Social Work, Victims, the Third Sector and the service provider, response levels to non-compliance should be defined, agreed and set out in a **Response Framework**. This Response Framework will also be fundamental in determining how GPS technology should be incorporated into an individual's order or licence conditions.

## Future Uses of Electronic Monitoring

Since its introduction in Scotland, EM has been used at fairly limited points in the Scottish criminal justice system and in a tactical rather than strategic manner.

As mentioned previously, current legislation allows for the purpose of monitoring compliance with a:

- restriction of liberty order (RLO)
- restricted movement requirement (imposed as a sanction for breaching a community payback order (CPO))
- release licence (such as for prisoners on home detention curfew (HDC) or licence conditions such as those recommended by the Parole Board)
- curfew condition in a Drug Treatment and Testing order (DTTO)
- movement restriction condition within a compulsory supervision requirement

Criminal Justice Social Work (CJSW) complete risk and needs assessments on all individuals who have offended. The Level of Service & Case Management Inventory (LS/CMI) was introduced in Scotland from October 2010, and is the common method of risk assessment within CJSW and SPS. It is compliant with the principles of the FRAME document ([Framework for Risk Assessment, Management and Evaluation](#)) – a model of best practice for managing individuals which is promoted by the Risk Management Authority and endorsed by the Scottish Government. In responding to and communicating risk, this is expressed in terms of the nature, seriousness, pattern and likelihood of offending, and the risk of serious harm and imminence, including assessing the risk to individuals or vulnerable groups and how serious the harm to a future victim might be. In addition, other specialist risk assessment tools are used for particular categories of offences such as sexual offending and domestic abuse.

The introduction of new technology increases the opportunity to extend the use of electronic monitoring to different points in the Scottish Criminal Justice System, both within a community setting and within the custodial estate. **In recognising these opportunities it's important to note that EM will not be suitable for every individual and that EM should only be used where it has been risk assessed as appropriate.**

With this in mind the Expert Working Group recommends that the use of electronic monitoring is extended to include:

**Recommendation 5: In the community:**

- Community re-integration following prison
- As an alternative to remand and support to pre-trial conditions
- As an alternative to short prison sentences
- Voluntary schemes for persistent offenders and those on the cusp of serious and organised crime
- Better support young people as part of an alternative to secure care or as part of a step-down process from secure care
- As an alternative option to fines
- As a condition of a Sexual Offences Prevention Order
- As a condition of a Risk of Sexual Harm Order
- As a condition of a Structured Deferred Sentence.

**Recommendation 6: Within the custodial estate:**

EM offers the opportunity to utilise technology to enhance public confidence in those individuals who are progressing through the prison system and provide additional options for prison managers to test those prisoners who remain on the margins of acceptable risk. This may increase the number of prisoners who progress to less secure conditions and provide them with the confidence to live successfully with the flexibility of an individual monitored plan.

EM may be utilised on some occasions for **work placement, home leave, future female community custody units and community access** from closed establishments. This may also include options for **Throughcare Support Officers** to help prisoners transition back to the community prior to release to attend community based appointments and as a support to a desistance model.

In coming to these recommendations the Working Group consulted widely with stakeholders, considered the international evidence base and international practice.

The rationale for recommending each new use is set out below:

## **In the community**

### **Community reintegration following prison**

There is widespread stakeholder support for the use of electronic monitoring to support community re-integration following prison.

HDC and parole licence enables prisoners who are nearing the end of their sentence, are considered low risk to public safety and meet statutory criteria to serve the last portion of their sentence in the community. EM is also available as a condition of a non-parole licence. As mentioned above, for long term prisoners, people convicted of a sexual offence and short-term extended sentence prisoners, their release on licence is supported by statutory throughcare delivered by CJSW and the Third Sector. Take up of support for short term prisoners is on a voluntary basis and is provided by CJSW, Throughcare Support Officers and as mentoring by the Third Sector.

Increasing the number of individuals released on licence with EM, and ensuring support is available to them, presents a unique opportunity to aid prisoner reintegration while maintaining an element of control.

In addition, there may be opportunities for EM to support prisoner reintegration prior to an individual being released. For example, EM could be used to enable an individual to attend a housing appointment to secure accommodation or to register with a GP prior to their liberation date.

The home assessment visit, undertaken by CJSW before a person is released on HDC ensures that the proposed accommodation is suitable, that specific risk factors have been assessed and that family members are content to have the individual under curfew at that address. This home assessment visit also provides a unique opportunity to engage with the prisoners family members prior to the individual's release.

### **As an alternative to remand and as a support to pre-trial conditions**

Research has suggested that electronic monitoring with bail could help achieve a number of different outcomes such as reduce the use of remand, reduced bail non-compliance, reduced offending and reduced costs. Recent Scottish Prison Service statistics show a reduction of 2% in the average prison population between 2013-14 and 2014-15. While this decrease was driven by a fall of 3% in the sentenced population, the remand population increased by 3%.

There are a number of reasons for opposing bail which are set out in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. These are:

- Any substantial risk that the person might if granted bail—
  - (i) abscond; or
  - (ii) fail to appear at a diet of the court as required;
- Any substantial risk of the person committing further offences if granted bail;

- Any substantial risk that the person might if granted bail—
  - (i)interfere with witnesses; or
  - (ii)otherwise obstruct the course of justice,
 in relation to himself or any other person;
- Any other substantial factor which appears to the court to justify keeping the person in custody.
- Where there is a charge of a serious offence (violence/sexual/drug trafficking) with a previous conviction for the same/similar offence, bail is only to be granted in exceptional circumstances (Section 23D of the Criminal Procedure (Scotland) Act 1995).

It's important to note that the use of EM to support bail as an alternative to remand would not be appropriate in every case. EM should only be used as an alternative to remand where it has been risk assessed as appropriate. Where this is the case, there is widespread stakeholder support for its introduction. Indeed, in 2011, the Cabinet Secretary for Justice appointed an independent [Commission on Women Offenders](#) whose remit was 'to consider the evidence on how to improve outcomes for women in the criminal justice system; to make recommendations for practical measures in this Parliament to reduce their reoffending and reverse the recent increase in the female prisoner population.

Specifically in relation to EM, the commission recommended that: 'The Scottish Government examines further the potential of using electronic monitoring as a condition of bail, taking into account the findings of the pilot conducted in 2008.

Introducing electronic monitoring as a condition of bail brings with it an element of 'reduced risk' in managing those on bail. It should be acknowledged that pre-trial EM can legitimately be standalone, although, in some circumstances Third Sector bail support has been proven to assist individuals to comply.

Existing RF technology can effectively be used in a pre-trial setting to curfew an individual to an address where that is appropriate. In addition, the introduction of GPS technology and the opportunity to set geographical exclusion zones may also be seen as helpful to protect witnesses and alleged victims at the pre-trial stage.

The Working Group deliberated electronic monitoring with bail **for those who do not pose a risk to public safety** and considered the following four options:

- **Non-compliance of bail related offences.** Standard bail is widely used across courts with the number of bail orders made relatively static over the last 5 years. Courts can already apply special conditions and the compliance rate is high. However, 18% of bail orders imposed are returned to court for bail-related offences (bail related offences include breach of bail conditions and failure to appear in court). The percentage of those sentenced to custody for bail related offences is approximately 25% (in 2014-15, this equated to 2,130). According to the statistics available, *EM for bail related offences, of a non-violent nature, could reduce the number of individuals in custody, realising benefits for desistance, impact on families and reducing costs. In*

*this way, resources could be better targeted to preventing and reducing further offending.*

- **Supervised bail** is an additional condition whereby *those who would otherwise be put on remand are released on bail* on the condition that they meet with a bail supervisor a specified number of times a week, with the aim of supporting the individual to comply with bail conditions and reduce remand numbers. An evaluation of supervised bail was conducted in 2012. This evaluation concluded that while supervised bail cannot guarantee compliance, it is a useful tool for encouraging and supporting compliance in a way not possible with standard bail conditions. *Electronic monitoring with supervised bail could potentially increase the number of individuals considered for support pre-trial. It is recognised that complementary work would be required to encourage the use of bail supervision.*
- **Police liberation on undertakings** are used by the police routinely to release people from police stations when they have been charged, arrested and liberated to appear at a specified court on a specified date and time. This is an alternative to keeping a person in custody to appear at court the next lawful day. When released, subject to an undertaking, a person may be subject to “standard conditions” which means that they must be of good behaviour and attend court on the specified date. It is also possible for the undertaking to include “special conditions” for the purpose of ensuring that the standard conditions are observed. The introduction of electronic monitoring, as a condition of a bail undertaking, could strengthen the protection arrangements for victims and witnesses. *EM with police undertakings could potentially increase the number of individuals considered for support pre-trial, subject to proportionality, robust risk assessment and consideration of the 2007 Act provisions.*
- **Investigative Liberation.** The Criminal Justice (Scotland) Act 2016 introduced Investigative Liberation. This allows the police to arrest a person for a crime punishable by imprisonment, interview them and release them for further enquiries, such as waiting for forensic evidence. The introduction of electronic monitoring with investigative liberation could strengthen the protection arrangements for victims and witnesses. *As with bail undertakings, electronic monitoring with Investigative Liberation would require being justified and proportionate.*

It is worth noting that it would require primary legislation to introduce the option of electronic monitoring with bail.

## As an alternative to short prison sentences

The Working Group was clear that EM can contribute towards the Scottish Government's vision:

- in which prison (and in particular short-term sentences) are used less frequently, recognising where prison remains absolutely necessary for public safety
- where there is a stronger emphasis on robust community sentences focused on actively addressing the underlying causes of offending behaviour leading to the prevention and reduction of further offending
- where public safety and the protection of victims of crime is prioritised.

The current daily prison population in Scotland is approximately 8,000 which reflects one of the highest incarceration rates in Western Europe at 146 per 100,000 of the population. This is more than twice as high as some of our Nordic neighbours despite their similar experiences of declining crime rates and at a time when reconviction rates are at a 17-year low and recorded crime is at its lowest level in 42 years it ought to be possible to seriously rethink the way that Scotland uses custody.

The Scottish Government has made clear its commitment to tackle this by: announcing the innovative new model for the female custodial estate; consulting on strengthening the current presumption against short sentences; and investing a further £1.5 million annually in community justice services for women. In addition, the community justice budget with around £100 million funding each year to Community Justice Authorities working with a range of organisations and partners to help to deliver community sentences, support the rehabilitation of individuals and reduce re-offending.

There is a particular commitment to reduce the use of short prison sentences which are not effective at preventing further offending. <sup>6</sup>Statistics published in March 2016 show that individuals released from a custodial sentence of 6 months or less are reconvicted more than twice as often as those given a Community Payback Order and that 61% of individuals imprisoned for 3 months or less are re-convicted within a year. The evidence indicates that imprisonment may in fact increase long-term offending by weakening social bonds and decreasing job stability.

As discussed earlier in this report, if used as part of a goal-orientated approach tailored to individual circumstances, EM can enable individuals to remain in the community, with their families, while preserving accommodation and/or employment - the very things that evidence shows support desistance from offending. If combined with wider support, EM can aid longer term desistance, reducing further offending and the impact that has on communities. It is the view of the Working Group that when using EM as an alternative to a short custodial sentence, this should always be combined with supervision.

Importantly, EM also gives sentencers an option to impose an element of control, be this as a direct punishment by curfewing an individual to an address for up to 12

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<sup>6</sup> [Criminal Justice Social Work Statistics In Scotland: 2014-15](#)

hours per day or to protect a victim by setting an exclusion zone or 'away from' around a particular address for 24 hours per day. The introduction of GPS will expand these opportunities further.

Combining a tailored approach to EM, within a wider package of support and with set restrictions provides a robust community sentence and alternative to short prison sentences.

### **Exclusion Zones as a Component of an alternative to a short prison sentence**

The sophisticated spatial restrictions that GPS tracking enables could make an important contribution to the use of EM as an alternative to short custodial sentences. As noted above, short custodial sentences contribute nothing to rehabilitation whilst disrupting community ties and social bonds. In some cases however, the imposition of short custodial sentences can at least offer short-term respite for victims, and this is felt by some to have intrinsic value irrespective of whether or not longer term problems are addressed. There is no easy solution to the question of respite, but the use of GPS monitored exclusion and inclusion zones potentially offers a solution when used as an alternative form of boundary to a prison wall. Whilst such zones are not as incapacitative as if an individual is imprisoned, they offer a degree of spatial restriction in a way that would not otherwise be enforceable. The safety, wellbeing and protection of victims is an important consideration, and the reassurance and respite to victims that exclusion or inclusion zones are deemed to offer would be in part determined by police response.

### **Voluntary schemes for persistent offenders**

Voluntary GPS schemes have been on-going in England and Wales since 2010. While the process of how these voluntary GPS schemes are delivered varies slightly between police forces it generally operates along the original structure piloted by Hertfordshire police force:

- The GPS scheme is delivered through the Integrated Offender Management Scheme (IoM), a partnership approach to offender management which includes both Police and the Probation Services
- Voluntary GPS is offered to individuals often as they are leaving custody, but may also be used with other types of IoM clients. Volunteers are identified as those being at a stage of wanting to change their behaviour
- Those who accept the offer are tagged and sign a contract indicating they agree for the GPS data to be collected, stored and even used as evidence against them by police
- The management of the scheme is carried out by local police forces and is usually passively monitored. Police officers will generally check the GPS data retrospectively roughly once a day
- There is no breach mechanism for participants; the pilot mainly aims to gather 'intelligence' on volunteers.

In its discussions the Working Group noted the innovative use of GPS technology but raised concerns over the purpose of the pilots in England and Wales, as they seemed overly focused on the surveillance of individuals, rather than in promoting

desistance or rehabilitation. Nonetheless, the group recognised the clear potential in offering GPS equipment to individuals on a voluntary basis, particularly alongside wider support packages. For instance it could be used to provide supplementary information on individuals to enhance social work interventions or as a protective measure for individuals on the cusp of organised crime to prevent them from becoming further involved in criminal activities.

It was clear that further discussion on the use of voluntary EM was required before specific applications for voluntary GPS schemes could be fully outlined.

### **As an alternative to secure care or as part of a step-down process from secure care**

*“Considering the use of Movement Restriction Condition’s (MRC’s), one form of EM, there are varying drivers that link generally to the aims of EM including; reducing recidivism, increasing individual accountability and protecting the public” (Nellis 2014).*

Scottish Government Guidance on the use of MRCs in the Children’s Hearing System was published in 2014. The Centre for Youth and Criminal Justice (CYCJ) paper [“Movement Restrictions Conditions in Youth Justice”](#) written by David Orr and published in December 2013 provides further information on the use of MRCs in youth justice, that paper is due to be updated later this year.

[The youth justice strategy Preventing Offending: Getting it Right for Children and Young People](#) sets out priorities for 2015 to 2020. Priority themes are: advancing the whole system approach, improving life chances and developing capacity and improvement. Within the strategy, there is a focus on community alternatives to secure care and custody. The strategy aims to provide robust alternatives to secure care and custody (including remand) using options such as MRCs, whilst being cognisant of the need to ensure public safety. High quality assessments and risk assessments are undertaken to support this.

The Advancing Whole System Approach Working Group has prioritised looking at this area of work over the next year. This will include the Centre for Youth and Criminal Justice publishing further research on the use of MRCs, promoting their use through events within local authorities, Children’s Hearing Panel Members and Children’s Reporters and through a national conference on high risk early next year (Simpson 2016 awaiting publication).

Partnership working will remain integral to the delivery of this strategy. Increasing the use of MRCs and of electronic monitoring will help achieve the strategy priorities.

### **As an alternative option to fines**

Fines have invariably been understood as a purely punitive – indeed straightforwardly retributive - measure. An element of deterrence may also be intended by the court which imposes them, and they may be experienced as such by

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<sup>7</sup> Mike Nellis, ‘Understanding The Electronic Monitoring of Offenders in Europe: expansion, regulation and prospects’

the person paying the fine. There is, however, no meaningful sense in which fines can be used to change a person's attitudes and behaviour. A fine is a merely transactional penalty: compliance is simply a matter of pay/don't pay. The utility of this penalty is not disputed, but when applied to low income individuals they have two obvious drawbacks. Firstly they may impose undue hardship on the individual's family.

Secondly, it may be impossible for the court to impose a fine that is proportionate to the seriousness of the offence because it would be beyond the means of the individual to pay it. In this context a period of RF EM could be an appropriate alternative – a “fine” on time, rather than a fine on income. It would be akin to a Restriction of Liberty Order, but would not necessarily be an alternative to custody, in the same way that fines sometimes are, sometimes not. EM in this form can also have adverse social and emotional consequence for other family members, but it does not have collateral financial consequences. Compliance, for the offender, is similarly binary: presence/absence instead of pay/don't pay. There would be no expectation of social work support for EM in this context, any more than there routinely is for fines; this would remain a purely punitive use of EM.

### **As a condition of a Sexual Offences Prevention Order (SOPO)**

Sexual Offences Prevention Orders (SOPOs) and Interim SOPOs are intended to regulate or otherwise control, the behaviour of those convicted of a relevant offence.

A SOPO is made only for the purpose of protecting the public or particular members of the public, from serious sexual harm. An order may prohibit the individual from doing anything specified in it, or positively oblige them to carry out a specified act or course of conduct. The duration of a SOPO cannot be for less than five years.

Electronic Monitoring could be included within a SOPO, where the court is satisfied that it is necessary for the purpose of protecting the public, or any particular members of the public, from serious sexual harm from the person, serious sexual harm being any serious physical or psychological harm.

The order must be tailored to the purported risk and must not be oppressive or disproportionate. It must also be capable of being policed effectively and will form part of that individual's Risk Management Plan.

### **As a condition of a Risk of Sexual Harm Order (RSHO)**

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 introduced Risk of Sexual Harm Orders (RSHO) as a tool to achieve the goals of protecting children and of proactively targeting those who pose a risk. They are preventative orders which can prohibit an individual from doing anything specified in it, or positively oblige them to carry out a specific act or course of conduct.

The Chief Constable can apply for a RSHO where it appears that the person has on at least 2 occasions done any of the following acts:

- engaged in sexual activity involving a child or in the presence of a child

- causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual
- giving a child anything that relates to sexual activity or contains a reference to such activity
- communicating with a child when a part of the communication is sexual.

There is no minimum age for an individual for whom an RSHO can be sought. The minimum duration of an order is 2 years.

Where a person has a previous conviction for crimes of a sexual nature, a Sexual Offence Prevention Order (SOPO) should be considered rather than an RSHO.

Conditions that might be considered include

- Restrictions based around contact with children
- Restrictions relating to entering areas where children might be present
- Restrictions on employment or volunteer work which would include contact with children.

EM could provide an ability to monitor compliance with these conditions.

### **Structured Deferred Sentence (SDS)**

The Structured Deferred Sentence is a low-tariff intervention offering the courts the option to provide a short period (usually around 3-6 months) of intensive supervision by CJSW to those who offend post-conviction but prior to final sentencing. It is intended for individuals who have offended with underlying problems such as drug or alcohol dependency, mental health issues or learning difficulties and allows for intervention work to be carried out without the imposition of a community sentence.

Structured Deferred Sentences are designed to provide courts with a less invasive sentencing option which benefits the individual by providing them with support to help change their behaviour and address their needs, and in turn can potentially lead to a reduced sentence. At the end of the period of intervention, the court retains the discretion to pass sentence in any manner that would have been appropriate at the time of conviction, but with the benefit of information from the supervising officer in relation to the period of deferral.

SDS with EM could provide more structure to the intensive supervision for all or part of the deferral period, and may facilitate SDS for higher-tariff individuals.

### **Within the prison estate**

EM offers the opportunity to enhance public confidence in the management of those individuals who are progressing through the prison system.

For those prisoners who are on the margins of acceptable risk, introducing the use of EM within the prison estate may provide additional options for prison managers to test those individuals while maintaining public safety. This approach has the potential to increase the number of prisoners who progress to less secure conditions

and provide them with the confidence to live successfully, supporting rehabilitation and the eventual integration back into the community.

### **Domestic abuse and violence against women**

Internationally there has been wide spread interest in the use of GPS tracking in the context of responses to Domestic Abuse, particularly at the pre-trial stage. The goal in this instance is to keep the alleged perpetrator and the victim apart from each other, by tracking the former and placing an exclusion around the latter, and in some instances giving the victim a mobile alarm which alerts her and the police if he comes within proximity of her (accidentally or deliberately). No perfect or uncontentious model of EM use in a domestic abuse context has yet been devised, but there is evidence from the U.S. that suggests some victims, though not all, have found it a useful, effective intervention at the pre-trial stage. The Working Group is clear that GPS tracking is not in itself a full solution to the risks posed by domestic abuse perpetrators (alleged or sentenced), let alone a means of changing attitudes or behaviour.

It can, however, add a level of control in situations where none (or less) existed before, both in relation to bail and investigative liberation and its use should not therefore be ruled out, where victims understand and are willing to accept and consent to this arrangement.

Using GPS tracking and exclusion and inclusion zones to keep the victim and perpetrator apart at the sentencing stage would be possible with the general enabling legislation that the Working Group envisages.

The 2015 SCCJR research highlighted that there was a need to address the current knowledge gap in Scotland and for independent research to be commissioned with victims of crime, people with convictions and families.

The use of GPS technology could offer victims more choices and support their safety, especially those who wish to stay in their own homes, if delivered appropriately. The developments in EM must recognise, as a priority, the needs and vulnerabilities of partners and children experiencing domestic abuse.

Effectively challenging domestic abuse requires adequate skills and resources in the judicial, statutory and third sectors, and the response may need to be different at different stages in the criminal justice process. In the context of more general work to devise evidence based strategies for dealing with domestic abuse, and on the specific basis of the U.S. research the Working Group is not adverse to further consideration being given to the use of GPS but we recognise that it can only be pursued if victims and their representatives are fully engaged in the process.

## Future Legislative change

The Expert Group recognises that amendments to primary legislation will be necessary to enable all of the recommended future uses, set out above, to be introduced. In addition, the following specific legislative changes are recommended:

### Recommendation 7: Legislative change

- Removing **Section 16 and 17 Statutory Exclusions** for Home Detention Curfew
- Providing for electronic monitoring as a **requirement of a Community Payback Order**
- Introducing legislative changes to allow for the **introduction of GPS technology**, including the necessary amendments to Data Protection legislation
- Enabling legislation to provide for a demonstration project on **Remote Alcohol Monitoring**
- **Redefining an RLO** as a standard standalone community sentence - that is not only considered as an alternative to custody.

The timescales for these changes are dependent on the timing of Primary legislation and the Group recognise that the passage of legislation is a matter for the Scottish Parliament.

### **Section 16 and 17 Statutory Exclusions (Prisoners and Criminal Proceedings (Scotland) Act 1993)**

There is growing recognition amongst stakeholders that HDC can be helpful in supporting prisoners to reintegrate back into their community, subject to risk assessment on a case by case basis. Currently, prisoners who have previously been released on early release at the half way point of their sentence and who have been recalled for non-compliance with their licence conditions (section 17) or for committing a new crime (section 16) are permanently excluded from applying for HDC again. This does not recognise nor afford opportunities for people to demonstrate human development progress over time in terms of their rehabilitation and improvements in compliance and motivation to desist.

The Group therefore recommend that Section 16 and 17 Statutory Exclusions are removed and will include statistics as evidence in the final report. **Removing these exclusions will require secondary legislation.**

## Information and data sharing and retention

The legislative framework and right to privacy context is provided for in both the Data Protection Act 1998 which covers the use of personal data and Article 8 of the European Convention on Human Rights which provides that everyone has the right to respect for his private and family life his home and his correspondence.

Given the nature of the data collected, which includes details of an individual's movements, decisions on how EM data and information is generated, stored, analysed and accessed is an important consideration. **The Working Group, therefore, recommends that a clear framework be put in place to ensure that the control and processing of data collected as a result of electronic monitoring is appropriate and that such data is only used for the purpose for which it was intended.**

The requirement for such a framework comes into sharper focus with the introduction of GPS technology and the locational data that will be produced. This additional data will raise data protection and data retention considerations due to the amount of data that could be collected on any one person and the ease with which it could potentially be aggregated and analysed to discern patterns. When the potential for live tracking of an individual's whereabouts is also possible, although the Working Group have not recommended this at this stage, further issues arise around the use of this information.

### The Integration and Rehabilitation sub-group

The Integration and Rehabilitation sub-group of the Working Group considered information sharing in more detail as part of its remit to consider how best to use electronic monitoring more effectively to support a person-centred approach.

Their findings concluded that effective information/data sharing can support multi-agency working. To support the appropriate sharing of personal information, new information sharing protocols and data retention schedules should be agreed and put in place. This would ensure that information is shared in a way which satisfies both the legal and professional obligations of the agencies, their respective staff and the legitimate expectations of the individual being monitored.

### Improvements in sharing information

The sub group concluded that improved information sharing was essential to effectively communicating the risk, nature, seriousness, pattern and likelihood of further offending. The following improvements were suggested by the sub-group to ensure more effective information sharing in support of improved practice and risk:

- Where an individual is released from custody on EM with supervision and support, partners including SPS, Police Scotland, the Parole Board for Scotland, the EM service provider, CJSW, the third sector and MAPPA (if applicable) must work together to share information in advance of the person being released to ensure that an effective support package is in place upon the person's release

- Similarly, when Courts are considering ordering a community sentence and the CJSW report and home assessment report has determined that additional support is required, relevant information must be shared between Courts, CJSW, the EM service provider and the third sector to ensure that said the support is in place timeously
- Where an EM Home Assessment Report has been completed by CJSW for an HDC or an RLO, CJSW should receive feedback on the outcome of the report. CJSW should also receive feedback on whether the individual has successfully completed their order
- Where a CPO and an RLO are ordered concurrently, the Courts must inform the service provider. The service provider must then share relevant information with the supervising officer, as defined in the contract, within the timescales set out in the contract.
- With regards to engagement with victims, the sub-group identified the need to develop a process for sharing information with victims. In particular, where an 'away from' is recommended to protect a victim, the victim's consent should be sought prior to the service provider installing the equipment. A process to seek this consent should be drawn up as a matter of urgency
- Going forward a process will also be required to be developed where an exclusion zone has been set up using GPS technology to protect a victim.

### **Information sharing protocols**

To underpin the suggestions set out above, information sharing protocols which offer transparency and clarity to the services and individuals whose information or data may be shared should be developed and agreed. These protocols will provide a framework to allow information to be shared appropriately.

It was noted that the existing information sharing protocols in place for children and young people and MAPPA worked well and should be maintained.

The sub-group noted that protocols should:

- Comply with the law and good practice on information sharing
- Support integrated assessment of risk and case management
- Support transition from prison to the community
- Support continuous improvement of services in the case of statistical data.

### **Records management and data retention**

Key to progressing any new use of electronic monitoring and, in particular, the introduction of GPS in Scotland will require an accompanying review of any records management policies and related procedures. These must comply with the Data Protection Act 1998.

Any storage facilities for archived data and retrieval and access procedures should ensure that personal data is held securely and access provided on a controlled basis only. Likewise, to ensure security of data, procedures for the protection of electronic monitoring records and data and for disaster recovery should be reviewed to ensure

currency with any new uses of electronic monitoring. Procedures for the disposal of records should ensure timely and accurate destruction.

To deliver on the above, the sub group further agreed that robust data retention schedules must be developed. These were seen to be fundamental to ensure an individual's privacy in line with Article 8 of the European Convention on Human Rights and the appropriate use of data in line with the Data Protection Act 1998.

This will require detailed consideration depending upon the purpose for which the data is being held. However, the sub-group suggested that any data retention schedule should at least clarify:

- What data is held
- Who should have access to this data
- Purpose for collecting this data
- How long the data should be held
- How data will be destroyed and the accompanying audit trail and notification processes.

It was noted that while there has been a large amount of EM data collected since its introduction in 2002, only small amounts of the data collected has been available for research purposes. The Group agreed that when developing data retention schedules how anonymised data could be made available for research purposes should be considered.

## **Review Findings**

The 2015 SCCJR research supports this direction of travel and found that there is a belief amongst agencies that more collaboration, integration and multi-agency work will be beneficial. The review also notes that CJSW and SPS staff highlight the need to balance the rights and interests of different people in the process of assessing risk and the suitability of an address. A sense of duty of care to balance the needs and rights of different parties involved was common in interview discussions about the use of discretion in decision-making about EM. The review also highlights that CJSW are not routinely provided with the decision and outcomes after submitting their report and recommendations to the SPS.

In relation to risk management, the review concluded that basic risk-related information should be communicated to all agencies involved and recommends that *“Authorising agencies should consistently instruct the private EM service provider about the number and gender of field officers needed to visit each person/household. This is necessary to further ensure excellent duty of care and risk management with regards to all parties involved”*.

## **‘Privacy by Design’ and Privacy Impact Assessments**

Given the nature, volume and depth of information or data that would be involved with the introduction of new uses of electronic monitoring and GPS in particular and the potential requests for access to this data, the Working Group suggest that it

would be sensible to take a 'Privacy by Design' approach to developing detailed policy objectives and required legislation.

Taking such an approach, although not a requirement under the Data Protection Act, is advocated by the Information Commissioner's Office (ICO.) to ensure that privacy and data protection is a key consideration in the early stages of implementation of the recommendations contained within this report. This approach pertains as much to engineers and technology providers as it does to policy makers.

The [ICO.website](#) states:

"Taking a privacy by design approach is an essential tool in minimising privacy risks and building trust. Designing projects, processes, products or systems with privacy in mind at the outset can lead to benefits which include:

- Potential problems are identified at an early stage, when addressing them will often be simpler and less costly.
- Increased awareness of privacy and data protection across an organisation.
- Organisations are more likely to meet their legal obligations and less likely to breach the Data Protection Act.
- Actions are less likely to be privacy intrusive and have a negative impact on individuals."

Therefore, at the point of starting work to implement any recommendations in this report which introduce new or expanded collection or use of information or data, the Working Group suggests that a Privacy Impact Assessment be carried out to identify and minimise privacy risks and that this work should be taken forward in dialogue with the ICO.

## Communications & Stakeholder Engagement

Communicating the benefits of electronic monitoring to a range of stakeholders with differing view-points is complex. This complexity exists because electronic monitoring is a versatile technology that can be used in a number of different ways, at various points in the criminal justice system and with different goals in mind.

Establishing a process for developing and communicating key messages around the enhanced use of EM to stakeholders was, therefore, an extremely important consideration of the Working Group, one which led to the establishing of a Communications Sub-Group.

Using the expertise of communications specialists, this sub-group has developed a comprehensive communications plan. The plan identifies key audiences, which includes a wide range of justice stakeholders, the general public and the media. It contains a list of key messages which have been developed by key stakeholders including Police Scotland, Violence Reduction Unit, SPS, SG Policy and Communications Officials and G4S. The plan also sets out a common language to frame discussions around electronic monitoring and sets out how the benefits of EM might best be communicated to stakeholders, including the general public and the media. **The communications plan has approved by the Working Group and is included in the pack attached with this report.**

In addition to the work of the Communications Sub-Group, partner and stakeholder engagement has been, and will continue to be, an important strand of this work. While we have already benefited greatly from having key partners and stakeholders represented on the Working Group, a number of other engagement activities have also been undertaken as part of the Groups research.

**Electronic Monitoring National Conference** – The conference was held on 26 August 2015 at Perth Concert Hall and attracted around 100 delegates from a variety of agencies and sectors to hear the Cabinet Secretary for Justice deliver the keynote address on Electronic Monitoring.

This was notable the first occasion where those involved in delivering EM in Scotland had had the opportunity to gather together in such large numbers to discuss the future policy direction. Michiel van der Veen gave a particularly insightful presentation into how EM has been used to pursue a goals-based approach to achieving justice outcomes in the Netherlands which the Working Group took note of. There was also an opportune chance to hear from people with ‘lived experience’ of EM which helped ensure their views were taken into account from an early stage when formulating the recommendations contained in this report, further information on the insights provided by this key group are detailed below.

**Local EM Events** - The conference was also the beginning of the deeper stakeholder engagement process, which has since continued with local events taking place, in collaboration with the eight Community Justice Authorities, since January 2016. These events have been well-attended by key agencies including CJSW, SPS, Police Scotland, the third sector, COPFS, SCTS and SDS among others and have involved input from key academics in the field, including Dr Mike Nellis

Strathclyde University and Dr Hannah Graham Stirling University, along with input from CJSW at a local level and Social Work Scotland at a national level.

These events have served as an excellent opportunity to expand the EM knowledge base, whilst also giving practitioners and other stakeholders the chance to contribute towards the future direction of EM in Scotland.

**Direct Engagement with Social Work Scotland (SWS)** – Through its representatives on the Working Group, SWS has prepared a statement setting out their position in relation to EM. The statement in full has been included along with this report.

**Technology Test of GPS Devices** – An eight-week test of GPS EM devices was conducted by Scottish Government with volunteers from various justice agencies, particularly CJSW, but also Police Scotland, SPS and the Third Sector. Participants were given the chance to wear a GPS device over the course of a working week and then debriefed on the data collected by a representative from G4S once the device was removed. The test not only confirmed the robustness of the GPS technology, but also gave hands-on experience to practitioners and helped us to start the setting of realistic expectations around this technology. Following the successful completion of the test, two events were held in Glasgow and Edinburgh to reflect on volunteers experience and explore the wider issues that introducing GPS devices raise.

**Electronic Monitoring Champions** – During the engagement activities listed above efforts have also been made to enlist EM Champions, individuals who will have an increased knowledge of EM and are able to promote its use and provide expert advice to their own respective organisations. There are currently 44 EM champions based within various organisations and, with the assistance of the service provider, G4S, additional training is being offered to increase their personal knowledge of EM.

Following the National Conference, it was recognised that there was a further need to ensure the voice of people with ‘lived experience’ was well-represented in the Working Groups’ final report.

## The Family Perspective

Electronic Monitoring affects more than just the person who wears the tag. People who are electronically monitored often live with others, and recent research into the impact on 'co-residents' – primarily family members - reports that families experienced the feeling of punishment as well, with anxiety as a common side effect.

Families reported that their daily routines and social lives were affected by EM. For example, feeling guilty about attending social events which fell during curfew hours, which in turn risked increasing a family's own social isolation. They also reported feeling like social workers, compliant in assisting with their family member's monitoring. They felt responsible for ensuring their family member refrained from consuming alcohol, arrived home in enough time to meet the conditions of the curfew, and taking responsibility for the family's everyday tasks.

Families summarise their experience in saying that imprisonment is more difficult for a family emotionally, but that EM is more taxing psychologically. The experience risks adding stress to family relationships, increasing isolation, putting families in a 'policing' role, and leaving them to feel their needs are secondary. They still preferred tagging overall to the separation of imprisonment, but the impact of EM on families' needs to be recognised and supported.

While it is the case in Scotland that families must provide consent in addition to the home assessment before having their loved one return home under EM, they would also benefit from a more informed approach such as through an information pack for families affected by electronic monitoring. In addition, they may also benefit from having direct access, support and contact with services.

## The Monitored Person's Perspective

An integral aspect of the stakeholder engagement process was seeking the views of those with lived experience of being monitored, either as part of an RLO or following release from prison on HDC. The views expressed by the monitored persons throughout this process, together with the views captured in the wider international literature, have been important in shaping aspects of this report.

The 2015 SCCJR research found that 'different international perspectives suggest a mixed response from monitored people, implying that electronically monitored punishment is preferred over imprisonment, yet EM has its own 'pains' and challenges and may be experienced as punitive and controlling'.

This view was echoed by those that we engaged with throughout the process, both monitored people and wider stakeholders. There was belief and acceptance amongst the individuals that electronic monitoring and the restriction of a person's liberty was a legitimate punishment which was not simple to complete or adhere to. It was however almost universally seen as a better option than prison, helping to maintain family ties and providing the monitored person with the opportunity to maintain or normalise their life as much as possible.

The discussions then primarily focussed on experiences of EM within a Scottish setting. One notable discussion was with regard to communication. There appeared to be a lack of basic knowledge amongst monitored persons about the 'rules' of electronic monitoring. It was thought that this lack of knowledge often left monitored persons' and their families unsure about contacting G4S or the issuing authorities to ask for advice in case they were perceived to be asking 'stupid' or 'phishing' questions. It was noted that this reluctance to communicate openly with G4S or the issuing authority may, in turn, lead to unnecessary breach of the monitored person's order. It was felt that current communication of the facts of EM was therefore often ineffective and that individuals' understanding of the process could be fragmented and based on misconception.

The prevailing belief amongst the individuals that we engaged with was that EM could be better tailored to individuals' circumstances to best achieve outcomes, for example curfew times could be set around employment requirements. For those on HDC, it was felt that more accessible information could be provided to prisoners to help them understand how EM could potentially be used in a positive way to support desistance and of the potential impact of EM on their families/co-habitants. One suggestion to help address this was to produce a DVD involving people who had lived experienced of being electronically monitored which explained the process and the potential pitfalls. This solution could also provide information to those on a court order and to family members/co-habitants. Again, for those in prison, the possible introduction of peer support specifically for EM, similar to the listeners peer support, was considered as a potential development area. It was suggested that this support could be provided via 'drop in' sessions within establishments.

Information given to families was also an area of concern it was suggested that holding joint information sessions with individuals and their families could be beneficial.

When liaising with monitored persons and family members, and in particular when undertaking home assessment visits, it was felt that there was a role for the third sector. This could be either in direct liaison with monitored persons or family members or in a supportive role alongside CJSW. One suggestion was for CJSW to carry out joint home visits with third sector partners. There may also be a role for peer mentors supporting monitored persons and families.

The availability of suitable accommodation was viewed as a major barrier to both being eligible for EM and to successfully completing a monitoring order. In particular the stigmatisation experienced from landlords. For those coming out of prison, HDC hostels or HDC foster families were suggested as a possible solution. A source of stress for individuals on EM was the provision of maintaining an uninterrupted supply of electricity particularly if supplied via card or key.

On future uses of EM, the monitored persons mentioned particular opportunities to use EM more flexibly alongside custody. These opportunities appeared to be in line with a desire to remain as an active contributor to society e.g. attending work during the day and returning to prison at night, working during the week and spending weekends in prison, and supporting desistance by using GPS technology to create exclusion zones to keep monitored persons apart from bad influences.

## Future Research

The Working Group has taken great effort to explore the key issues surrounding the use of EM in Scotland to inform its recommendations. As part of this work, the Working Group commissioned the Scottish Centre for Crime & Justice Research (2015 SCCJR research) to undertake a [Scottish and International Review of the Uses of Electronic Monitoring](#). Independently, the SCCJR and the University of Stirling were commissioned to undertake research as part of a wider [European Project: 'Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states'](#). The resulting report: 'Current Uses of Electronic Monitoring in Scotland' and its recommendations have also informed the work of the Group.

The research above highlighted that while aspects of EM have been relatively well researched since its introduction, there are specific areas which would benefit from more in-depth research.

One of these areas undoubtedly is gathering more insight on the lived experiences of monitored persons, their families and victims of crime. It is therefore suggested that further research is undertaken with these groups, whether through an independent study or other mechanism to gather their input, or both. Understanding and addressing the effects on families in particular should be a priority, given what research there currently is suggests that having a monitored person in the home can cause a great deal of anxiety by placing responsibilities on their friends and family to help ensure compliance.

In addition, the Working Group agreed that more detailed research should be undertaken on how EM is best integrated with other interventions. This research could be conducted alongside the Demonstration Projects as they establish what works as a wider package of support alongside EM and what the costs implications for this are. Conducting this research in a Scottish context would be helpful in bolstering the international evidence-base for this approach.

It is therefore recommended that further research of this nature is undertaken as Scottish Government moves forward with its new uses of Electronic Monitoring.

## Victims of Crime

The Working Group recognises that, when considering the future uses of EM and its individual application, the voice of those impacted by crime, most specifically victims, must be heard.

As with people who may be subject to EM, people who have been or are victims are not a homogenous group. They may range from one individual who has been subject to crime on one or many occasions or to a large organisation. The offence type may also differ in frequency and impact. Just as offending affects victims of crime in different ways, eliciting different responses, so too a victim's response and views towards the use of EM can differ. Not all victims of crime will have had the same experience, the same needs and anxieties and, may therefore, have differing needs in terms of protection from further offending.

EM should only be used where it has been risk assessed as appropriate and that each risk assessment must be carried out on a person by person basis. All of these factors must, therefore, be taken into account when considering how EM could be used appropriately to provide protection against further offending to a victim or victims, providing a level of control where none existed before. The Working Group strongly recommends, therefore, that **any use of EM in a protective context for victims must be risk assessed and proportionate. It must also be person centred; tailored appropriately to the risks identified and the intended outcome and, give consideration to those affected by offending.**

In keeping with other recommendations in this paper, the imposition of any such arrangement must start with the goal rather than the technology in mind. That said, it is the case that new technologies might offer more scope to protect victims.

Expanding the use of EM, in particular the introduction of GPS and the ability to set large exclusion zones, offers new opportunities to use EM technology to provide a level of protection for victims.

Currently using RF technology, EM can help protect a victim by setting an exclusion zone or 'away from' condition around a particular address, such as a business or individual home. This option is used but not in particularly high numbers (on average 3 'away from' conditions are monitored at any given time) or uniformly across Scotland and there may be a need to further understand the reasons behind this.

The inclusion of a person-centred package of support<sup>8</sup> for the monitored person and for the victim which incorporates a protection plan may assist in broadening the appeal of this type of sanction. In addition, the introduction of GPS technology may provide greater flexibility and technical opportunities.

Like RF technology, GPS could help keep a monitored person apart from the victim by creating exclusion zones to place a restriction on the monitored person's movements and prohibit them from entering a property, street or geographic area.

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<sup>8</sup> What "support" may comprise of will be scoped out in the aforementioned demonstration project

Using GPS, exclusion zones can be any size, from an individual property, to a neighbourhood or whole city. Internationally, such zones have been used to create safe spaces for victims of crime so that they are not likely to encounter the person who offended against them. GPS technology can also create *inclusion* zones, limiting an individual's movement to remain within a prescribed area and keep them apart from a victim.

It is important to highlight that setting exclusion or inclusion zones would not prevent the monitored person from entering or leaving such a zone; they still have the choice to do so but with an awareness of the consequences of taking such action. The response to this occurring would depend upon the risk status of the individual being monitored and the response plan in place for the victim. This also pre-supposes that the monitored person has an integrated package of support, management or supervision in place.

Examples of potential responses may be:

- Retrospectively, via the professional providing support to or the management of the monitored person, openly and robustly discussing the individual's entry into an exclusion zone or leaving of an inclusion zone with a view to promoting desistance;
- Via an alert being raised to those monitoring the zone, the monitored person could be informed when they have entered such a zone or, more likely, a "buffer zone" around the exclusion zone thereby adding an additional layer of protection for the victim. This gives the option of the individual removing themselves from the area or, depending upon the risk posed, local agencies being informed and potentially dispatched if the individual remains in the area.
  - Where this approach is used, practices differ as to whether the nature of the protection plan in place requires that the victim is also alerted. This may depend upon local policies, the risk posed by the monitored person and the needs and requests of the individual victim.
  - In certain circumstances, depending upon the level of risk posed by the monitored person and the protection plan in place for the victim, the police may attend the victim's address or place of work to alert them to the situation. It is likely that this would be used when the victim or victim(s) is/are an individual person rather than an organisation or business.

Separate to, or in addition to, the use of an exclusion or inclusion zone, where there is a recognised individual victim or victims, they could also opt to carry a mobile alarm which will provide an early alert direct to them if the individual is close by.

There may be differing responses from the victim to using this and this would have to be kept under review as part of the protection plan for the victim, particularly to ensure that this approach does not cause any additional stress and anxiety.

In all of the above, the rule of proportionality must be applied and there would need to be a risk assessment carried out on the monitored person's risk of further offending or causing harm. The discussion played out already in this paper the

appropriate use of data must also be considered here, particularly if the victim is to also carry a device.

With the above caveats regarding proportionality and victims' views and protection in mind, recognising its greater flexibility, GPS may offer degrees of protection to victims of crime in ways that other community interventions are unable to do. However, the use of RF technology for 'away from' may still be appropriate, particularly when used in standalone applications of EM.

The Working Group has already worked with the Scottish Government to start the work on increasing awareness of the goal-oriented approach to EM and its flexibility. Continuing this work should help to further increase the use of EM and, as part of this, the use of RF 'away from' as appropriate.

It must also be stressed that GPS tracking is not, in itself, a full solution to the risks which may be posed by an individual as no form of EM can offer 100 per cent protection for a victim. However it could, if used appropriately, and with the correct awareness, responses and services in place by community justice partners provide an additional level of control and protection to a victim. The Working Group therefore, recommends, that **appropriate and proportionate use of EM is taken forward as part of the new approach to the use of the technology in Scotland but that careful consideration be given to how this may be introduced and how a victim might be involved in the setting of any restrictions.**

As noted, although there are options available to us now and, through the introduction of new technologies, potentially in the future, to better ensure the proportionate and effective application of EM, we need to better understand how EM can play a better part in what works to support individuals, prevent and reduce further offending and protect victims.

Internationally, there remains a paucity of research about victims' perspectives and experiences of EM. Existing empirical knowledge is mostly derived from small qualitative studies conducted in Sweden and the United States. While very informative and useful, the above mentioned EU research recommends more independent research is needed to ensure future developments in EM policies and practices are informed by the perspectives and lived experiences of victims amongst others.

As mentioned previously, notwithstanding the taking forward of the above recommendations, the Working Group also recommends **further research on victims' perspectives and experiences of EM is undertaken to inform future developments and that best practice continues to be shared with Community Justice Scotland taking a role in this when it is established in 2017.**

## **Conclusion**

The EM in Scotland Working Group has, over the past 16 months, given careful consideration on how best to utilise the opportunities that EM can offer in the prevention and reduction of further offending, supporting the Cabinet Secretary's overall vision for penal policy in Scotland.

In this report the Working Group has set out a number of key recommendations arising from its deliberations. These have been informed by international evidence, partner and stakeholder engagement at a national and local level and the knowledge and expertise of the Working Group members.

The Working Group considers that EM could play a far greater role in the Scottish criminal justice system, through making more innovative use of the technology available and citing this within a desistance oriented approach.

It should be noted that the Working Group does not have the final word on electronic monitoring or how it should be used in Scotland. This report should, instead, be used by the Cabinet Secretary to inform his decisions and by partners and other agencies to stimulate their thinking more widely.

The EM in Scotland Working Group commends this report to Scottish Ministers and urges that early action be taken against the recommendations in a manner which is both ambitious and inclusive of all partners required to move the agenda forward at pace.

## Social Work Scotland

# Position Statement on Electronic Monitoring

Social Work Scotland is the professional leadership body for social workers throughout Scotland. It is a membership body and exists to influence policy and legislation as well as supporting the development of the social work profession.

This statement sets out our agreed position on electronic monitoring. This is view that our members support. As the use of EM develops in Scotland we will revisit this statement to make sure it reflects the current issues and challenges of using technology as part of the criminal justice system.

### **Background**

There is now an international evidence-base strongly suggesting that using electronic monitoring has a crime reduction effect for the duration of the monitoring period. While there continues to be a place for standalone EM (i.e. a Restriction of Liberty Order [RLO]) and Home Detention Curfew (HDC), and potentially at the pre-trial stage as an alternative to remand, the provision of support alongside EM, where required, can be a crucial element if longer term change and desistance is to be achieved.

Criminal justice social workers (CJSW) engage with people who have been involved in offending behaviour in many different, evidenced-based ways, including providing support to enable desistance, addressing offending behaviour, establishing trusting relationships, challenging inappropriate behaviour, highlighting the impact of such behaviour on victims and assisting individuals to overcome problems including substance use. EM has an important role in assisting individuals to end or reduce their involvement in offending and to successfully (re)integrate into their local community, including after a prison sentence or indeed utilising this technology as part of a future joint community / prison sentence. Used effectively EM can contribute significantly to public protection and provide judges with a direct alternative to custodial sentences.

Used proportionately EM is not at odds with human rights. This very much depends how it is developed, deployed and overseen. As there is no single way of using EM, and various regimes exist varying in intensity Social Work Scotland believe that we have a professional and social responsibility to play a lead role in shaping the legal and policy frameworks in which EM is used in Scotland. In our view it is essential to ensure that developments in EM are commensurate with an ethic of care,

proportionality based on assessment of need and risk, human rights principles, data protection, and the broader values and aspirations of Social Work.

Social work, the judiciary and the police, need to work together to shape the decisions and debates on the forms of EM which may be used in Scotland, including GPS tracking and trans-dermal alcohol monitoring. These debates and decisions must be informed by evidence and ensure we collaboratively develop a process to ensure adequate scrutiny to manage the potential complexities of use of this technology and to ensure that technology alone does not dictate future use.

Research tends to show that while people that have been involved in offending and their families often find EM challenging, it enables pro-social and protective factors to be sustained. As EM regimes themselves vary, there is no single effect of EM, and much depends on the type of technology, the circumstances of the individual being restricted, the other measures used (or not) alongside EM (including the provision of support) and the severity or flexibility of the response applied to violations of requirements. It can be seen as a way of helping a person to structure their daily life and a spur to desistance as well as a legitimate punishment. It is possible to design EM-regimes which are destructive, degrading and counter-productive and we believe this reinforces the need for Social Work Scotland to play an active role as part of our professional responsibility to ensure that EM is used in ways that are effective and humane.

#### **Social Work Scotland recommendations:**

- Social Work Scotland support a strong presumption against short-term prison sentences and the commitment to reserving prison only for those people that because of the seriousness of their crime(s) and for the protection of the public require to be incarcerated. EM is a sufficient form of additional control for many convicted people and through a wider understanding of its existing and potential use, integrated with other interventions, it could play a significant part in reducing the overuse of short-term prison sentences in Scotland.
- Social Work Scotland support the assessment for EM as part of every Criminal Justice Social Work Report (CJSWR) and the proposal of this disposal where it is assessed as appropriate in the professional judgment of the report writer. The proposal in a report should always set out what the purpose of monitoring is and the level of restriction required for risk management.
- Social Work Scotland endorse the proposal to explore the development of LS/CMI (the Level of Service & Case Management Inventory, the risk and needs assessment tool used by CJSW in Scotland) to assist social workers in assessing for EM when a court report is being prepared. A CJSW should assess whether a standalone RLO or an RLO with support is required. Currently, at the point of sentence, a RLO can be made alongside a Community Payback Order combining CJSW support to address offending behaviour with tangible elements of control and punishment. It is recognised that this may not be the best legal framework for integrating these two measures and Social Work Scotland would support consideration of a specific electronic monitoring requirement as part of a Community Payback Order at the first point of sentence.
- Social Work Scotland recognises there is a risk that actively promoting the use of EM leads to it being used inappropriately as a sentence or as a prison licence

condition and where it is not proportionate with a person's risk of offending or assessed as required. Decisions about supervision must continue to be based on the assessment of risk and needs and recognition that there is still a role for stand-alone EM where support is not required. Where statutory support for rehabilitation is assessed as required, a Community Payback Order with supervision alongside a RLO may also be preferable to imposing a short prison sentence and then quickly releasing a person on a Home Detention Curfew, as it would prevent disruption of pro-social elements to the individual and families lives, including sustaining employment; and, given the high cost of prison, it would make better use of scarce resources which could be better transferred into the community.

- Social Work Scotland supports the recent Scottish Government consultation on EM and considers there is considerable scope to develop its use in Scotland in creative and imaginative ways. Satellite tracking using GPS technology has significant potential to provide real-time monitoring of the movement of people that are assessed as posing a risk to others, and to enable the use of both inclusion and exclusion zones of various sizes. Remote alcohol monitoring devices can enforce prohibitions or restrictions on the use of alcohol, which may be helpful components of a treatment plan enhanced by close working between criminal Justice social work and alcohol /health services.
- Social Work Scotland believes GPS technology or remote alcohol monitoring does not always need to be linked to the use of statutory measures. There is considerable scope for agencies to identify and collectively engage with individuals on a voluntary basis either pre-release or in the community and, alongside packages of support, to use EM to encourage desistance.
- Social Work Scotland above all believes there needs to be a move away from a technology driven approach to EM practice to focussing on the goals that have to be achieved and then considering which kind of equipment best fits with the goals that have to be achieved.
- Social Work Scotland recognises that debates on “proportionality” and “net widening” in respect of EM are complex. Whilst EM does not necessarily need to be reserved only for those individual's posing a significant degree of harm to others or particular categories of offences or as an alternative to custody, Social Work Scotland believes there is an important principle which links the level of restriction with the seriousness of the situation which an individual faces due to their involvement in offending.
- Social Work Scotland recognise there is considerable scope to be creative in how restrictions are applied; it may only be required for short periods when a person is at risk of offending (e.g. this might be linked to attendance at football matches) and the prospect of a reduction in the period of restriction can act as a legitimate incentive to comply and engage with an order.
- Social work Scotland recognises EM is not problem-free. No community penalty is. We recognise the requirement to manage the expectations of stakeholders including the judiciary, the press, public opinion and those subject to the restrictions and their families. It affects other family members, as prison does, but differently.
- Social Work Scotland recognised EM raises ethical and practical issues that other community measures do not. And there are clear resource implications for CJSW if there is an increased use of EM and as new methods are developed and deployed. Social Work Scotland considers that it is imperative the Scottish

Government recognise and acknowledge this and make a commitment to providing additional new funding to ensure the increased use of EM is successful.

In light of the emerging evidence-base and the professional obligation to shape these technologies in ethically acceptable ways, there are clear grounds for attempting to use EM to improve penal practice in Scotland. As such Social Work Scotland is committed to play a major role in the policy debate regarding the use of electronic monitoring and view the points illustrated in this statement as key areas of that debate.



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