

EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	THE ELECTRONIC MONITORING (RELEVANT DISPOSALS) (MODIFICATION) (SCOTLAND) REGULATIONS 2020	
Minister	Cabinet Secretary for Justice	
Lead official	Graham Robertson	
Officials involved in the EQIA	name	team
	Graham Robertson	Public Protection Unit, Community Justice Division
	Craig McGuffie	SGLD
Directorate: Division: Team	Community Justice Division	
Is this new policy or revision to an existing policy?	New Regulations	

Screening

Policy Aim

These Regulations add bail to the list of disposals that can be electronically monitored. The policy aim is to add this capability to the existing range of tools available to courts.

This contributes to the following national outcomes: (i) that people live in communities that are inclusive, empowered, resilient and safe (ii) that people respect, protect and fulfil human rights and live free from discrimination.

Who will it affect?

While the underpinning legislation on bail will not change, having this additional assurance around how bail conditions can be monitored may mean that fewer people are placed on remand.

This could impact on all those currently remanded in terms of opening up a new possibility as an alternative to remand and it may help mitigate the damaging impact of remand while giving greater assurance to courts about how bail conditions are being monitored. There may also be an impact on those who would otherwise have been given a bail condition, but where that condition is now monitored electronically. There is no indication that anyone's protected characteristics would be specifically impacted by that change.

What might prevent the desired outcomes being achieved?

The desired outcome is to broaden the options available to courts. The extent to which it is used or not will have an impact on the extent to which it also achieves an associated aim of reducing the remand population. The confidence the judiciary have in the measure will determine how well it is used. That in turn will probably be dependent on the performance of the associated processes of assessment of suitability, monitoring of the order and reporting of compliance.

Stage 1: Framing

Results of framing exercise

The policy aims to add electronic monitoring to the list of disposals that can be electronically monitored. The underpinning legislation on bail is not changing so this change is really a change in *how* conditions of bail can be monitored.

Extent/Level of EQIA required

It is not considered that an extensive EQIA will be necessary as the considerations around who gets bail are not changing. The criteria for suitability for bail are set out in legislation and do not change with this set of Regulations rather a new method of monitoring movement restriction conditions in a bail order is made available to the court. Electronic monitoring is already a well-established feature of the justice system in Scotland where there is much existing practice designed to ensure protected characteristics are taken into account in the service, and they are built into the national contract for the service. The use of bail as an alternative to remand is widely supported (as per the results of SG consultation and the recent Justice Committee enquiry into remand).

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.	n/a	See below for assessment of impact on this protected characteristic.
DISABILITY	Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.	n/a	See below for assessment of impact on this protected characteristic
SEX	Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.	n/a	See below for assessment of impact on this protected characteristic
PREGNANCY AND MATERNITY	Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.	n/a	See below for assessment of impact on this protected characteristic

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

<p>GENDER REASSIGNMENT</p>	<p>Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.</p>	<p>n/a</p>	<p>See below for assessment of impact on this protected characteristic</p>
<p>SEXUAL ORIENTATION</p>	<p>Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.</p>	<p>n/a</p>	<p>See below for assessment of impact on this protected characteristic</p>
<p>RACE</p>	<p>Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.</p>	<p>n/a</p>	<p>See below for assessment of impact on this protected characteristic</p>
<p>RELIGION OR BELIEF</p>	<p>Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.</p>	<p>n/a</p>	<p>See below for assessment of impact on this protected characteristic</p>
<p>MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected</p>	<p>Significant new data collection was not undertaken as the change is only a minor change in how existing conditions are monitored.</p>	<p>n/a</p>	<p>See below for assessment of impact on this protected characteristic</p>

characteristic unless
the policy or practice
relates to work, for
example HR policies
and practices - refer
to Definitions of
Protected
Characteristics
document for details)

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			None	<p>This is a very specific legislative change that just allows an existing bail condition around movement restriction to be monitored in a new way.</p> <p>It is likely the age impact will reflect the profile of those currently in the criminal justice system currently. Therefore a greater number of young people may get this disposal as they are over-represented in the criminal justice system.</p> <p>There is unlikely to be direct impact on reducing age discrimination, harassment and victimisation</p>
Advancing equality of opportunity	Positive			<p>It may be that the additional assurance that comes from an EM monitored condition means that, across all age groups, people are given an opportunity to avoid prison and a chance to be supported in the community that does not currently exist but it is not expected that this would disproportionately affect any one age group except</p>

					in so far that there is already an over-representation of young people in the system.
Promoting good relations among and between different age groups			None		There is unlikely to be direct impact on promoting good relations among and between different age groups as a result of this specific change.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			None	There is not expected to be a specific impact from this change.
Advancing equality of opportunity			None	There is not expected to be a specific impact from this change.
Promoting good relations among and between disabled and non-disabled people			None	There is not expected to be a specific impact from this change.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	Positive			Again use of EM bail may follow the existing profile of those in the justice system. A number of people during the Justice Committee enquiry into remand raised concerns about the number of women held on remand. Given these concerns, it may be that the judiciary choose to use this new measure disproportionately with women however they are independent decision makers and they are required to consider each case on its own merits.
Advancing equality of opportunity	Positive			As above
Promoting good relations between men and women			None	There is not expected to be a specific impact from this change.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	Positive			The judiciary may choose to remand fewer women as a result of the additional assurance over how bail can be monitored. The current EM service have existing protocols for monitoring pregnant women (for example taking account of the

					possibility that ankles may swell during pregnancy).
Advancing equality of opportunity				None	There is not expected to be a specific impact from this change.
Promoting good relations				None	There is not expected to be a specific impact from this change.

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			None	There is not expected to be a specific impact from this change. There are existing protocols in place within the EM contract as to how this group should be dealt with operationally and the new national contract collects data on those monitored based on a broader range of gender categories.
Advancing equality of opportunity			None	There is not expected to be a specific impact from this change.
Promoting good relations			None	There is not expected to be a specific impact from this change.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful			None	There is not expected to be a specific impact from

discrimination					this change.
Advancing equality of opportunity			None	None	There is not expected to be a specific impact from this change.
Promoting good relations			None	None	There is not expected to be a specific impact from this change.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			None	There is not expected to be a specific impact from this change.
Advancing equality of opportunity			None	There is not expected to be a specific impact from this change.
Promoting good race relations			None	There is not expected to be a specific impact from this change.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			None	There is not expected to be a specific impact from this change.
Advancing equality of opportunity			None	There is not expected to be a specific impact from this change.
Promoting good			None	There is not expected to be a specific impact from this change.

relations					this change.
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Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership²	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			none	There is not expected to be a specific impact from this change.

²

In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

If, following the impact analysis, you think you have identified any unlawful discrimination – direct or indirect - you must consider and set out what action will be undertaken to mitigate the negative impact. You will need to consult your legal team in SGLD at this point if you have not already done so.

Have positive or negative impacts been identified for any of the equality groups?	Yes, potentially some positive impact on the protected characteristics of age, sex and pregnancy and maternity. Where the impact of remand is deemed undesirable this measure may help courts seek an alternative disposal if they determine a person is vulnerable. No negative impacts were assessed.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ³ ?	No, this proposal relates to disposals in criminal proceedings so each case is necessarily considered individually as to what the appropriate disposal might be, so that arguably lessens the potential for impact across groups.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	n/a
If not justified, what mitigating action will be undertaken?	n/a

³ See EQIA – Setting the Scene for further information on the legislation.

Describing how Equality Impact analysis has shaped the policy making process

This is a legislative not a purely policy change. The underpinning Act was widely consulted upon and was subject to its own EQIA.

Monitoring and Review

Data will be collected on all those given EM bail so that characteristics can be analysed so that we can determine how courts are using the disposal and make any further policy changes that are required.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for these Regulations and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Cat Dalrymple

Position: Deputy Director

Authorisation date: 30/09/20