

## POLICY NOTE

### THE ELECTRONIC MONITORING (RELEVANT DISPOSALS) (MODIFICATION) (SCOTLAND) REGULATIONS 2020

SSI 2020/309

The above instrument was made in exercise of the powers conferred by sections 4(1) and 15(1), of the Management of Offenders (Scotland) Act 2019 and all other powers enabling Scottish Ministers to do so. The instrument is subject to negative procedure.

**These Regulations modify the list of relevant disposals in section 3(2) of the Management of Offenders (Scotland) Act 2019 (“the 2019 Act”) alongside which an electronic monitoring requirement may be imposed by the court under section 1 of the 2019 Act.**

**These Regulations add a new entry to the list of relevant disposals in section 3(2) of the 2019 Act – the imposition or modification of bail conditions under various provisions of Part III of the Criminal Procedure (Scotland) Act 1995.**

#### Policy Objectives

These Regulations add bail to the above specified list of disposals that can be electronically monitored. This change does not alter the underpinning legislation covering bail. Rather, where a bail order has a condition that can be monitored electronically, for example: a movement restriction condition, compliance with such a condition can be monitored electronically via an electronic monitoring requirement imposed under section 1 of the 2019 Act.

This change will enhance the range of options available to the courts as they consider cases before them. During the current disruption to the justice system as a result of covid, the proportion of the prison population has increased significantly from under 20 per cent of the population to close to 27 per cent of the population. Reducing the remand population was already desirable, given what is known about the disruptive impact of remand with people losing employment, housing and family connection, with some forms of remand occurring before any trial has taken place to establish innocence or guilt. The recent Scottish Parliament inquiry into remand looked at these issues and at the potential role that electronic monitoring could play in reducing the remand population.

Individual decisions on bail or remand are for the court, so the policy objective here is simply that, where they deem bail appropriate, an additional way in which any such bail requirements can be monitored is provided through the national contract for electronic monitoring.

This change adds bail to the list of those disposals that can be electronically monitored. This ability to electronically monitor bail will have no practical effect until such time as the remaining sections of Part 1 of the Management of Offenders (Scotland) Act 2019 are commenced. No timescale has yet been set for commencing those remaining sections of the Act. This change to add bail to the list of disposals is being made now, with work on the

underpinning administrative arrangements continuing in parallel. This approach is necessary given the need to move quickly to put in place arrangements to assist justice system recovery. These Regulations will provide the statutory powers for courts to order the electronic monitoring of bail conditions once Part 1 of the 2019 Act comes into force, while enabling partners to continue to make the necessary administrative arrangements in preparation for the commencement of Part 1. Only once partners such as the Police, COPFS, social work and others have confirmed they are administratively ready for this new policy use will the remaining sections of Part 1 be brought into force via further Commencement Regulations.

## **Consultation**

Before and during the passage of the Management of Offenders (Scotland) Act 2019 there was extensive consultation on the development of electronic monitoring, including consultation on the use of electronically monitored bail. The Scottish Government publication *Analysis of Responses to Electronic Monitoring in Scotland* showed 89% of respondents considered that electronic monitoring should be introduced as an alternative to remand. The consultation informed the legislative proposals that were brought forward. The full list of responses to the consultation is published on the Scottish Government website.

## **Impact Assessments**

The change here does not change the powers to put in place conditions, it is only an additional way of monitoring those conditions. An additional impact assessment has been completed for the equalities impact of these regulations. It is not anticipated there will be any adverse impact from an equalities perspective and given the nature of the change, individual cases are being considered on their own merits which allows for specific account to be taken of protected characteristics.

There is no specific impact on children or islands from these changes so specific impact assessments for those were not completed. The national electronic monitoring contract already has in place arrangements for delivering services to young people (such as requirements that parents are present) and for delivering services to islands (retained staff) and those aspects of the service would not be expected to change.

As the extent of impact is dependent on court use of these powers, impact is necessarily illustrative. The Management of Offenders (Scotland) Act, set out illustrative costs and impact on partners from a 10% increase in electronic monitoring. Existing arrangements for assessment, reporting and enforcement for bail exist at present and it is expected many will not need to change significantly if the conditions are monitored electronically.

This change is not accompanied by a move to new technology such as GPS, so the existing data protection arrangements within the electronic monitoring regime remain unchanged from those needed in support of the existing radio frequency service.

## **Financial Effects**

The Scottish Government confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. The electronic monitoring service is provided wholly under contract already held by the Scottish Government.

The Management of Offenders (Scotland) Act 2019 set out illustrative costs for the expansion of electronic monitoring more generally, as any use is dependent on what the courts determine is appropriate.

Justice social work have already received an increase in funding in anticipation of electronic monitoring expansion. The national budget for electronic monitoring was also increased to £6m and it is anticipated that this budget will be sufficient to meet any increased costs resulting from increases in the volume of those monitored. The arrangements will be kept under review so that any increase in costs or indeed saving realised, can be taken into account in future funding arrangements for partners. If partners need to incur further costs in advance, for example to make IT changes, then it is anticipated that reasonably incurred costs could be met from the existing national electronic monitoring budget.

Scottish Government  
Justice Directorate

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