

Electronic Monitoring in Scotland

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Contents

Acronyms and Abbreviations	i
Glossary of Key Terms	ii
Acknowledgements	iii
Contact the Researchers	iii
Executive summary	1
Introduction	5
Section 1: Legal and organisational context	6
1.1 Actors involved in the implementation of electronic monitoring	6
1.2 Legal and contractual framework	7
1.2.1 Adults and young adult offenders	7
1.2.2 Children and young people	9
1.2.3 Contractual framework	10
1.3 Scottish political and policy context	11
1.4 Adherence to the Council of Europe recommendation on electronic monitoring	13
Section 2: Methodology and research process	14
2.1 Observations	14
2.2 Interviews	15
2.3 Statistical data	16
2.4 Scope and limitations within the Scottish research	18
Section 3: The application of electronic monitoring	19
3.1 Objectives: Why do we tag people?	20
3.1.1 Perceived strengths, opportunities and benefits of using EM	21
3.1.2 Perceived challenges and limitations of using EM	22
3.2 Target groups: Who should electronic monitoring be used with?	23
3.3 Geographical and institutional differences in uses of EM across Scotland	26
3.4 Assessment of eligibility and suitability	27
3.5 Consent	29
3.6 Creativity and flexibility in current uses of electronic monitoring	32
Section 4: Equipment and technology	33
4.1 Description of the equipment	33
4.2 Installation process of the equipment	34
4.3 Storage and maintenance of the equipment	38
Section 5: Monitoring processes	38
5.1 Risk assessment and management	38

5.2 Keeping track: communication with monitored people.....	41
5.3 Changes in circumstances	43
5.3.1 Change of address	43
5.3.2 Extenuating circumstances: deaths in the family	43
5.3.3 Extenuating circumstances: crime victimisation by theft or damage to EM equipment.....	43
5.4 The end of EM: de-installation and uplifts of equipment	44
Section 6: Compliance and breach.....	44
6.1 Violations and breaches.....	44
6.1.1 Out past curfew	45
6.1.2 Left home during curfew	45
6.1.3 Denied absence	46
6.1.4 Tag and strap tamper alerts.....	46
6.1.5 Tilt alert	46
6.1.6 Damage to equipment	47
6.1.7 Failure to comply.....	47
6.1.8 Aggressive or threatening behaviour towards field officers	47
6.2 Who deals with violations and breach? Decision-making and discretion	47
6.2.1 Judicial discretion and ‘Special Sheriffs’: differences in responses	48
6.2.2 Prisons and decision-making about risk, breach and recall to custody	52
Section 7: Diversity and vulnerability	54
7.1 Gender.....	55
7.2 Age	55
7.3 Language.....	57
7.4 Education and low literacy	57
7.5 Deaf and hearing impaired monitored people.....	58
7.6 Poverty and social disadvantage.....	58
7.7 Monitored people who have been victims of crime	59
7.8 Duty of care and the ‘home all day alert’	59
Section 8: Information exchange and multi-agency working	59
8.1 Increasing integration and multi-agency collaboration.....	59
8.2 Data protection and privacy	61
Section 9: Effectiveness and impact of electronic monitoring	61
9.1 Costs and comparisons to custody	61
9.2 Electronically monitored order completion.....	61
9.3 Reconviction	63

Section 10: The future of electronic monitoring in Scotland	65
10.1 Reducing the use of remand in custody: EM as a pre-sentence option	66
10.2 New electronic monitoring technologies	66
10.2.1 Remote alcohol monitoring (RAM) tagging technology	66
10.2.2 GPS tagging and satellite tracking technology.....	67
10.3 Lived experiences of electronic monitoring: address knowledge gaps.....	69
10.4 Policy and practice leadership to make EM more fit-for-purpose.....	69
Section 11: Conclusion and recommendations.....	70
11.1 Recommendations	71
Section 12: Appendices.....	75
Section 13: References	79

Table of tables

Table 1 List of interview participants by work role type	16
Table 2 Percentage reconvicted within one year by disposal and number of previous convictions in Scotland.....	65

Table of figures

Figure 1 Prison population rate (per 100,000 of national population) in Scotland, 2000-2015	11
Figure 2 Restriction of Liberty Order (RLO) length: number of orders by number of months, in Scotland from 1 January – 31 December 2015.....	17
Figure 3 Home Detention Curfew (HDC) length: number of orders by number of days, in Scotland between 1 January – 31 December in 2014 and 2015.....	18
Figure 4 Examples of main types of crimes/offences for which Restriction of Liberty Orders were the main penalty imposed in Scotland, 2013-2014*	24
Figure 5 Restriction of Liberty Order completions, revocations and expiries (%) by month in Scotland, 2015	62
Figure 6 Home Detention Curfew completions, revocations and expiries (%) by month in Scotland, 2015	63
Figure 7 Trends in reconviction rates (%) (1 year follow-up period) by index disposal in Scotland, 2002-03 to 2012-13	64

Table of appendices

Appendix 1 Restriction of Liberty Orders	75
Appendix 2 Home Detention Curfew	77

Acronyms and Abbreviations

CJSW	Criminal Justice Social Worker
COPFS	Crown Office and Procurator Fiscal Service
CPO	Community Payback Order
DTTO	Drug Treatment and Testing Order
EM	Electronic Monitoring <i>or</i> Electronically Monitored
GPS	Global Positioning System (satellite tracking)
HDC	Home Detention Curfew
HMU	Home Monitoring Unit (box unit)
ISMS	Intensive Support and Monitoring Service (order for children aged under 16)
MAPPA	Multi-Agency Public Protection Arrangements
MRC	Movement Restriction Condition
NEMC	National Electronic Monitoring Centre
PID	Personal Identification Device (tag)
RAM	Remote Alcohol Monitoring
RF	Radio Frequency
RFID	Radio Frequency Identification
RLO	Restriction of Liberty Order
SPS	Scottish Prison Service

Glossary of Key Terms

Authorising Agency – the agency that imposed or issued the order or licence, which includes the Courts, the Scottish Prison Service, the Parole Board, or the Children’s Hearings Panel.

Criminal Justice Social Worker – an accredited social worker based in a local authority (Council), who oversees community-based offender supervision, undertakes assessments and prepares reports to aid decision-making at various points in the criminal justice process. Criminal justice social workers are the Scottish equivalent of a probation and parole officer.

Local Authorities – councils. Currently, there are 32 local authorities in Scotland, and community-based offender supervision is devolved or overseen at the level of each local authority.

Monitored Person – in the current Scottish context, ‘monitored person’ is the term used by the private monitoring services provider G4S and the researchers to describe individuals who are tagged and monitored. In addition to adults monitored through the Scottish criminal justice system, children are also subject to monitoring through Children’s Hearings System, and they are not commonly spoken of as ‘offenders’, even if they have histories of criminal behaviour.

Premises Holder – the property owner, or a named signatory to the rental lease.

Procurator Fiscal – a prosecutor (sometimes abbreviated to PF or Fiscal), employed within the Crown Office and Procurator Fiscal Service (COPFS), Scotland’s prosecution service.

Sheriff – a judicial officer; the Scottish equivalent of a magistrate who sits in the middle (mainstream) level of criminal and civil courts, the Sheriff’s Courts, which deal with higher matters than Justice of the Peace Courts (presided over by lay magistrate), and lower or less serious matters than the High Court (presided over by judges or Law Lords).

Stand-alone Order – this term encompasses different meanings in different jurisdictions; it is used here in keeping with Nellis and Lehner’s (2012: 2) definition: a stand-alone order is a ‘means of execution of a criminal sanction or measure, without being combined with other interventions or treatment measures.’ Restriction of Liberty Orders (RLOs) and Home Detention Curfews (HDCs) in Scotland are typically referred to as stand-alone orders. By way of contrast, ‘integrated’ approaches combine the use EM with supervision, supports and/or surveillance.

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Executive summary

This research report examines the current uses of electronic monitoring (EM) tagging technology in the Scottish criminal justice system. The themes and findings presented here form one part of an EU-funded comparative research project¹ involving five jurisdictions: England and Wales, Scotland, Belgium, Germany and the Netherlands. Significantly, this is the first comparative study of its kind in Europe. Criminologists Professor Gill Mclvor and Dr Hannah Graham conducted the Scottish component of the research project, which spans a period of two years from May 2014 – April 2016. A range of key actors in the Scottish criminal justice field have been involved in this study as research participants, and details about the methods used in this study are outlined in Section 2 of this report.

Electronic monitoring (EM) has been a feature of Scottish criminal justice for 15 years, based around the use of one type of technology – radio frequency (RF) tags – and home curfews and other place-based restrictions. EM is used in its own right as a stand-alone community penalty called a Restriction of Liberty Order, as well as with other groups like prisoners with early release through a Home Detention Curfew or as a condition of a parole licence. Scotland has one of the highest prison population rates in Western Europe, and the current and potential uses of electronic monitoring have featured in wider discussions of the need to pursue diversion and decarceration.

To date, the uses of electronic monitoring in Scotland can be characterised as relatively simple but stable in approach. Most decision-makers (e.g., the judiciary, prison staff) tend to impose relatively standardised curfew regimes restricting people to their home for up to 12 hours a day. A large majority of these orders made by courts and prisons currently do not involve supervision by criminal justice social workers or requirements to participate in rehabilitation programmes or paid or unpaid work. The restriction of liberty in making people be restricted to a place (home) or away from a place acts as a punishment. However, within the current approach to EM, this study highlights the missing links of the options of supervision and supports for rehabilitation and desistance from crime.

Key research findings

- From 2002-2015, electronic monitoring (EM) in Scotland has operated using a simple but relatively stable approach. It has relied on the use of only one type of tagging technology.
- Electronic monitoring is currently used for a range of objectives and penological purposes in Scotland. There are positive benefits associated with using electronic monitoring as a community penalty, as well as challenges and limitations, some of which are outlined in Section 3.

¹ The research on which this report is based is part of the European project: 'Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states' (Hucklesby, Beyens, Boone, Dünkel, Mclvor and Graham, 2016). Details at: www.emeu.leeds.ac.uk. This report has been produced with the financial support of the Criminal Justice Programme of the European Commission (JUST/2013/JPEN/AG/4510). The contents are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

- Access to electronic monitoring appears to depend on the decision-maker involved, with geographical and institutional differences observed across Scotland. Some judicial officers and courts across Scotland use Restriction of Liberty Orders (EM court orders) frequently, whereas others use them rarely. In 2015, the rate of Restriction of Liberty Orders imposed by sheriffs in Glasgow was 256 per cent higher than that of their Edinburgh counterparts, with 314 RLOs imposed in Glasgow compared to 88 RLOs in Edinburgh (G4S, 2016). Some court areas had a marked rise in the use of EM orders, for example, in Kilmarnock 60 RLOs were imposed in 2014, and 196 RLOs in 2015, which signals a 226 per cent increase in one year (G4S, 2016; 2015).
- EM orders in Scotland require people's consent; people are not tagged against their will. There is extensive consensus across participants in this study that consent is, and should continue to be required from the monitored person and the premises holder (if this is not the monitored person) for equipment installation and home-based curfew restrictions. Only a few participants explicitly express the view that cohabitants should be asked for their consent.
- EM order completion rates are fairly high in Scotland, with approximately 8 out of 10 EM orders completed in 2015 (G4S, 2016).
- Being responsive to issues of diversity and vulnerability (gender, age, language, education and low literacy, disability, poverty, victimisation) matters to Scottish practitioners and policymakers. Interviewees speak extensively about tailoring EM to the needs of offenders and victims.
- Monitoring of mostly 'stand-alone' EM orders (i.e. no supervision) by a private EM service provider is associated with limited integration and multi-agency work with criminal justice social workers (Scottish equivalent of probation officers) and charitable organisations. Yet, many of those interviewed wanted greater integration of EM with multi-agency supervision and support.
- There is moderate support among participants for the (re)introduction of the option of electronic monitoring as a pre-sentence modality for the purpose of reducing the use of remand in custody.
- There is moderate support for the introduction of GPS tagging and tracking with location-based exclusion zones in cases where this may reduce risk of re-offending and promote victim safety.
- It is time for more strategic development. The key findings and recommendations of this report encourage more creative and strategic uses of tagging technologies, while not losing sight of the importance of proportionality and consistency in such uses.

Recommendations

This particular moment in Scottish criminal justice represents an opportunity for policymakers and practice leaders to make the uses of electronic monitoring more strategic, creative and fit-for-purpose. Consideration should be given to the following, which are based on the findings of this research:

1. Clarify national breach criteria and responses to non-compliance. Consider consolidating breach reporting timeframes and thresholds into two nationally available options – standard and intensive – to foster consistency between decision-makers and authorising agencies.
2. Introduce mechanisms to give courts and prisons the choice of imposing a supervision requirement with EM modalities involving a ‘supervising officer’, or to make EM a condition of other orders, to enable more multi-agency work and reintegrative supports for monitored people. Implementing integration and the option of supervision will necessitate commensurate funds and resources. However, the introduction of supervising officers will enable decision-making to reduce the volume of queries for order variation which are currently being put before authorising agencies such as the courts, which may reduce workload churn and costs.
3. Authorising agencies should consistently instruct the private EM services 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 regard to all parties involved.
4. Introduce and encourage wider use of mechanisms which motivate and reward monitored people’s compliance and desistance, including graduated changes in regimes and conditions, as well as a mechanism to allow authorising agencies to terminate an EM order or condition early.
5. Abolish the statutory exclusion for Home Detention Curfew (HDC) licences which permanently excludes prisoners who have previously breached a HDC licence. It is inefficient and inequitable.
6. Consider more creative collective uses of EM with people given a custodial sentence, similar to Scandinavian and Dutch approaches, which feature integrated supports for desistance.
7. More data should be collected and released about the current uses of electronic monitoring, and more independent research is needed in the future:
 - a. A greater quantity and quality of data (particularly statistical data, as well as aggregate demographic information about monitored people) needs to be collected about the effectiveness of electronic monitoring in Scotland and made publicly available.
 - b. Ensure future developments in EM policies and practices are informed by the perspectives and lived experiences of monitored people, their families, and victims. More independent research is needed.
8. Initiate greater awareness-raising among professionals, media and the public about electronic monitoring in Scotland.

Electronic monitoring is a tool which can be used for different purposes; however, EM is not a panacea and any expectations about its impact after monitoring has ceased should be truncated. Monitored people benefit from positive supports and opportunities to help them leave crime behind, which extend far beyond time-limited and place-based restrictions. Tagging *technologies* and equipment should not be allowed to

unnecessarily dominate discussions of electronic monitoring and offender supervision, now or in the future. Objectives of supporting rehabilitation and desistance are better realised in the context of supervisory relationships and desistance-oriented supports and regimes in which EM may only be one feature (see Graham and McIvor, 2015).

Introduction

The Scottish research findings and recommendations presented here, in combination with the comparative findings across the five jurisdictions (featured in a separate report and briefing paper, see Hucklesby *et al.*, 2016a, 2016b), promote deeper understanding of current uses of electronic monitoring, with a view to further development of ethical and effective uses in jurisdictions across Europe. The structure of this report, including the ways in which sub-headings are worded and organised, is a replication of a format adopted consistently across the country reports for each of the five jurisdictions in this research project, as well as the comparative report.²

Electronic monitoring of offenders has existed in Scotland for 15 years, yet it has been the subject of few independent academic studies during this time. Those studies which have been conducted are relatively small and tend to be focused on one particular EM modality or policy initiative. In addition to its contributions to the wider focus on Europe, this research report offers one of the most recent and detailed empirical accounts of how electronic monitoring is currently used in Scotland (albeit with the acknowledgement that significant changes may be enacted in the near future). Yet such knowledge is built upon and informed by the extant contributions of others, whose contributions are cited throughout this report. The analytical insights of Mike Nellis (2016a; 2016b; 2015; 2014; 2009; 2007; 2006a, 2006b), a Scotland-based scholar with internationally recognised expertise in electronic monitoring, stand out above the rest as offering one of the most cogent accounts within what remains a small body of Scottish EM literature. Furthermore, in 2015, concurrently to conducting the fieldwork for this research which is funded and commissioned independent of the Scottish context, we were separately commissioned by the Scottish Government through the Scottish Centre for Crime and Justice Research (SCCJR) to co-author a Scottish and international review of existing literature to examine the uses, purposes and impact of electronic monitoring in different jurisdictions and make recommendations regarding the national context (see Graham and McIvor, 2015).

It is acknowledged from the outset that this research has been conducted in a period of time characterised by substantial interest among Scottish policymakers, practitioners and other stakeholders in electronic monitoring and its potential development in the near future. Interviews for this study should be contextualised as occurring following a period of national consultation on electronic monitoring (Scottish Government, 2014; 2013a). Following the Consultation, the Scottish Government Working Group on Electronic Monitoring has been established to consider the governance and potential future uses of EM, and it is expected that they will make recommendations to the Cabinet Secretary for Justice shortly. Throughout the period of consultation and subsequent multidisciplinary practitioner events across Scotland, there has been concerted efforts by the Scottish Government and other stakeholders to mobilise the judiciary, prisons and other criminal justice actors to reduce the prison population and make greater use of community sanctions and measures, including electronic monitoring, as well as early release from prison using EM. As such, the research findings and recommendations conveyed here are representative of a particular social, historical and political moment in Scottish criminal justice.

² Each of the five country reports and the comparative report are available online at the research project website: <http://emeu.leeds.ac.uk/>

Section 1: Legal and organisational context

Section 1 sets the scene by providing an overview of the legislative arrangements, policy and organisational contexts in which electronic monitoring operates. It also briefly hints at the recent and current political climate and associated Scottish Government priorities which may bear some influence on participants' perspectives in the period in which data collection for this research occurred.

1.1 Actors involved in the implementation of electronic monitoring

In European jurisdictions, there are two major approaches to the implementation of electronic monitoring (see also the comparative briefing paper and report, Hucklesby *et al.*, 2016a; 2016b). The approach taken in Scotland is coherent with what may be referred to as an 'Anglophone model' of privatised service provision, also used in England and Wales, where electronic monitoring is contracted to a private company. In contrast, other jurisdictions such as the Netherlands, Germany and Belgium adopt what might be termed as a more continental European approach, where electronic monitoring is implemented by government criminal justice organisations, with the role of private corporations limited to, for example, a subcontract to provide them with EM equipment.

A range of stakeholders are involved in the implementation and operation of electronic monitoring in Scotland. Electronic monitoring legislation and policy are set nationally by the Scottish Government. Electronic monitoring is implemented by a private services provider, currently G4S, under contract to the Scottish Government. G4S Scotland staffing includes managers, monitoring officers and field support officers (who keep an inventory of equipment, issue equipment to the field officers and send faulty equipment to the suppliers – G4S Monitoring Technologies - in Leicester, UK). Monitoring officers also work as field officers so that they have all round experience and can provide technical advice to their colleagues involved in field visits. The majority of the staff (around 70 per cent) are based in the National Electronic Monitoring Centre (NEMC) from where much of the population base of Scotland is accessible within 1.5 hours of driving. There are, in addition, approximately 20 staff who work from home (including some who are 'retained') and who undertake the tasks of field officers in the north of Scotland and Western and Northern Isles.

Key criminal justice actors involved in the implementation of EM in Scotland include judicial officers (mainly sheriffs and, much less commonly, lay justices), criminal justice social workers and criminal justice social work assistants from local authorities, procurators fiscal (prosecutors), prison governors and Scottish Prison Service staff responsible for overseeing Home Detention Curfews, the Parole Board for Scotland, Multi-Agency Public Protection Arrangements (MAPPA), Police Scotland staff, the Children's Panel and Youth Justice in the case of children and young people who are tagged, and the private EM services provider.

Some victims of crime may have the opportunity for some input into the implementation of EM because of the nature of 'away from' place-based restrictions and EM equipment being placed in their property, as well as opportunities for formal victim notification and input with specific types of EM modalities. For example, for prisoners eligible for early release on HDC, the Scottish Prison Service takes part in a victim notification scheme available if a prisoner is serving a sentence of over 18 months. In this case, victim(s)

may be notified and able submit representation to inform executive decisions no less than two weeks prior to a HDC licence decision being made.

Currently, there are 32 local authorities (where criminal justice social work services reside) and six sheriffdoms (court areas) across Scotland. At the time of writing, the Scottish Prison Service (n.d.) has 13 prisons which are run by the government prison service, and 2 prisons which are run by private companies under contract to the SPS. The range of organisations, facilities and actors involved means that localism remains an influential feature of Scottish criminal justice. It also means that, as some of the findings of this research and the available data by others show, there are geographical and institutional differences which can be observed across Scotland in the implementation of electronic monitoring.

1.2 Legal and contractual framework

The following sub-sections involve discussion of adults and young adult offenders, as well as children and young people (under the age of 16 years old). However, the dominant focus of this research project centres on adults involved in the criminal justice system in Scotland.

1.2.1 Adults and young adult offenders

Electronic monitoring was initially introduced in Scotland on a pilot basis in 1998 as a means of monitoring compliance with Restriction of Liberty Orders (RLOs), which are imposed by courts. Electronically monitored RLOs were regarded as a mechanism for restricting the liberty of the offender in the community, potentially 'in a way which reduces the risk of re-offending, where previous offending has been linked to particular locations or events' (Scottish Office, 1996: para 9.13). Restriction of Liberty Orders (RLOs) were established through Section 245A of the *Criminal Procedure (Scotland) Act 1995* (as introduced by Section 245A of the *Crime and Punishment (Scotland) Act 1997*) and enabled the courts to require that offenders stay in a specified place for up to 12 hours a day, for a period of up to 12 months, or away from a specified place for up to 24 hours a day for up to 12 months. They could be imposed as a stand-alone option, or in conjunction with a supervisory order. They are primarily targeted at young offenders and adult offenders; however, it should be noted that Section 245A of the *Criminal Procedure (Scotland) Act 1995* as amended by section 12 of the *Anti-Social Behaviour Etc. (Scotland) Act 2004* allows for RLOs on persons under the age of 16 dealt with by the Court system – although these cases are rare and, in some years, not used at all. Restriction of Liberty Orders were subsequently rolled out nationally in Scotland in April 2002, following an evaluation of the pilots (Lobley and Smith, 2000) and a consultation by the Scottish Executive on the wider potential of electronic monitoring in the supervision of offenders (Scottish Executive, 2000).

The use of electronic monitoring was further extended by the *Criminal Justice (Scotland) Act 2003*, which introduced provisions for electronically monitored curfews as a condition of a probation order (S. 46), or drug treatment and testing order (DTTO) (S.47) and as a condition of parole (S.40). The same legislation also specified that the RLO should be deemed an alternative to custody (S. 50 (3)) by stipulating that orders should only be imposed for offences punishable by imprisonment where the alternative would be a period of imprisonment or detention. Electronic monitoring as a condition of bail (or EM bail) was introduced on a pilot basis in three areas in 2005 to seek to improve bail

decision-making and encourage compliance with bail. However, a decision was taken not to roll EM bail out nationally following an evaluation of the pilot which found that applications for electronically monitored bail represented a very small proportion (less than five per cent) of potentially eligible cases, with the result that the remand population in the pilot areas was reduced by less than two per cent and there was no evidence of improved confidence in public safety attributable to electronically monitored as opposed to standard bail (Barry, Malloch, Moodie, Nellis, Knapp, Romeo, and Dhanasiri, 2007).

HDCs were introduced in Scotland in 2006 for prisoners serving sentences of less than four years through the *Management of Offenders etc. (Scotland) Act 2005*. Initially, prisoners assessed as suitable could be released up to a maximum period of four and a half months prior to their release date to serve the remaining part of their sentence at home (or another suitable address) subject to an electronically monitored curfew (for between 9 and 12 hours per day). In 2008, the maximum duration of HDC was extended to six months and the scheme was extended to long term prisoners (serving sentences of four years or more) who have been recommended for release by the Parole Board at the half-way stage of their sentence. A number of statutory exclusions are set out in the legislation ensuring that the following types of prisoners are not eligible for early release on a HDC licence:

- prisoners who are required to register as sex offenders;
- prisoners who are subject to an Extended Sentence;
- prisoners who are subject to a Supervised Release Order;
- prisoners who are subject to a Hospital Direction (including Transfer for Treatment);
- foreign national prisoners awaiting deportation; and
- prisoners who have previously been recalled to prison having been released on licence.

The rules governing the Victim Notification Scheme in Scotland mean that victims are only able to be notified and make a submission to the Scottish Prison Service prior to a HDC licence being granted if the prisoner applying for HDC is serving a sentence of over 18 months. HDC licences are considered to be a stand-alone order, in that there is no mandatory supervision requirement; however, voluntary throughcare services are available to prisoners who choose to participate in them.

A 2011 evaluation of HDCs indicated that most prisoners released on HDC were serving sentences of between six months and two years, their offending profile tended to be less serious than that of the Scottish prison population as a whole and proportionally more use was made of HDC with women than with men (Armstrong, Malloch, Nellis, and Norris, 2011). HDC was perceived by respondents in Armstrong and colleagues' (2011) study principally as a mechanism for managing the prison population and the pressures occasioned by overcrowding although they also believed that it could help ease the prisoner back into society and support the process of reintegration.

People granted a parole licence may be subject to an electronic monitoring condition, and this may be applied in general, as well as specifically to parolees convicted of sexual crime or violent crime who are managed through Multi-Agency Public Protection Arrangements (MAPPA). Provisions within Sections 10 and 11 of the *Management of Offenders etc. (Scotland) Act 2005* establish that electronic monitoring services providers have a 'duty to cooperate' with statutorily 'responsible authorities' (Scottish Prison Service, Police Scotland and local authorities) in the joint assessment and management of sex offenders. The Parole Board has the responsibility for making the decision about whether a sex offender is subject to electronic monitoring upon release from custody (Scottish Government, 2013), and EM is not imposed automatically in all cases of sex offenders managed by MAPPA. The Parole Board's decision is informed by the other stakeholders involved (e.g., Scottish Prison Service, Police Scotland, local authorities). EM as a condition of a parole licence can be granted for up to 24 hours in both the case of 'away from' restrictions as well as restrictions to a place (which is unlike the other orders); however, it is understood that curfews are not routinely imposed on parolees for more than 12 hours a day and a strong rationale is needed to impose longer curfews, for example, up to 17 hours a day.

In 2011, following the recommendation of the Scottish Prisons Commission (2008), the Community Payback Order (CPO) was introduced in Scotland through the *Criminal Justice and Licensing (Scotland) Act 2010* to replace existing community sentences (probation, community service and supervised attendance orders). RLOs and DTTOs were not 'rolled up' into the new order. The RLO, specifically, was retained 'for high tariff offenders where the safety of the public in general or of particular individuals (for example, in relation to a conviction related to domestic violence) is at risk' (Scottish Government, 2008: 11). While electronic monitoring cannot be imposed as a condition of a Community Payback Order (CPO), it is possible for an RLO and a CPO to be imposed concurrently, providing offenders with access to supervision and other services as required. Moreover, an additional requirement of electronic monitoring - a restricted movement requirement - was made available to the court (through Section 227ZE of the *Criminal Justice and Licensing (Scotland) Act 2010*) in the event of a CPO being breached. Like an RLO, a restricted movement requirement requires the individual to remain at a specific address for up to 12 hours a day and/or to stay away from a specific address for up to 24 hours a day, with scope for flexibility regarding the monitoring periods imposed. Because the restricted movement requirement can only be imposed following breach of a CPO, failures to comply are considered serious breaches and must be notified to the court within a maximum period of three days from detection. For more in-depth discussion of the legal framework and uses of electronic monitoring in Scotland, see the review by Graham and McIvor (2015).

1.2.2 Children and young people

Although the focus of this research is on the use of electronic monitoring with adults (defined as those aged 16 years and older in Scotland), it is also important to note its use with children and young people. Proposals to introduce electronic monitoring of under 16 year-olds were first contained in a consultation paper *Putting Our Communities First: A Strategy for Tackling Anti-social Behaviour*, published by the Scottish Executive in 2003 in which options included making electronic monitoring available through the Children's Hearings System and extending the availability of RLOs to young people aged under 16 years sentenced in the courts. Analysis of consultation responses identified some cautious support for the use of electronic monitoring with young people,

so long as it was introduced as part of a holistic range of services and supports, was considered a high tariff option that would be suited only to a small number of young people, was subject to regular review and was initially developed on a pilot basis to enable its effectiveness with young people to be assessed. It was also stressed that the impact on families would need to be carefully assessed and appropriate supports provided (Flint *et al.*, 2003).

An electronically monitored movement restriction condition (MRC) for children and young people under 16 years of age is dealt with in the Children's Hearings System as an alternative to secure accommodation. Legislatively enacted in January 2005 through Section 135 of the *Antisocial Behaviour etc. (Scotland) Act 2004* and Section 70 of the *Intensive Support and Monitoring (Scotland) Regulations 2005*, MRCs were introduced in the context of the Intensive Support and Monitoring Service (ISMS) orders, which was piloted in six sites in 2005. ISMS involved intensive, multi-agency services tailored to individual young people's needs and risks, and were subsequently rolled out nationally in 2008. Furthermore, the imposition of a Movement Restriction Condition must meet one or more of the statutory inclusion criteria (which are the same as those needed for inclusion to secure accommodation):

- (a) that the child has previously absconded and is likely to abscond again and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk;
- (b) that the child is likely to engage in self-harming conduct;
- (c) that the child is likely to cause injury to another person.

Relatively limited use has been made of MRCs since their inception, despite some evidence that they are considered by young people and by social workers to be preferable to secure accommodation, and by parents as being helpful in enabling young people to resist peer pressure, reducing conflict regarding when the young person should be home and keeping the young person safe (MacQueen and Rigby, 2010; Khan and Hill, 2007).

1.2.3 Contractual framework

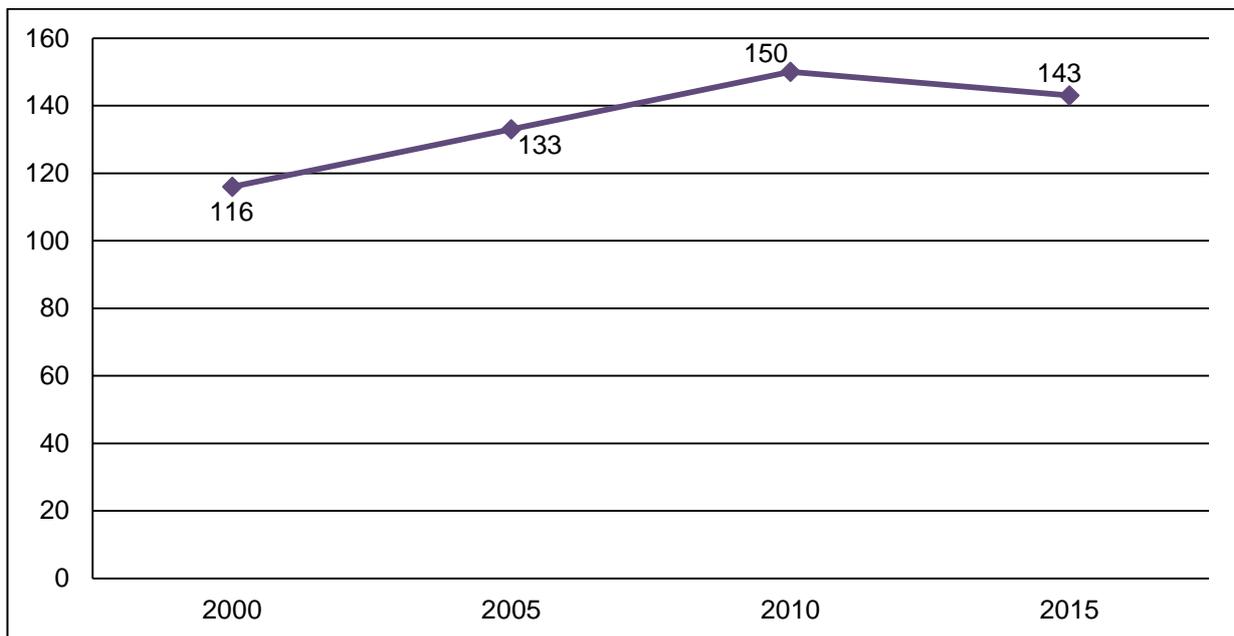
Electronic monitoring in Scotland is funded by the Scottish Government Justice Department (Community Justice Division). As has already been mentioned, the service is currently provided by one private contractor – currently G4S - under a five year contract to the Scottish Government which was awarded in September 2012 and began in April 2013 following a competitive tendering process. Previous private EM services providers in Scotland include Reliance and Serco.

Some contractual obligations to which the current private EM services provider is bound implicitly feature in the practices described in this research; however, the content of the contract itself is confidential, and not available to the researchers or the public. What is clear is that the current contractual framework involves close working arrangements and scrutiny of contractual compliance, with 'tight' accountability 'via real-time access to the contractor's data on all tagged offenders, monthly performance audits and regular meetings with managers' (Nellis, 2016a: 184).

1.3 Scottish political and policy context

While there have been some modest changes in the stages at which EM is available in the criminal justice process, and to whom, there have not yet been wholesale departures from a relatively standard approach of predominantly using RF tagging and home curfews. This, however, may change in light of recent and current developments in the realms of criminal justice policy and politics. Scotland has one of the highest prison population rates in Western Europe, with a steady rise in prisoner numbers from 2000-2010, as illustrated in Figure 1. This has not gone unnoticed in local policy discussions in recent years.

Figure 1 Prison population rate (per 100,000 of national population) in Scotland, 2000-2015



The most recent estimate of the Scottish prison population rate is 143 per 100,000 of national population (Walmsley, 2016). To put this in context, Scotland's prison population rate of 143 is noticeably higher when compared to other European countries, for example, Sweden (55), Finland (57), Denmark (61), the Netherlands (69), Germany (78), Ireland (80), Italy (86), Croatia (89), and France (95) (Walmsley, 2016). The high Scottish prison population rate has featured in different policy and political discussions in recent years.

In the autumn of 2013, the Scottish Government published a Consultation on the potential development of electronic monitoring in Scotland to better take advantage of advances in technology, in particular the availability of improved GPS technology (see Scottish Government, 2013a). The consultation identified EM as currently being used in Scotland to:

- restrict offenders' movements and monitor their compliance with conditions;
- support prisoners' reintegration into the community;

- provide an element of structure to support the completion of rehabilitative programmes (and possibly disrupt patterns of offending behaviour).

At a general level, the Consultation document sought views on how electronic monitoring could be better integrated with other supervision and support services, how the system of breach and enforcement could be developed, and identification of the barriers to increasing the rates of use of electronic monitoring (see Scottish Government, 2013a). Part of the Consultation focused on how the current electronic monitoring service could be improved, including whether it should be extended to include new areas, whether existing systems and processes of information exchange between agencies are effective, which offenders should receive electronic monitoring, whether the current maximum of curfew hours per day is appropriate, how well electronic monitoring operates for children and young people as an alternative to secure care, and whether the implementation of EM could better incentivise compliance with electronically monitored orders. Views were sought on the use and development of new electronic monitoring technologies, including GPS, remote alcohol monitoring (RAM) and the potential development of an electronic reminder service.

Fawcett, Costley and Granville (2014) collated and analysed the Consultation responses. Perhaps unsurprisingly, a number of themes and issues were raised in response to the Consultation that were also raised by participants in this study, including the need to further develop the current system for handling breach, as well as identifying the need for a greater orientation towards and opportunities for rehabilitation. There was moderate support for integration of EM service provision with statutory service provision, including criminal justice social work. Interestingly, their analysis indicated that:

The main barriers to greater use of electronic monitoring related to a perceived lack of understanding and awareness generally, public perceptions of electronic monitoring as a 'soft' punishment, the need for evidence on the effectiveness of electronic monitoring in terms of reducing reoffending and concerns about the appropriateness of offenders' living arrangements when under electronic monitoring. A small number of respondents also cited privacy and human rights issues as an area of potential concern (Fawcett *et al.*, 2014: 1).

Following the Consultation, the Scottish Government established an Electronic Monitoring Working Group to consider policy and practice development and potential legislative change. In our review of the Scottish and international evidence (Graham and McIvor, 2015) commissioned by that working group, we made a series of recommendations based on the findings of our review (see Graham and McIvor, 2015).

At events in August and September 2015, the Scottish Government Cabinet Secretary for Justice, Michael Matheson MSP, spoke to practitioners and the media about the Scottish Government's vision for the future uses of electronic monitoring. This vision was positioned against the backdrop of Scotland's high prison population rate, prompting a focus among policymakers on its use as an alternative to reduce the use of custody, particularly short-term prison sentences. The following excerpt of Matheson's (2015) statements is indicative of some of the key issues being considered at this particular moment in Scottish history:

One of the obvious ways in which we can already start to look at alternatives to the traditional custodial estate is by the use of electronic monitoring. Each day in

Scotland we currently monitor around 800 people, two-thirds of whom are serving community-based sentences, with the remaining one third transitioning from custody to the community. I believe that we can, and I also believe that we should, be doing more to increase this number. In 2013/14, nine times as many people received custodial sentences of less than six months as were issued with restriction of liberty orders. Evidence from other countries shows us that electronic monitoring can help people to maintain connections with their family, their community and their employment - the very things that short-term sentences are so disruptive of ... Electronic monitoring should no longer be seen as an end in itself, but one which, when set against a wider package of care, can be used as part of a credible community sentence which is effective at reducing reoffending in the longer term... (Matheson, 2015: 6)

Matheson's (2015) comments called attention to a wider Scottish Government policy agenda to shift towards the increased use of non-custodial sentences. This has coincided with embarking on a relatively large-scale re-design of community justice in Scotland.

Separately but concurrently to the period in which the EM Consultation was conducted, a Ministerial Group on Offender Reintegration was established in October 2013 and released a final report in September 2015. Its brief was to address the demand for better integration between the justice system and other services and systems, to focus the role and contributions of actors and organisations outside of criminal justice to supporting the community reintegration of individuals leaving custody. The need to reduce the use of custody, especially in the form of short-term prison sentences, was highlighted in the Ministerial Group's (2015) final report, like other reports before it. Also in 2015, the Scottish Government established a national Consultation on a proposal to strengthen the presumption against short prison sentences. That Consultation closed in mid-December 2015, and many of the submissions have been made publicly available online.

Those discussions and consultations notwithstanding, the two year timeframe and the bounded parameters of this research project, combined with a lack of available detailed data, do not allow for us as researchers to draw concrete conclusions about the nature of the relationship between uses of EM and uses of custody (including any reductions in prison populations). We can only observe that participants in this research, and Scottish policymakers and politicians appear to see a link between EM and reducing the use of custody, now and into the future.

1.4 Adherence to the Council of Europe recommendation on electronic monitoring

In 2014, the Council of Europe made a recommendation (Recommendation CM/Rec (2014) 4) about electronic monitoring in EU member states, containing 40 recommendation-style rules or principles. This recommendation is an influential form of 'soft law', in that it is not legally binding. It was introduced 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' (Council of Europe, 2014: 2). One of the questions asked of some interview participants in this study was to ask of their awareness of the

recommendation, and the extent to which this influences and is applied in Scotland. Very few participants were aware that this recommendation existed.

The Council of Europe (2014) recommendation divides principles into different sub-categories: basic principles; conditions of the execution of electronic monitoring at the different stages of the criminal justice process; ethical issues; data protection; staff; and work with the public, research and evaluation. Overall, the current uses of electronic monitoring largely adhere to the recommendation, which is a strong and positive threshold on which to build future developments. However, a few points of differentiation can be observed. The areas where there is moderately strong adherence to the recommendation are ethical issues (rules 26-28) and data protection (rules 29-32). Different types of practitioners in this study speak at length (see Section 7 of this report) about ethical considerations in working with diversity and vulnerability in the lives of monitored people. There are moderately strong data protection protocols in place, with moderately strict accountability mechanisms put in place and overseen by the Scottish Government. With regard to electronic monitoring staff (rules 33-38), we are unable to offer a view about private EM staff skills and training, as it is outwith the scope of this study and there is a lack of publicly available data. However, field work observations and the length of EM work experience that numerous field officers have appear to *suggest* moderate adherence to the recommendation. Most of the conditions of execution of EM (rules 15-25) are in place in Scotland, with the exception of the option of EM as an alternative execution to a custodial sentence, and variability in practice in the extent to which victims of crime give *prior* informed consent to involvement in the case of 'away from' restrictions. Finally, one of the basic principles (rules 1-14) is notably missing in Scotland: the combination of EM with other professional interventions and supportive measures aimed at the social reintegration of offenders in order to seek and promote desistance from crime.

Section 2: Methodology and research process

Section 2 describes the Scottish research design and methods. This is a mixed methods study which is predominantly based on qualitative insights from a sample of different criminal justice actors in the field; however, descriptive statistics and other types of secondary data helpfully complement participants' contributions in interviews and ethnographic observations. The following discussions relate to the Scottish component of the international research project; however, as indicated in the comparative briefing paper and comparative report (see Hucklesby *et al.*, 2016a; 2016b), collectively, involved a total of 75 days of ethnographic observation and over 190 interviews across the five jurisdictions. The research project underwent a process of human research ethics committee review and approval before data collection commenced. Institutional permissions were sought where they were required.

2.1 Observations

The following ethnographic observations have been completed with G4S, the current private electronic monitoring services provider in Scotland:

- 2.5 hours across one day in March 2015 involving two researchers observing the IT and phone system, administration processes and equipment storage and maintenance at the G4S National Electronic Monitoring Centre (NEMC) in Uddingston, Glasgow.

- Nine hours across three days in March and June of observations involving two researchers of the evening 'backshift' (6:00pm – 9:00pm) at the G4S National Electronic Monitoring Centre (NEMC) in Uddingston, Glasgow.
- 42 hours across five days in April and June of observations of the evening 'field shift' (from 3:30pm to approximately 12 midnight) involving two researchers accompanying field officers into the homes of monitored people and other locations across Scotland.

Both male and female field officers were observed during the evening 'field shifts'. In engaging in ethnographic observation and taking field notes, the researchers wore ID tags to identify them as a guest observing the process, demarcating their role from that of the G4S field officer they accompanied. Great care has been taken not to collect information about the personal demographics and contact details of monitored people and other people present in the property at the time of observation, nor was any information sought about their offence histories or offence for which they are tagged. The purpose of the ethnographic observation was to witness the implementation and application processes of electronic monitoring in a variety of modalities and circumstances. An observation guide, developed with the research partners from the other jurisdictions in this project, was used to guide the priority topics and process details for the researchers to focus on.

2.2 Interviews

Interviews have been conducted with 30 participants between May and December 2015. A list of interview participants is provided in Table 1; it should be noted that this table lists interviewees by job role type, not necessarily in the consecutive order in which interviews were conducted, and that a few practitioners chose to be interviewed in pairs. Information sheets and consent forms were provided to all participants in advance of the interview taking place. The interviews range in length, with 55 minutes being the approximate average duration. If the interviews and fieldwork observations are combined, a total of 14 staff from G4S, the current EM services provider in Scotland, have participated in this research.

With respect to the sample of criminal justice actors, participants across different roles were recruited from four courts located across three Sheriffdoms (i.e. half of the Sheriffdoms) in Scotland. Each member of the judiciary interviewed had worked in at least one court area other than the one they currently work in. Furthermore, each of the criminal justice social workers from different local authorities across Scotland has a considerable number of years of professional practice experience, including in frontline operational roles. Interviews were also conducted with two staff from a charitable or third sector representative organisation.

Interviewee 1	Criminal Justice Social Worker	Interviewee 16	Sheriff
Interviewee 2	Police Scotland	Interviewee 17	Criminal Justice Social Worker
Interviewee 3	Criminal Justice Social Worker	Interviewee 18	Sheriff
Interviewee 4	Criminal Justice Social Worker	Interviewee 19	Sheriff
Interviewee 5	G4S staff	Interviewee 20	Sheriff
Interviewee 6	G4S staff	Interviewee 21	Scottish Government Justice
Interviewee 7	G4S staff	Interviewee 22	Scottish Government Justice
Interviewee 8	G4S staff	Interviewee 23	Parole Board for Scotland
Interviewee 9	G4S staff	Interviewee 24	Scottish Prison Service
Interviewee 10	Criminal Justice Social Worker	Interviewee 25	Scottish Prison Service
Interviewee 11	G4S staff	Interviewee 26	Scottish Prison Service
Interviewee 12	G4S staff	Interviewee 27	Criminal Justice Social Worker
Interviewee 13	G4S staff	Interviewee 28	Scottish Prison Service
Interviewee 14	G4S staff	Interviewee 29	Representative organisation (third sector)
Interviewee 15	Scottish Prison Service	Interviewee 30	Representative organisation (third sector)

Interview data was transcribed, and coded using an agreed coding schedule developed between the five research partners, based on a shared interview schedule.

2.3 Statistical data

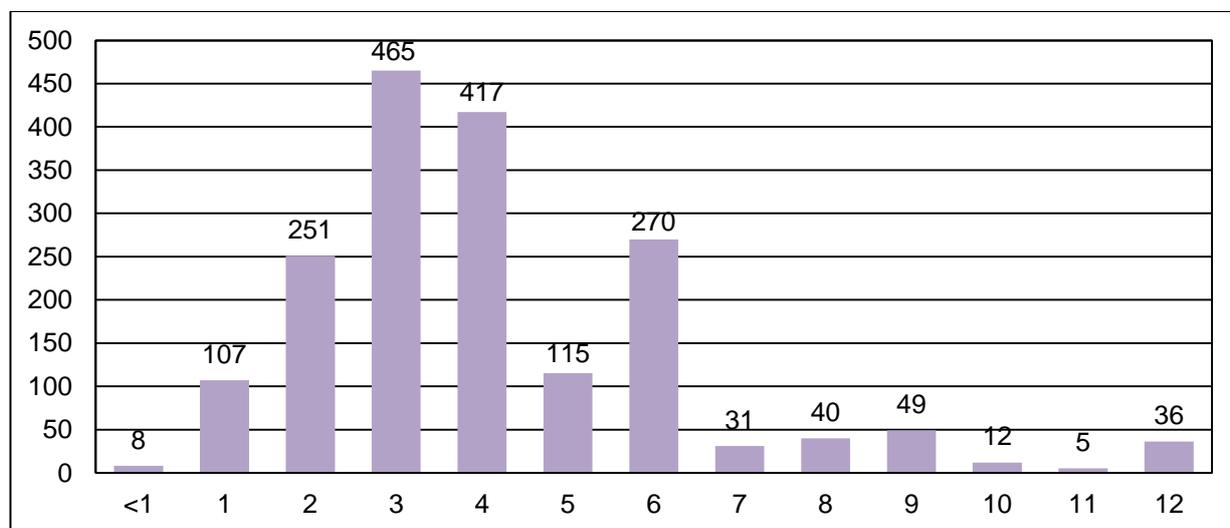
The numbers of people being monitored at any given time are dynamic, and appear to be steadily increasing in recent months. There were 808 live EM orders under supervision from the National Electronic Monitoring Centre in Scotland on Thursday 11

June 2015 plus 54 SMS (cases that are not being actively monitored – e.g., in police custody). On 3 May 2016, this total number rose to a current caseload of approximately 902 (Smith, 2016). G4S (2016; 2015; 2014) make statistical data available about the use of EM and some of the characteristics of monitored people in Scotland, some of which is referenced here.

Court-imposed Restriction of Liberty Orders (RLOs) are the most commonly used form of EM order, accounting for 66 per cent of EM cases in 2015 (G4S, 2016). In the 12 month period from 1 January - 31 December 2015 a total of 1,806 new RLOs were imposed, most commonly for a period of 3 or 4 months (G4S, 2016). The majority of RLOs involve restriction to a designated place (i.e. home curfew), with the imposition of only one order involving an ‘away from’ restriction from a place. ‘Away from’ restrictions can be imposed for up to 24 hours and they can be imposed concurrently with curfew restrictions to a place. Curfews can only be imposed for up to a maximum of 12 hours a day. The most common offences resulting in the imposition of an RLO are diverse in nature. In 2015, these included offences under the *Criminal Justice and Licencing (Scotland) Act 2010*, assault, and theft, as well as offences under the *Sexual Offences (Scotland) Act 2009*, the *Misuse of Drugs Act 1971*, the *Social Security Administration Act 1992*, fraud, arson, wilful fire-raising, and wasting police time. Even though they are the most common form of EM modality in Scotland, Restriction of Liberty Orders are not widely recommended to sentencers by criminal justice social workers. In 2014-2015, of the 30,838 criminal justice social work reports submitted, only 551 had an RLO as a preferred sentencing option.

Similarly, in 2015, 1,426 new Home Detention Curfews (HDCs) were imposed (G4S, 2016). The use of EM as a condition or requirement of another type of order is rare. In 2015, 9 new restricted movement requirements after breach of a Community Payback Order were imposed, and during the same period, 17 parole releases with an EM condition were made (G4S, 2016). In relation to children and youth with a movement restriction condition as a component of their ISMS intensive support package, in 2015, 27 movement restriction conditions were made (G4S, 2016).

Figure 2 Restriction of Liberty Order (RLO) length: number of orders by number of months, in Scotland from 1 January – 31 December 2015

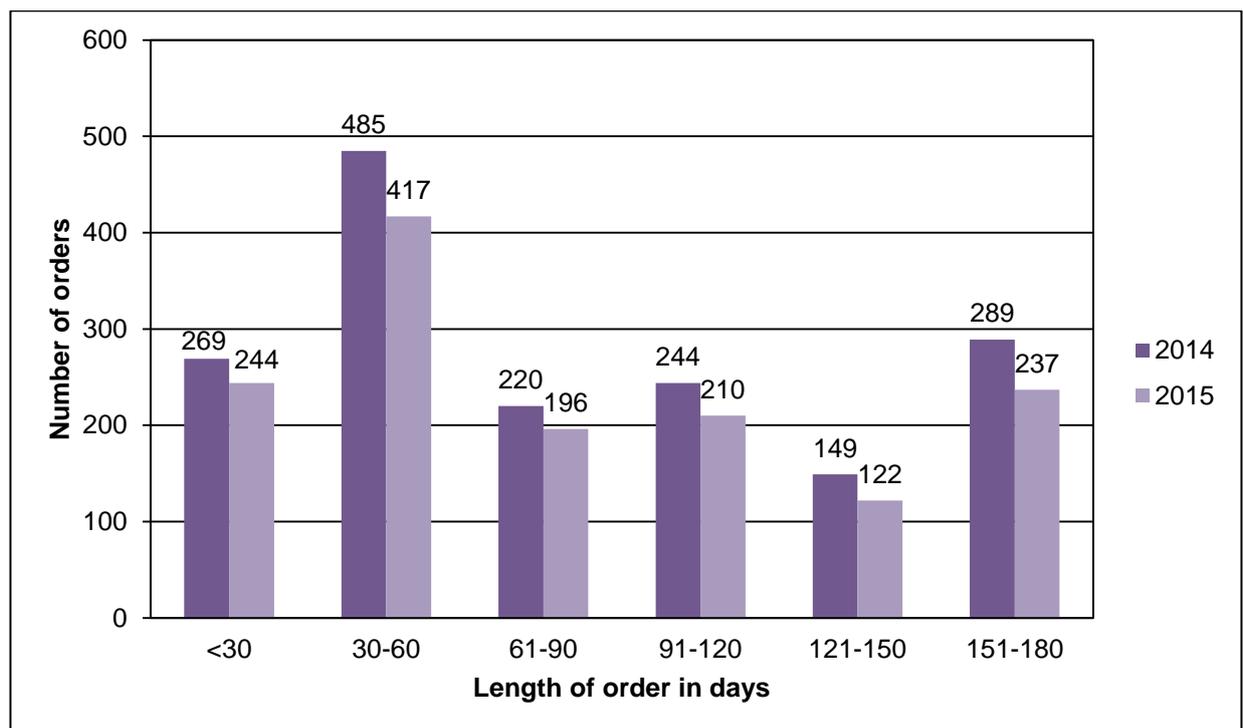


Source: G4S (2016).

Statistical data about the length of EM orders report measures of time differently, with the length of RLOs reported in months, and the length of HDCs reported in days.

During the period 1 January – 31 December 2015, the most commonly imposed length of HDC licence was 30-60 days, and the maximum length is 180 days (G4S, 2016). Figure 2.2 shows that the number of HDC’s granted decreased in 2015, compared to 2014.

Figure 3 Home Detention Curfew (HDC) length: number of orders by number of days, in Scotland between 1 January – 31 December in 2014 and 2015



Source: G4S (2016; 2015).

2.4 Scope and limitations within the Scottish research

There are a few issues and features of the Scottish research which warrant acknowledgement to contextualise and bound its contributions and scope. These relate to the Scottish sample in terms of size and composition, bounding of the interview questions, as well as availability of data. This research does not encompass a focus on confidential operational matters (for example, details of procurement between the government and private companies), nor is it an evaluation (in the formal sense of the word) of the practices of any service provider or organisation.

The sample size of 30 interviews per country was a target set in agreement with the other research partners at the outset of this project. However, it is acknowledged that an interview sample of 30 participants is relatively small, albeit one that is, arguably, appropriate and proportionate in the context of a small jurisdiction, in combination with the information yielded by the other methods and data used in this study. In this report and related research outputs, we, as authors and researchers, do not claim to provide an all-inclusive account of the views of *all* actors involved in EM and Scottish criminal justice more broadly. The Scottish research sample contains, for example, an interview

with one practitioner from Police Scotland and one member of the Parole Board for Scotland. Each practitioner perspective is valid and valuable; however, interview participants have provided insights from their professional expertise and experiences, and their comments are not offered here as official representations of their institution's viewpoint on a given issue or research finding.

Secondly, this research sample does not include monitored people, their families and other cohabitants, or victims of crime (and these groups are not mutually exclusive). Ethnographic observations in the Scottish research focused on electronic monitoring *practices* in the field; interview questions were not asked of people present in the households visited. However, lived experiences and first person perspectives are important in gaining a fuller and deeper understanding of electronic monitoring, which is why here and elsewhere (see Graham and McIvor, 2015) we recommend that in-depth research, especially independent research, and other mechanisms for input and consultation with people from these groups should be considered and initiated as a matter of urgency.

Thirdly, it is acutely acknowledged in Scotland, as well as other countries in this five jurisdiction comparison, that our capacity to offer empirical findings and recommendations about the *effectiveness* and impact of electronic monitoring is limited by a lack of publicly available information. Some descriptive statistical data, for example, about numbers of EM orders, is available in the Scottish context, a proportion of which is referenced here. However, more data, especially statistical data, needs to be collected and made publicly available. In particular, more information is needed about monitored people both during and after an EM order, as well as workforce, institutional and economic data relating to the staffing, operation and costs of EM. Some of these issues and limitations raised in this sub-section are related. It is difficult to make conclusions about, for example, the effectiveness or impact of EM on compliance and desistance in a study where monitored people have not been interviewed and other sources of data about recidivism is rudimentary.

We have argued elsewhere (Graham and McIvor, 2015: 117) that 'the effectiveness of electronic monitoring must be understood as contingent and complex', and that others such as Gainey (2014) 'rightly warns against the extremes of simplistically constructing electronically monitored punishment as a panacea or as an abject failure in response to the problem of crime'. Any evidence, experiences or recommendations within this research need to be understood in light of such caveats and warnings. There is still a lot that is not known about the uses and impact of electronic monitoring, in Scotland and internationally. In making recommendations about potential changes for the future, the multi-faceted implications of these changes, if enacted, cannot be fully accounted for here.

Section 3: The application of electronic monitoring

Section 3 highlights a series of research findings about how EM is currently used, featuring the perspectives of a range of practitioners who were interviewed in this research. It is worth noting at the outset of this section that there are significant differences between practitioners in levels of awareness of what is involved in the application of electronic monitoring and how the technology works. This, in turn, may reflect ideological differences between practitioners in different institutions and areas across Scotland. Such differences appear to be influenced by how frequently EM is

used by those criminal justice actors, as well as by the perceptions and attitudes of the judiciary, prison staff and managers of criminal justice social work teams in a given area. In areas where EM orders are commonly used, practitioners demonstrate a moderately strong and clear awareness of its uses, including its strengths and limitations. In areas where EM orders are not as commonly assessed for, recommended or imposed, particularly in relation to RLOs, criminal justice social workers and sheriffs interviewed in this research made comments to the effect of “they don’t ask for it/they don’t recommend it.” This is further explored in sub-section 3.4. Some participants asked questions in research interviews about how EM technology works, which community sentences it can be imposed with, who has access to the data about monitored people, and about EM order completion rates and breach rates.

While there might be a knowledge gap among some criminal justice actors, this is not because of a current lack of available information about electronic monitoring in Scotland. Staff from the private EM services provider G4S regularly offer information presentations and tagging demonstrations at practitioner conferences and professional development events (e.g., for social workers, sheriffs), as well as inviting key practitioners to ‘Open Nights’ at the National Electronic Monitoring Centre near Glasgow, to promote clearer awareness of the uses of EM in Scotland. Research bulletins with descriptive statistics about EM are available annually (see G4S, 2016; 2015; 2014). Similarly, policymakers from Scottish Government Community Justice division in collaboration with others in cognate organisations (e.g., Social Work Scotland) have hosted multi-disciplinary practitioner information and consultation sessions across the nation in 2015 and 2016.

3.1 Objectives: Why do we tag people?

All participants interviewed in this research were asked ‘what are the purposes of electronic monitoring?’ Research participants identify a diverse variety of intended objectives, from deterrence to avoiding the harms and costs of incarceration. The most common answers centre on reducing the use of prison, through diversion using a community penalty, or through decarceration by early release from prison. Some of the objectives and purposes raised by participants are complementary and some sit in tension with others, in that seeking to achieve one objective or purpose may indirectly frustrate or hinder the pursuit of another.

Several interview participants were asked if there is consensus about the uses of EM and why we tag people, in terms of consensus among their peers, and between different types of criminal justice actors and organisations? The most common response was the view that there is a current lack of consensus. One sheriff answers by saying “No, I’d say there are diverse views, within sheriffs and courts, and between others as well ... there is some consensus of an RLO being seen as nearer to an alternative to prison than unpaid work” (Interview 19, Sheriff). A criminal justice social worker responds with a similar view, “I think there is a huge variance of perceptions of what it’s for ... I think if you were to ask a hundred social workers you would probably get quite a varied idea” (Interview 4, Criminal Justice Social Worker).

Members of the judiciary are more likely to raise the retributive element of restricting someone’s liberty as a punishment for their crime, serving a symbolic function to fulfil community expectations that justice is seen to be done. One sheriff explains: “I’m a fan

of Restriction of Liberty Orders and sometimes I use it in a punitive way as an alternative for sending people to jail” (Interview 18, Sheriff).

Some criminal justice social workers and G4S Scotland staff highlight factors which coalesce around desistance and community reintegration, suggesting that EM enables monitored people to keep and live in their own home, to maintain relationships with family and friends, to study or work and retain their employment, and take part in community-based programmes and activities in ways which would not be possible if they were incarcerated. In a subtle but important distinction, very few of those interviewed speak about EM as rehabilitative, or they criticise it as lacking on those very grounds.

Several interviewees raise critical questions about the capacity of current radio-frequency (RF) tagging and curfews to motivate compliance and reduce re-offending, whereas others hold the view that it is currently adequate in achieving these things. By contrast, the objective of risk management to reduce re-offending features in several interviews regarding the prospect of introducing GPS tagging and tracking. Interviewees were quick to point out that GPS EM does not necessarily protect victims and the community, because monitored people can remove the tag and it does not control or stop offending behaviour. However, several interviewees support the view that there are cases where GPS EM and exclusion zones (‘away from’ restrictions) should be used as one mechanism for risk management nested within a wider package of supervision of particular types of offenders, namely those convicted of sexual offences and domestic abuse offences. The perceived strengths and benefits, as well as limitations and challenges, of using electronic monitoring are discussed in the next two sub-sections, and these are closely related to understanding the objectives and purposes of EM, with some overlap between them.

3.1.1 Perceived strengths, opportunities and benefits of using EM

There are complexities inherent within discussions of the ‘benefits’ of electronic monitoring, because this broaches the question of beneficial for whom? For example, some of the perceived strengths and benefits mentioned here, offered from the perspective of diverse types of practitioners, may or may not be met with assent from monitored people. In this study, a relatively broad view is taken in analysing participants’ perspectives of the potential benefits and strengths, as well as limitations and challenges, of EM.

One vein of discussions of the perceived benefits relates to active participation in positive family and other social relationships, with some participants recognising that, where these exist, EM is likely to be less damaging than separation through confinement in custody because it enables families to stay connected and the monitored person to continue to take part in family life. In discussing early release from prison, one interview participant accentuates the benefits and opportunities for men in the process of reintegration:

I can see the point of having them [prisoners] outside in the community serving part of their sentence because it’s preparing them for release ... It’s letting them engage with their family again and their kids, it’s letting them see their kids coming out from school, they can do homework with their children, the whole aspect of

being a father I suppose they're going to benefit from, and I think the families benefit from that as well (Interview 28, Scottish Prison Service).

More broadly, this fits with the extant literature on desistance from crime and reintegration which affirms the value of maintaining positive (including safe) family relationships and social connections, and incorporating these roles in a positive personal sense of identity (e.g., father or mother), in the process of leaving crime behind (see Graham and McIvor, 2015; Hucklesby, 2008).

Another, related vein of discussions highlights the opportunity to leave negative relationships and pro-criminal influences behind. Numerous interview participants from a diverse range of work roles spoke about the opportunity to use the tag as a visible reason for not being able to go out and engage in criminal behaviour and not being available to associate with the people they used to engage in such activities with. One practitioner called the 'excuse' of EM a potential "protective element for them" (Interview 23, Parole Board for Scotland) in giving young offenders a credible reason for not being able to go out at night, with a view to breaking away from established peer associations that led to their criminal justice involvement. Another echoed the same sentiments:

It's about ... giving the people an opportunity to prevent themselves from having to hang about with the same group of people that they were hanging about with at the time they got into trouble, if that makes sense? [laughs] So you know, whereas before, you know, their pals would phone them up and go "right, come on, we're going out to the pub tonight and blah-blah" and they would go "aye let's go, that's fine", now they go "well I cannae [can't], I've got this tag on" so it's giving them the perfect excuse to change their social circle if they like or, you know, to make that break from a group of people that maybe werenae [weren't] having the best influence on them (Interview 12, G4S).

Various practitioners offered anonymous real examples from their professional experiences of having motivational conversations with service users, particularly youth and young adults, about using their time 'on the tag' to settle into routines that do not involve criminal behaviour and associated contexts.

In a different vein of discussions, some interviewees draw attention to the surveillant and restrictive penal functions of electronic monitoring for the perceived benefit of prioritising public protection and community safety. One interview participant characterises EM as offering some level of surveillance and control in the community, "there are a lot of people for whom a custodial sentence is not necessary, but some kind of control or punishment or monitoring is relevant" (Interview 2, Police Scotland). Other interview participants link the community punishment and control functions of EM as having the capacity to "strengthen the credibility" (Interview 4, Criminal Justice Social Worker) of EM as a community sanction. A different criminal justice social worker highlights the value of "public accountability" in using EM as a restriction of liberty (Interview 3, Criminal Justice Social Worker).

3.1.2 Perceived challenges and limitations of using EM

A few different concerns and challenges are acknowledged by interview participants. Participants demonstrate a mindfulness of the size and visibility of the EM tag, the frustrations and pressures of the home curfew, and the recognition that, for some, being

tagged and curfewed is a stigmatising and difficult experience. However, the difficulties associated with EM tend to be juxtaposed as preferable when compared with the difficulties and stigma of being imprisoned.

Some participants are quick to acknowledge that EM is a punishment, and in its stand-alone form, it may not achieve much more than that. Questions and concerns are raised about the suitability of imposing a structured and strict curfew regime without integrated supervision with people who have a history of non-compliance. For example, one participant contends that EM is “less suitable where people have a demonstrably chaotic lifestyle and a poor record of compliance with court measures which unfortunately includes quite a number of people who have been through the criminal justice process” (Interview 2, Police Scotland). Another interviewee links the issue of lack of suitability for people with a chaotic lifestyle and the risk of “setting them up to fail” with the challenges EM might pose for the family and household relational dynamics in such circumstances, especially if they felt they could not ask the person to leave (Interview 4, Criminal Justice Social Worker).

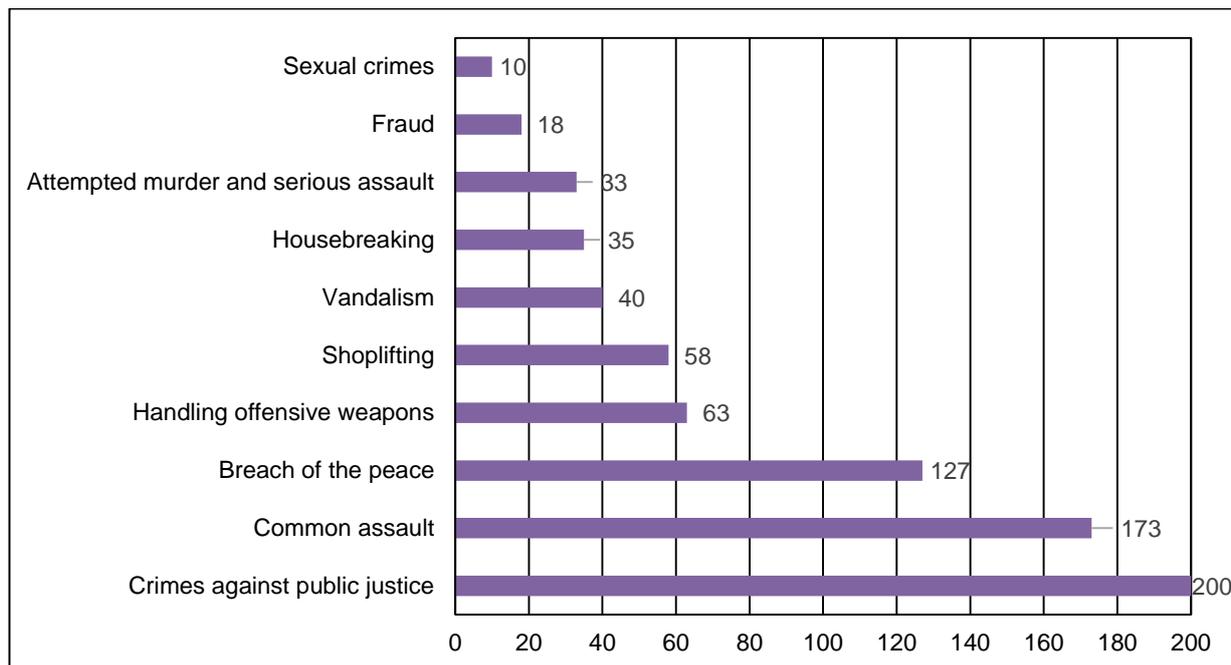
The potential collateral consequences of tagging and curfews for families and other cohabitants were raised in several interviews. Firstly, at the most serious end of the spectrum, several participants raise questions and concerns about the need to fully and regularly assess for the risk of domestic abuse in imposing a home curfew. Secondly, some participants highlight differences in the length and intensity of an EM order: “families might be able to sustain four weeks but they might not be able to sustain four months overall” (Interview 3, Criminal Justice Social Work). The average length of a Restriction of Liberty Order may be three or four months, and RLOs can be imposed for up to 12 months at a time. Other participants gave anonymous examples of feedback from family members about the challenges and pressures of EM, including “feedback from mums of younger offenders who say they felt as if they were taking on the responsibility of the curfew because they were, you know, literally hoping that the young person was in at seven o'clock, and then they were on tenterhooks if they were talking about leaving the house during curfew et cetera” (Interview 11, G4S). The findings and recommendations of this study urge the need for more research in this area, in terms of listening to the full spectrum of family members' experiences.

Interestingly, a more systemic and social challenge or issue which was largely missing from participant discussions in this study is the important question of net-widening and critical reflections on the extent to which EM is used in Scotland as *an alternative* to prison, compared to the extent to which it is used in addition to a burgeoning custodial estate.

3.2 Target groups: Who should electronic monitoring be used with?

This sub-section offers a summary of participant perspectives in response to questions and conversations about the targeted use of electronic monitoring. As indicated earlier in this report, electronic monitoring in Scotland is available at a number of points in the criminal justice process. It is used principally as a high tariff community based penalty (RLO) and as a mechanism for early release from custody (on HDC) for short-term prisoners (that is, those serving prison sentences of less than four years). Courts currently impose RLOs on people who have committed a diverse range of crimes and offences, as illustrated in Figure 4. Figure 4 demonstrates the versatility of EM, implying that current uses of EM are not exclusive in the targeting of particular groups of people.

Figure 4 Examples of main types of crimes/offences for which Restriction of Liberty Orders were the main penalty imposed in Scotland, 2013-2014*



Source: Adapted from Scottish Government (2014: 40).

* Note: Figure 4 does not provide a *comprehensive* list of *all* crimes and offences for which a Restriction of Liberty Order was imposed as the main penalty for people with a charge proven in Scotland in 2013-2014.

In initiating discussions about more focused uses of EM with particular groups, in its 2013 Consultation on electronic monitoring (Scottish Government, 2013a) the Scottish Government sought views on the potential introduction and uses of GPS tagging and tracking technology:

- to monitor sex offenders;
- in voluntary pilots for persistent offenders;
- to protect victims of domestic abuse;
- for all electronically monitored orders.

The development of EM in Scotland following the Consultation is currently being taken forwards by a Working Group on EM established by the Scottish Government which is expected to report and make recommendations to the Cabinet Secretary for Justice in mid-2016. In addition, a few groups are worthy of specific comment here, namely sex offenders and women offenders.

One of the approaches to the management of sex offenders in Scotland involves Multi-Agency Public Protection Arrangements, which are commonly referred to as MAPPA. Where EM is imposed as a component of MAPPA supervision, a sex offender may be restricted to a place and/or restricted away from specific places. The capacity to actively monitor the latter is somewhat limited by the capacity of RF-based EM technology,

which does not 'track' movements, and can only detect presence or absence of a tagged person within an established zone where there is a home monitoring unit (HMU). Furthermore, for a small proportion of sex offenders managed within MAPPA who are assessed as presenting the highest level of risk, the use of electronic monitoring may be combined with other restrictions and surveillance measures, including 'CCTV in their properties or a supervising officer physically with them 24/7 ... for these offenders, electronic monitoring will be part of an existing supervisory condition' (Scottish Government, 2013a: 20). Participants in this study draw attention to the importance of sound risk management practices and the utility of EM in assisting that.

The other group to feature extensively in participant comments in this study is that of women offenders. In Scotland, as in numerous other Western jurisdictions, the female prison population has grown significantly over the last 15 years resulting in increasing political concern about the imprisonment of women. 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'. In its resulting report the Commission made 37 recommendations across seven broad areas for improving outcomes for women in the criminal justice system and reducing their reoffending (Commission on Women Offenders, 2012). Specifically in relation to EM, the Commission recommended that the Government examine the potential for EM to be made available as a condition of bail as an alternative to a custodial remand. Views were sought on this proposal in the Scottish Government consultation on the development of EM in Scotland (Scottish Government, 2013a).

More recently the Scottish Government has reaffirmed its commitment to reducing the number of women imprisoned through plans for a reconfigured and scaled down female custodial estate with an increased use of community based penalties for women who are not deemed to require a period of incarceration. While policy and practice continues to develop in this area, participant perceptions in this study suggest they see EM as having a prominent role as one mechanism, among others, in seeking to reduce the female prison population in Scotland.

Conversely, one interview participant emphasises their view that EM and curfews, as a stand-alone order, are not appropriate for some women offenders as it may increase their risk of self-harm:

For some client groups, service user groups it's not entirely appropriate, for example women I think, well not all women but some women, I think given the high degrees of self-harm in some women having them restricted to a place for long periods of time potentially increases the risk of self-harm and for men as well obviously... We have a women's service in [place in Scotland] ... and I was talking to [name removed] the other day, the manager and she was like "no to electronic monitoring for women", and for some women it just, I mean it would increase their risk of self-harm most definitely ... Some of these women are traumatised and damaged you know, experiencing acute trauma, and more therapeutic interventions are what's required to be honest (Interview 10, Criminal Justice Social Worker).

However, this view was not commonly held by others. Numerous interview participants perceived electronic monitoring as being a suitable and even desirable diversionary measure to reduce and avoid high rates of women's imprisonment in Scotland. Access to other supports, including gender-specific responses tailored to women, was highlighted by some participants – in other words, they did not necessarily continue to see EM as a stand-alone measure but one condition among other requirements and supports for female offenders.

3.3 Geographical and institutional differences in uses of EM across Scotland

Secondary analysis of statistics provided by key stakeholders show some geographical and institutional differences in the use of electronically monitored orders across Scotland. This is most clearly observed in the differences between courts in the frequency with which EM orders are imposed, albeit with the recognition that judicial decisions are informed by the recommendations of criminal justice social workers from their local authority.

Some judicial officers and courts across Scotland use Restriction of Liberty Orders (EM court orders) frequently, whereas others use them rarely.

In 2015, some courts imposed RLOs extensively (N = number of orders): Glasgow (N=314), Kilmarnock (N=196), Dundee (N=189), Hamilton (N=154), Dunfermline (N=147), Livingston (N=110) and Kirkcaldy (102) (G4S, 2016). In comparison, some courts barely made use of this sentencing disposition in the same 12 month period, for example: Arbroath (N=1), Jedburgh (N=4), Stirling (N=6), Falkirk (N=6), Greenock (N=9), Alloa (N=11), Inverness (N=17), Paisley (N=18), and Aberdeen (N=19) (G4S, 2016). These differences cannot be explained solely on the basis of differences in local area population or annual court workload in criminal proceedings.

In 2015, the rate of RLOs imposed by sheriffs in Glasgow was 256 per cent higher than that of their Edinburgh counterparts, with 314 RLOs imposed in Glasgow compared to 88 RLOs in Edinburgh (G4S, 2016). Some court areas had a marked rise in the use of EM orders, for example, in Kilmarnock 60 RLOs were imposed in 2014, and 196 RLOs in 2015, which signals a 226 per cent increase in 1 year (G4S, 2016, 2015). Differences between sheriffs and courts were commented on in the course of ethnographic observations in the field and in interviews, with one criminal justice social worker noting “the sheriffs in Glasgow and the sheriffs in Edinburgh are completely different” (Interview 3) to draw attention to the differences in their uses of EM orders.

There are some modest institutional differences in the use of HDCs, which involve the early release and electronic monitoring of prisoners in the community. In 2015, the Scottish prisons which most commonly imposed HDCs were: HMP Barlinnie (N=227), HMP Edinburgh (N=172), HMP Perth (N=161), HMP Addiewell (N=139) and HMP Low Moss (N=124) (G4S, 2016). In the same year, the prisons which least commonly imposed HDCs were: HMP Inverness (N=43), HMP Glenochil (N=46) and HMP Greenock (N=65) (G4S, 2016). It appears that institutional differences between prison facilities in numbers of HDCs imposed may, to a certain extent at least, correspond with the size of the prison facilities, as reflected by average daily prison population. Some of the prisons with some of the largest prisoner populations and prisoner admission rates per annum, for example, HMP Barlinnie and HMP Edinburgh, are also those granting the most HDCs in a 12 month period. By contrast, HMP Glenochil is moderate in the

size of its overall prisoner population; however, it is a site which is central to managing prisoners who may not be eligible for HDC (e.g., prisoners convicted of sexual offences and prisoners serving extended sentence orders), which may partly explain why it grants less HDCs in a 12 month period.

Overall, geographical and institutional differences in uses of electronically monitored orders across Scotland need to be better understood. The available statistics indicate that access to EM is partially dependent on the decision-maker involved. Given that one of the uses of electronic monitoring is intended as an alternative to a prison sentence, this raises questions of equity and consistency which warrant consideration and responses from those tasked with the governance and development of EM in Scotland into the future.

3.4 Assessment of eligibility and suitability

For RLOs and HDCs, criminal justice social workers and criminal justice social work assistants are responsible for assessing the suitability of a person and their nominated address, if given a home curfew restriction. In the case of court-imposed orders, this assessment information is provided to the judiciary in a review of relevant sentencing options which includes recommendations by the criminal justice social worker. In the case of early release from prison on HDC licence, this assessment information and recommendations are provided to the relevant Scottish Prison Service staff in the prison facility in which the applicant is incarcerated.

In practice, there are differences across Scotland in processes and uses of templates to assess and recommend suitability for a Restriction of Liberty Order, as part of a review of relevant sentencing options.

Some members of the judiciary routinely ask for RLOs to be included in pre-sentence assessments of the suitability of relevant sentencing options; some ask for it to be assessed and written in a separate document; others rarely ask for it to be assessed. Similarly, some criminal justice social workers and local authorities automatically or at least routinely assess for suitability of a RLO along with other community-based sanctions. Conversely, some social workers suggested that they only assess suitability for a court-imposed EM order where they are specifically requested to, “I think a lot of social workers will only consider it when the sheriffs kind of initiate an assessment” (Interview 4, criminal justice social worker). In a different local authority, another criminal justice social worker stated that “it’s not used widely” where they work, and that social workers “ask for it rarely” and “even if they do recommend it, sometimes sheriffs don’t go for it as well” (Interview 10, Criminal Justice Social Worker).

A few sheriffs expressed their views that some criminal justice social workers avoid assessing for it and recommending it because of a perceived ideological opposition to EM and private service involvement, and because they are not involved in service delivery with monitored people on stand-alone orders:

Because it’s a privatised order, social workers unionised a bit chippie sometimes, they never liked these people [private companies] coming in ... But it’s not been taken up nearly as well as it should be and the main thing is because it’s never recommended. So you know let’s just take this report I’ve got for tomorrow: this young lady’s pregnant, she’s been involved in serious drug stuff blah-blah-blah,

they say “oh drug treatment and testing order, community payback order ... financial penalties, blah-blah-blah analysis and all of that”, it’s called a review of relevant sentencing options and it doesn't go anywhere near a Restriction of Liberty Order! So the only way I might get that covered is if I specifically ask for it, but even when I specifically ask for it mysteriously they forget to do it (Interview 18, Sheriff).

A sheriff who had worked across more than one sheriff court also spoke about the differences in willingness to assess suitability between the criminal justice social work teams in the two places.

It depends very much I think on the, how comfortable the social workers are with them as well. In [name of Place A] the criminal justice social work department became quite, I think they were quite content with the way that I used them so they were willing to work along with them, were willing to do proper assessments as to the suitability. In [name of Place B], they don't automatically assess for Restriction of Liberty Orders, so unless the sentencer specifically asks for an assessment, it won't appear in the criminal justice social work report, which will discourage people from imposing them – well you can't impose them unless they've been assessed as suitable and very few cases in [Place B] have I ever seen a social worker suggest a RLO. But I routinely asked for assessments because I thought they might be an appropriate way of doing it and therefore if my colleagues aren't asking for those assessments, they're not being put forward as a suggestion and therefore they're not going to be encouraged to think of them. (Interview 16, Sheriff).

In contrast, a senior criminal justice social worker relayed examples of common questions among their staff team about the objectives of electronic monitoring, stating that some of the differences in opinion about EM between the judiciary and criminal justice social workers might derive from different ideas about its purposes:

I've done a lot of work with a lot of sheriffs in [place] so I know them quite well. But one of the things they said, which was really quite enlightening for us, was that sometimes they use it purely as a punishment element ... they've utilised it as a punishment so it's about “this is what I can do to you, I can put you to custody but what I'm going to do is I'm going to make you stay in your house for this period of time” ... So that was a real revelation because nobody had ever said that to us before and then the sheriffs went “oh we wondered why you never recommended it” [laughs] or made referral, included it. We went “well actually, we didn't see that as our, it's not our role to look at punitive elements”, but it now explains why sheriffs on some occasions have imposed electronic monitoring when it's made absolutely no sense to us whatsoever, why would you restrict somebody who goes out during the day to offend to be in at night time? [laughs] (Interview 3, Criminal Justice Social Worker).

This criminal justice social worker and others spoke extensively about matching sanctions with risk, including risk of reoffending, rather than just imposing a standardised punishment. Similarly, another criminal justice social worker suggested that, from their perspective, one of the limitations of electronic monitoring is that “it does not reduce re-offending” (Interview 10). Geographic diversity in assessment of suitability for court-imposed EM warrants further consideration in terms of ensuring a coherent

amount of consistency and equity across Scotland. The issues involved in inter-agency work regarding assessment of risk with regard to address suitability are discussed in Section 5 of this report.

A member of the Parole Board for Scotland interviewed in this research spoke of their experience in ways which bear some similarities to the perceptions of sheriffs, suggesting that some criminal justice social workers do not tend to assess for and recommend EM:

Interviewer: So if the social worker hasn't raised the possibility of electronic monitoring, you could still ask for an assessment?

Participant: We do quite often do. Quite often it's not done and we will say we'll defer it and we'd like an assessment done for this, yes. Or the social worker sometimes refers it but hasn't got the assessment done and we'll say "yes that's fine" but come back to make sure it's manageable (Interview 23, Parole Board for Scotland).

The reasons underlying the apparent differences in perspective and practices between some decision-makers in authorising agencies and some criminal justice social workers as assessors and supervising officers warrant further reflection and discussion. If there has been a historical or if there is a current hesitancy among some criminal justice social workers to recommend electronic monitoring, the reasons for this need to be heard and responded to, as their professional views and culture are relevant to future developments of electronic monitoring in Scotland.

3.5 Consent

Individuals who are made subject to EM in Scotland are required to sign a form indicating their consent to having the equipment installed, both in their residence and on their person. Signed consent is also required of the premises holder (premises owner or person named on the rental lease agreement), if this is not the monitored person. In the case of children and young people under 16 years of age, consent is required both from the young person and their parent or a responsible adult. In the case of 'away from' restrictions involving victims, consent is required from the victim to have a box installed in their property. Formal consent is often sought at the point immediately prior to the equipment being installed.

There is extensive consensus across participants that consent is, and should continue to be, required from the monitored person and the premises holder (if this is not the monitored person) for home-based curfew restrictions.

Overall, most participants are clear and succinct in stating that they support the current arrangements of seeking the consent of the monitored person and the premises holder, if that is not the monitored person, retaining the mechanisms for consent to be withdrawn at any time. One participant offered the view that, "if you impose something upon somebody who hasn't given their consent, then a resentment and the issues that flow from that might be too challenging to manage" (Interview 1, Criminal Justice Social Worker).

The following case study offers an example from fieldwork observations to illustrate the fact that maintaining the informed consent of monitored people is not always a straight forward process. This case study raises questions of how dynamic issues of consent can arise during the period of monitoring (i.e., after the initial installation process) in relation to violations and breach decisions.

Case study from the field: Consent and compliance in investigating a violation alert

A field officer was accompanied by a researcher to the house of a man on a Restriction of Liberty Order to investigate a denied absence alert. The National Electronic Monitoring Centre (NEMC) system had been registering alerts that his tag was intermittently absent for periods of a few minutes at a time. He denied that he was absent in these instances, and stated that he had been smoking at the front door of the property – his parent’s house, who had consented to the EM equipment in the house – while standing just inside the threshold. The field officer discovered that the home monitoring unit (HMU) box had been installed in close proximity to a large TV in the lounge room downstairs. He asked the monitored person about why it was installed there, and the monitored person said that he “was not really sure”, but he expressed an emphatic view that it should not be moved and re-installed upstairs.

The field officer explained that the installation of the HMU box next to the TV would affect its accuracy and increase the likelihood of false alerts for absences. He asked the monitored person if he could move the HMU box to a better location, which would involve an install process, including a range test. The monitored person said repeatedly that he was not sure about this. The field officer carefully explained, in detail, his options and their consequences regarding whether or not he consented to an install procedure being done, which was necessary for the HMU box to be moved for it to work properly. The monitored person asked if he could go upstairs to speak with one of his parents, which he did. He returned and explained that he would not consent to an install being done on that night because of the loud beeping and the need to walk around the perimeter of each room. The reason for rejecting the field officer’s request related to the fact that the monitored person’s child was asleep upstairs at the time, and that it was important to him that the child did not know he was tagged.

The field officer re-iterated the potential consequences of continuing to accrue alerts as violations in the system, and of refusing to consent to an re-install being done, as this could constitute as a ‘failure to comply’ violation, meaning he risked being returned to court. The monitored person said that he understood the consequences of this, stating that he would “rather risk going to court” than risk his child finding out that he was tagged. The monitored person and the field officer discussed the wording of the visit report, and the monitored person signed it. The monitored person continued to wear the tag, and the HMU box stayed in the original location next to the TV. These events were documented by the field officer and relayed to the NEMC system, and the discretion for making decisions about violation alerts was to be left to the issuing court as the authorising agency of his order.

Only a few participants explicitly expressed the view that family member cohabitants should be asked for their consent in instances of home-based curfew restrictions (where those family members are not the premises holder).

The welfare of cohabitants, family or otherwise, was deemed by participants to be a relevant consideration for the issuing authority (prison, court, parole board) in terms of risk management and assessing the suitability of the address. However, the need to gain their formal consent before or during the process of installation was not raised or recommended by many participants. Among the few participants that did raise it, it was framed in terms of family members' rights and the impact of EM on them.

Some of the judiciary felt that they already take into account the wellbeing of family cohabitants as important in their decision-making to impose an electronically monitored order, but were either opposed to or undecided about whether the formal consent of family should be sought.

We certainly take account of cohabitants views because as you'll know, we have to get a background report before we can impose the order, and I think the social workers who write these reports are very aware of potential difficulties in having couples forced, forcibly confined to the same house especially if there's been, you know, difficulties between them. So whether it should be a formal requirement I'm not quite sure, I would need to think about it, but in reality we do usually, we're alerted to any potential difficulties that might arise (Interview 20, Sheriff).

There is a need for further consideration of the processes for seeking the informed consent of victims and premises holders of properties where an 'away from' restriction is imposed

G4S staff and some sheriffs mentioned the use of 'away from' restrictions where an exclusion zone is established around a property and monitored 24 hours a day. These restrictions are not made very often in Scotland. However, recent examples include 'away from' restrictions being made as a component of a Restriction of Liberty Order, and HMU boxes being put into business properties, including supermarkets and fast food chains, which have been the location of criminal activities.

Where participants mention the use of 'away from' restrictions, all were clear in stating that the premises holder, especially as these are usually victim(s), should consent to this. However, it was suggested by a few participants that, in the case of businesses, seeking consent on the day that an order has been imposed is difficult with businesses, whose staff change shifts and whose management may or may not inform those on duty in the afternoon or at night when G4S staff arrive that they are coming (bearing in mind that installation procedures involve conducting a range test). Some participants suggest that the sheriff or authorising agency imposing the order with 'away from' restrictions, in liaison with the Crown Office and Procurator Fiscal Service, should go to greater lengths to consistently ensure that the people and properties where these restrictions are being imposed are *aware and give their informed consent in advance* that this will occur, before G4S staff arrive to seek formal consent and conduct installation procedures.

The guy that's restricted away from Macdonald's - Macdonald's had no idea we were coming, so it would be good if these people were made aware of one, that we're turning up and two that we need to put equipment in and then we can explain obviously fully what's expected (Interview 6, G4S staff).

The sensitivities of seeking consent are likely to be even greater in instances where an 'away from' restriction and box installation is required in the property of a victim of

offences involving domestic abuse or other issues of violence or stalking. The timing and processes for seeking this consent warrant further reflection in Scotland.

The only interview participants to highlight the question of whether consent is, or should be, required from the EM services provider, G4S staff, are those participants who work for G4S and a criminal justice social work participant. Their comments tend to be framed in terms of risk management and duty of care.

Would we want to get G4S or the provider to? I think they would. I think if the assessment is sound, they should be working with them whether they wanted to or not (Interview 1, Criminal Justice Social Worker).

Staff are told, you know, always their safety comes first you know. As a business I think we can withdraw our kind of, we can withdraw all consent to monitoring as well if we feel, you usually find that kind of a wee word of warning from whatever body, be it the prisons or the courts or whatever, or maybe just send in two staff the next night and just make them aware that their behaviour was unacceptable and it usually works here (Interview 8, G4S staff).

If an EM field officer encounters sufficient risk to withdraw their consent, and evacuate or refuse to enter a property or work with a monitored person, the reasons for this are relayed to NEMC staff and documented. If it is due to threats to their wellbeing and aggressive behaviour, the monitored person is, in most cases, made aware of this and informed of the consequences. Threats and aggressive behaviour to field officers is a violation, which may result in breach. Issues of risk to field officers, and their safety and consent, are discussed further in Section 5 of this report.

3.6 Creativity and flexibility in current uses of electronic monitoring

Mike Nellis (2016a, 2016b; 2014) has already observed that there is scope for electronic monitoring to be used more strategically and creatively in Scotland. The findings of this study demonstrate that, overall, the uses of EM here can be characterised as simple and straightforward. Curfews tend to be standardised, and only altered from a 7:00pm – 7:00am regime where there is a reason to do so, for example, employment. Current uses of EM appear to be relatively sound in achieving objectives like restriction of liberty, diversion through acting as an alternative to prison, or modest decarceration through early release from prison for those who are eligible.

Despite limited examples of creative and tailored uses of EM, a few interview participants have suggested that this is changing. For court-imposed EM orders, some sheriffs in Scotland are known to use RLOs in a flexible and graduated way that motivates and incentivises compliance.

Some sheriffs have used a sort of staged Restriction of Liberty order whereby it'll be twelve hours for the first month, and then if there are no breaches reported, it'll come down to eight hours for the second month, and then again if there are no breaches it'll come down so it is very flexible (Interview 20, Sheriff).

Restriction of Liberty Orders are very flexible at the moment. You can set different hours of curfew every day, if you wish... On the positive side, we can also use the approach of incentivised compliance. It is like a staged RLO, for example, a curfew

of 12 hours a day for the first stage, and then down to 8 hours a day if they are compliant (Interview 19, Sheriff).

Reflections and recommendations on how to further develop electronic monitoring in Scotland are offered in the conclusion of this report, with complementary analysis and recommendations provided in the comparative research report (see Hucklesby *et al.*, 2016b).

Section 4: Equipment and technology

The electronic monitoring technology and equipment which has been used in Scotland over the past 15 years (2002 to 2016) is radio frequency (RF) tagging technology. Section 4 briefly describes the equipment involved, as well as providing a detailed description of the installation process.

4.1 Description of the equipment

The RF EM equipment used in Scotland is designed and manufactured by G4S Monitoring Technologies. It consists of two devices: the Personal Identification Device (PID) tag which is secured around the ankle and the Home Monitoring Unit (HMU) which is installed at the specified address. The PID contains a short range radio transmitter which sends a radio signal at random intervals of between one and ten seconds to any HMU which is within receiving range. When the monitoring equipment is installed, the field officer will perform a range test by instructing the monitored person to walk around all of the allowable areas of the property. Signals emitted by the PID enable the HMU to determine the range setting needed to detect signals from the PID whenever the person is within the specified curfew area. In late 2015, it was estimated that the RF equipment costs approximately £71.70 (€100.77) for a PID tag, and £400 (€562.15) for a HMU box.

The RF tag is called a 'PID', a personal identification device. It is secured round the ankle (except in extenuating circumstances where this is not possible), and it is waterproof and cannot be removed without detection. An installation tool is used which simultaneously locks the strap around the monitored person's ankle and activates the PID's electronics in a single action. The signal the PID emits to the HMU includes the serial number of the PID and its status (battery level, functionality, evidence of tampering). The strap contains a fibre optic cable which transmits a light signal from one side of the PID to the other which is interrupted if the strap is cut, creating a 'tamper flag' to alert the service provider that a tamper has occurred. The strap strength is also designed so that in the event of an emergency (such as the PID becoming attached to machinery) a clip failure would occur and the PID would be released. The telephone number to contact the service provider is inscribed on the PID should the monitored person need to do so (this, presumably, also enables those who find discarded PIDs to contact G4S to return them). The batteries in the PID tags last approximately 12 months. There is a warning about battery life that appears after 10 months alerting the EM services provider that it will need to be replaced.

The RF box which accompanies the tag is called a 'home monitoring unit' or HMU. It is installed in the specified premises, usually the monitored person's home, and receives radio signals from the PID to enable it to determine whether the monitored person is present. The information received is processed and transmitted to the monitoring system. It relies on a SIM card and mobile phone coverage from the network provider

O2. The HMU contains two buttons and a handset. The blue button is pressed by the monitored person to receive an incoming call from the monitoring centre (for example, to investigate a violation or a 'home all day' alert) and can also be used by the monitored person to contact the monitoring centre. A red button on the HMU can be used to contact the emergency services.

4.2 Installation process of the equipment

There are slight differences in the installation process, depending on the type of order or licence a person is on. Most field officers conduct field visits and installations as lone workers, unless there is a specific reason (i.e., risk to the field officer, or anticipation that a particular individual might make an allegation or complaint about the conduct of a lone field officer) for them to conduct an installation with two field officers present. Only female field officers are allowed to touch the tag or the person of a female monitored person. Equipment installations are conducted during curfew hours and before midnight on the first day of the order or licence.

During observations of field officers, the following process of installation has been observed for people whose order involves a curfew with a restriction to the home for a specified period of time:

- **Paperwork** is pre-prepared by the field officer in the car before entering the property;
- **National Electronic Monitoring Centre (NEMC) 'book on'**: while in the car, the field officer 'books on' before leaving the car by ringing the NEMC, stating the time, name of the staff member and monitored person, their address, and the nature of the procedure prior to entering the property;
- **Lone worker security device 'book on'**: field officers wear a device around their neck on a lanyard that looks like an ID tag, but has lone worker security features embedded in it. The device contains a silent 'panic button' style alert that, in the event that they press it, will start recording all audio information and will record their location. This information will be relayed to a response centre in Ireland, who can hear everything but cannot interact with the worker. It will also send an alert to the NEMC in Glasgow. Field officers 'book on' to this device, by pressing a certain button on it and speaking into it by stating their name and that of anyone else present with them (e.g., the researcher or other escorted visitors), the address they are about to enter and the time. The information is stored securely in Ireland;
- **Equipment**: Only the equipment needed for the induction procedure is placed in a large black bag and taken into the property. (It should be noted that neither the bag, the vehicle nor the field officer's clothing visually identify them as being from G4S: indeed, field officers often conduct in-vehicle paperwork a short distance from premises they are visiting to avoid being seen by neighbours);
- At the entry to the property, the field officer introduces themselves as being from G4S, and will not disclose much until they are with the person subject to the order. The person's date of birth and sighting of **personal identification (ID)** is requested at the outset to verify that the right individual is being inducted and installed;

- In addition to this, if a person is on a HDC or on Parole, they need to show a copy of their licence and state their prison number; if subject to an RLO they are asked to show a copy of the order.
- If the person is a child or young person under the age of 16 years old with a Movement Restriction Condition (MRC) of an Intensive Support and Monitoring Service (ISMS) order, a responsible adult must be present during the installation process.
- The monitored person is given a G4S **information booklet** that is specifically designed with information that corresponds to the type of order that they have been given. This states in writing the information that they are also told verbally during the induction;
- The field officer reads through and clearly explains the **Standard Agreement Declaration**, including clarification of the time of their curfew and the end date of their order, and then asks if the monitored person has any questions.
 - It is explained that G4S field officers can visit them during curfew hours up until midnight, and that they will not be contacted in advance to be notified that someone is going to visit. However, G4S staff will not visit during non-curfew hours, which are usually during the day.
 - It is also explained that G4S NEMC staff may ring the Home Monitoring Unit (HMU) box and that they are obliged to answer this; however, the calls will be for a reason, e.g., if there is an issue such as a violation or a 'home all day' alert.
 - The monitored person is informed as to **what constitutes a violation**, and told that it will be the decision of the court, the Scottish Prison Service or the Children's Hearings Panel, as the authorising agency, if they violate or breach the conditions of their order.
 - The monitored person is informed that, if they are on a court order (e.g. an RLO), and they wish to **change their address**, G4S staff can request a change of address on their behalf through the courts on one occasion during their order and, after that, they must get their lawyer to request this through the courts. All authorised changes of address must notify G4S the same day that the Court approves them, so that the equipment can be moved and a re-install process can be followed. If the monitored person is on a prison-issued order or they are on parole, they must get the approval of the authorising agency for any change of address.
 - If the monitored person is the **premises holder** (which means the property owner, or a named signatory to the rental lease), they sign the Standard Agreement Declaration. If the monitored person is not the premises holder, the Declaration must be signed by both the monitored person and the premises holder prior to or during the installation to authorise the installation of equipment in their property.

- The field officer has certain sections or fields of a separate form called the **Visit Report** that they complete in handwriting during the installation process. The monitored person is asked to provide two **passwords** that will be used in any phone calls through the HMU box with the NEMC to verify it is them;
- The monitored person is asked what type of power they have and who the electricity services provider is for their property, and they are asked to agree that they will ensure a continuous supply of power for the duration of the order. It is also explained that the premises holder/electricity account holder will be eligible for a refund of the amount of electricity used by the HMU box upon the completion/end of the order (at a rate of 1p per day);
- The person's **ankle is measured** with a measuring tape, so that the right length and size of strap is installed. The PID fitting tool (red plastic tool) is used to **install the Personal Identification Device (PID) tag**, then the field officer holds a PDA device next to the PID to check it is working. The monitored person is shown the phone number on their tag and told that it is the phone number for the NEMC, and that they can ring it if they need to talk to someone there. They are instructed that if, in the event of an emergency, they are taken to hospital or need to take an immediate family member to hospital during curfew hours, they need to get a doctor or nurse to ring that number on their tag when they arrive at the hospital to confirm that they are there and to ring that number again at the point when they are leaving the hospital;
- The field officer walks around the house and determines the best place to **install the Home Monitoring Unit (HMU) box**. It needs to be installed relatively centrally. There are particular places and proximities to other household items that are inappropriate for it to be installed because they will interfere with its signal. Tamper proof tape is placed over the power point where the HMU box is plugged in, and the monitored person is instructed that no one should move, unplug or lift up the box, or this will register as a HMU tamper and the tape will have warning marks appear on it if it has been tampered with. They are told that the box has 'tilt' technology, and will alert the NEMC if it is picked up, unplugged or moved. The monitored person is also told that they are obliged to ensure there is electricity to the property at all times: if there is a power failure or the electricity cuts out during their curfew, the box has a battery and will continue to monitor them, and they can top up their power when their curfew ends. If the property is in an area that does not have mobile phone coverage, a landline has to be installed as the HMU box works using a SIM card;
- The person does a **range test walk around of the perimeters** or corners of every room and walk-in area (including walk-in cupboards) in the property. The HMU box beeps loudly during this time as it registers the range of the walk around. The field officer observes and gives directions throughout this process. In properties where there is a bath, the person runs water to a depth where it covers their ankle and has to hold their ankle and the PID tag (which is waterproof) under the water for a minute or so to ensure that this registers during the range test. The person is informed that they cannot go out their front door (or any other external door in the property), unless they have the express permission of the authorising agency to enter the back yard or front yard for a specific purpose (which is only granted rarely), and they have to run their ankle near the threshold of the front door in the range test walk around. At

the end of the range test walk around, the box stops making the loud piercing beeping noise;

- Immediately after this, the HMU box uses the line to automatically upload the information to the National Electronic Monitoring Centre (NEMC). The field officer then **phones the National Electronic Monitoring Centre** to confirm equipment details such as the PID number and the HMU number, the range, and that the NEMC shift staff member can see three 'yes' and one 'no' coming up in the NEMC system, which means that the installation is complete and there are no issues with the functionality of the equipment. They then hang up;
- The field officer explains the functions of the HMU box to the monitored person, clarifying that they need to pick up the phone on the box and press the blue button if (a) the box is ringing, or (b) if they want to speak to the NEMC. They only press the red button if they need to ring 999 emergency services, and that will put them straight through. **The NEMC phone the person through the box** a few minutes after receiving the field officer's phone call (see point above), it makes a beeping noise and the monitored person practices answering it, while the field officer watches and helps if necessary. The NEMC shift staff ask them for their name and their date of birth, then provide a short amount of information about what they can ring them for and remind them that they need to be present at the home and answer the box when it rings during their curfew;
- The monitored person reads (if they want to, some do not) and **signs the one-page Visit Report** that the field officer has been writing on during the installation process;
- The field officer completes the visit, leaves the property and uses their PDA to conduct a **random alternative monitoring check** just outside the property on their way out to double check that the PID is registering, as well as to check the range. The RAM reading needs to be the same as what is recorded on the visit report and entered into the template that is 'booked off';
- **National Electronic Monitoring Centre 'book off'**: The field officer returns to the car, completes their paperwork (some choose to drive just out of sight of the property and neighbourhood, so people are not staring at them) and 'books off' to the NEMC by populating the template on their PDA and emailing it through to the NEMC. The types of information collected by the field officer within the installation template include:
 - PID (tag) number
 - HMU (box) number
 - Range (low, medium, or high)
 - Contact information, especially if they have a mobile number
 - Monitored person's passwords
 - Whether the Standard Agreement Declaration (SAD) document has been completed and signed

- Whether it is an ‘intermittent signal area’, which may require a landline.
 - Directions and notes relating to the individual, their circumstances and the conditions of their order (including, for example, whether there are dogs in the premises that should be removed prior to any field worker visits)
- **Lone worker security device ‘book off’:** The field officer then ‘books off’ in the car by speaking to the security device around their neck, similar to the ‘book on’ procedure for the same device listed at the start of this Install process.

4.3 Storage and maintenance of the equipment

Monitoring equipment is stored securely at the National Electronic Monitoring Centre in Uddingston, Glasgow, as well as at a few secure facilities on private premises (e.g., vehicle bases) in regional and remote areas of Scotland. Field support officers check and maintain the equipment, and field support supervisors monitor the logistics of ensuring enough equipment is allocated in different regions of Scotland, relative to the number of EM orders in the area. Field officers are responsible for checking their equipment at the beginning of each field shift, and cleaning used equipment at the end of each field shift, before returning it to field support officers or the nearest secure storage facility.

Monitored people routinely request HMU box changes because they receive repeated automated or marketing phone calls. NEMC staff explain to them that, because O2 are the service provider for that aspect of the service and the box relies on a SIM card, G4S can change the equipment, but they cannot stop randomly generated calls occurring. Monitored people do not know the number of their HMU box and are reassured that the number is not given out to others, and that the caller does not know that they are calling EM equipment or speaking to a monitored person. The comments or feedback from the monitored people is that this can be a stressful experience, and their reaction is to wonder why they are being phoned and whether they are going to be told they have done something wrong.

Section 5: Monitoring processes

5.1 Risk assessment and management

Overall, decision-making about risk and risk management tends to be the responsibility of authorising agencies, that is, the judiciary and courts, the Scottish Prison Service, and the Parole Board for Scotland. This sub-section considers risk from the perspective of the Parole Board for Scotland; risk assessment with regard to being curfewed to a particular address; as well as inter-agency responses to risk and duty of care to EM field officers.

As described earlier, people granted a parole licence may be subject to an electronic monitoring condition, and this may be applied in general, as well as specifically to parolees convicted of sexual crime or violent crime who are managed through Multi-Agency Public Protection Arrangements (MAPPA). Currently, an electronically monitored condition of a parole licence is not common. However, the use of this option

may increase if GPS tagging and tracking technology is introduced to Scotland with the emphasis on its use with sex offenders and domestic abuse offenders.

When asked about the objectives and purposes of using EM with parolees, the member of the Parole Board for Scotland interviewed in this research drew attention to its capacity to form one component of a multi-faceted approach to risk management. However, they also cautioned against too great an emphasis on risk and restriction potentially affecting a person's likelihood of successful order completion:

In terms of conditions, the Parole Board are very conscious of not, making sure it's appropriate that we don't overdo conditions, you know, because you can get to a stage where you think that individual actually has no choices almost left in the community because there are so many conditions attached to this licence, you know, so it's trying to make sure it's proportionate (Interview 23, Parole Board for Scotland).

In terms of informing a risk assessment, criminal justice social workers or criminal justice social work assistants visit and assess the suitability of the proposed address to which a person has asked to be curfewed. For example, in the case of EM as a condition of parole or early release from prison with a HDC, after visiting the property and speaking with its inhabitants, a criminal justice social worker will complete a pro forma report and make recommendations about the suitability of the address and any recommended licence conditions, which is sent back to the authorising agency, for example the Parole Board for Scotland or the HDC coordinator from the Scottish Prison Service establishment which requested it. Authorising agencies are not bound to agree with or follow the recommendations of these reports, and are free to impose an order to curfew a person to an address in instances where a criminal justice social worker has recommended it is unsuitable. Criminal justice social workers are not routinely provided with the decision and outcomes after submitting their report and recommendations to the Scottish Prison Service.

In interviews, criminal justice social workers and Scottish Prison Service 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. Most comments on this topic relate to disclosure and information sharing, that is, what and how much the individual should be told following the assessment, and what and how much cohabitants should be told about them. Staff from the Scottish Prison Service said that "non-disclosure of reasons is a way of not implicating family members who may have said to the prisoner that they will take them, just to get them off their back, but have said to the social worker that they don't want to take them, but are too scared to tell them or don't want to deal with their frustration" (Interview 26, Scottish Prison Service).

Some interview participants highlight the fact that the individual may not have told their family or other cohabitants that they have been convicted, or they may have told them that, for example, they were caught shoplifting, when their offence was actually of a more serious nature. One participant highlights the need to be careful in what information is disclosed to others, raising the issue of the privacy and rights of the offender and potential risks they may face if disclosure is made:

It's about the assessment and management of risk and if the address is unsuitable, the address is unsuitable ... and it wouldn't improve necessarily with a disclosure.

So disclosure would be, I suppose, not the last stage if you like, but we'd certainly be assessing a whole range of things before we got to a disclosure point because we have to consider the impact of that disclosure on the service user you know, we've got a duty of care regardless of what offence they've committed you know we have to, you know we have to keep them safe as well so (Interview 10, Criminal Justice Social Worker).

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.

Many participants, but not all, expressed moderate confidence in current inter-agency responses to assess and manage risk in the uses of EM of Scotland. Staff from the private services provider consistently expressed a desire for clearer risk information to be provided to them in light of their company's lone worker policy in relation to EM field officers.

Two particular views are consistently expressed about risk assessment and risk management by staff from the private services provider. In relation to risk assessment and the initial implementation of EM, participants persistently state that they believe that the private services provider should be given more information regarding risk *at the point of an order being made*, to guide the allocation of field officers. Several participants pointed out the limited information that is provided to the private EM services provider under current arrangements, and call for more information sharing.

Such potential improvements to information sharing can be differentiated as occurring at different levels. Private EM field officers have no need to know of the full spectrum of information assessed by qualified helping professionals in statutory agencies. G4S field officers operate under a lone worker policy, unless there has been an indication by the authorising agency that there is a need for two workers to conduct a visit to, for example, install equipment. Contractual requirements and operational practicalities mean that EM field officers enter and work with monitored people in their homes during their hours of curfew, which is usually in the evening. In light of this, it may be appropriate for mechanisms to be introduced to consistently ensure that basic risk-related information is communicated to the private EM services provider, for example, through the introduction of tick boxes or sections in templates used by authorising agencies, especially courts, to specify in every instance the gender and number of field officers required.

In relation to risk *management* and inter-agency responses to risks which arise during the period of a person's order, private EM services staff tend to express confidence that staff from authorising agencies and Police Scotland act relatively swiftly if provided with information that a monitored person is putting others at risk, or are themselves at risk.

The liaison we've got with the prisons is quite good. We had a case last week, we had concerns when an officer had visited somebody out on HDC, certain comments that he was making and his attitude and his behaviour, so we gave the prison a courtesy call to say we were concerned about some of the things and we were concerned for officer safety. They acted very quickly ... phoned the guy to highlight to him that he's at risk of being returned because of his attitude and his

behaviour, so they certainly take our welfare and our concerns into consideration (Interview 6, G4S staff).

Several EM field officers spoke of the option of communicating their way through a situation, but promptly leaving a property where there appeared to be escalation of aggression. Anonymous instances were also relayed in interviews where risk management was needed because of other people in the home, not because of the monitored person's behaviour.

5.2 Keeping track: communication with monitored people

Monitored people routinely contact the National Electronic Monitoring Centre (NEMC) of their own volition, using their HMU box, with self-reports and questions regarding the equipment, changes in circumstances, or the conditions of their order. The following series of phone calls received by NEMC shift staff (while the researchers conducted observations there) are examples of the types of queries received:

- A monitored person who was on a Court order from a 'Special Sheriff' (which means there are strict conditions relating to the reporting of violations) called the NEMC during his curfew to say that he was concerned that his electricity was about to run out. He stated that he wanted to go out and buy more/top up his electricity. G4S staff advised the monitored person that they could not authorise him to leave the property, and suggested that he ask someone else if they were able to help him with this, for example, a family member, friend or neighbour. The monitored person was also reassured that the home monitoring box would continue to work if the electricity did run out, and that they could leave the property at the end of the curfew to top up their electricity. Throughout the conversation, the monitored person was clearly advised not to leave, and it was explained that, if they did leave during the curfew period, it would be up to the court to make any decisions about action to be taking regarding this. All of the information from the phone call was documented on the person's file within the NEMC information system.
- A monitored person on a court order rang up to ask about their curfew and the conditions of their order for specific dates or events, asking how they might go about applying for a variation on a particular date. G4S staff clarified that they would need to speak with their lawyer and that applications for any variations in conditions need to be approved by the Court because G4S cannot authorise absences.
- A monitored person rang up to ask whether her court order could be adjusted for good behaviour. She had been given an order of approximately 10 months, which is a relatively long EM order in the Scottish context. It was explained authorised absences and adjustments to monitoring periods were possible, but need to be approved and authorised by the court which, if it agreed to an amendment would provide G4S with the necessary authorisation. The NEMC shift staff member stated to the researcher that this monitored person had been fully compliant with the conditions of her order. The monitored person said she might ask her lawyer to request an authorised absence or shortened curfew for an upcoming family event, occurring towards the end of her order.

In interviews and observations, some participants exhibited a belief in the need to trust monitored people to a certain extent, albeit not negating the need for risk management

and consistency of approach to monitoring. Participants sometimes framed their discussions of trusting monitored people in terms of allowing them “to take responsibility for their lives” (Interview 3, Criminal Justice Social Worker) and to be given the opportunity to choose to comply and change.

We need to trust prisoners on the tag to a certain extent. They need to be given a certain level of choice and freedom. You’ve got to give them trust. In most cases, they will be liberated and without supervision within weeks or months anyway. They are already assessed as low supervision and low risk to get HDC. Even in conversations with victims, I ask them “would you prefer them to get HDC and to take responsibility, and be monitored for a while to see that they’re complying in the community, or would you prefer they are just out soon with nothing, no supervision or structure?” (Interview 25, Scottish Prison Service).

Some Sheriffs and Scottish Prison Service interview participants spoke of the motivating potential of entrusting a person to be on an EM order, be it an RLO or a HDC, as a chance to prove themselves, instead of being imprisoned.

It’s like all of these things, most effective community disposals are down to the relationship that’s built up between the offender and the person supervising it, if you don’t have an effective relationship then the chances of success are reduced ... Sentencers build up relationships, particularly in a small court, a sentencer can build up a relationship with an offender ... Quite often they actually feel an obligation to you because you’ve given them a chance not to let you down, and then they seem genuinely upset when you know they do let you down and they have to go to prison but so I think a lot of it’s to do with relationships (Interview 16, Sheriff).

In other interviews, discussions of trust were framed in terms of giving monitored people the “benefit of the doubt.” For example, Scottish Prison Service staff described situations where it is possible that a prisoner on HDC may have been non-compliant, but this has not been proven or verified. They hold the view that, in relation to allegations made by others and circumstances that do not pose a significant risk, the best and most common response is to phone the monitored prisoner and speak to them, giving them a warning about the need to comply with the conditions of their licence, and attempting to motivate them that being on HDC is their chance to prove that they can successfully complete the order. Alongside considerations relating to the individual as well as the wider public, prison staff also described institutional considerations as relevant to this approach, because HDC is one of the main “back door” mechanisms for reducing the prison population and breach has lasting legal consequences:

We can’t just breach everybody. Once a prisoner is recalled to prison for non-compliance, they can’t ever get early release on HDC again. If this happened extensively, it would pose issues for prison population numbers as increasing numbers would be ineligible based on a breach and recall from an earlier sentence (Interview 26, Scottish Prison Service).

In summary, the uses of discretion in day-to-day monitoring and decision-making about EM are multi-faceted, where practitioners and authorising agencies have numerous considerations to balance.

5.3 Changes in circumstances

5.3.1 Change of address

If monitored person is on a court order (e.g., an RLO) and they wish to change their address, G4S staff can request a change of address on their behalf through the courts *once* during their order. After that, they must get their lawyer to request this through the courts. All authorised changes of address must be notified to G4S the same day that the Court approves them, so that the equipment can be moved and a re-install process can be followed. If the monitored person is on a prison-issued order or they are on parole, they must get the approval of the authorising agency for any change of address, and this is likely to involve an assessment of the property by a criminal justice social worker working in an HDC assessment team.

5.3.2 Extenuating circumstances: deaths in the family

In the event of a death in the family of the monitored person, the authorising agency can choose to suspend or adjust the order for a period of time. The NEMC staff make arrangements for the HMU box and PID tag to be uplifted for the period that the order is suspended, and re-installation will occur as per the standard routine when the order resumes. There are added notes that come up on the screen at the NEMC for a monitored person's file to forewarn NEMC shift staff and field officers that this monitored person is grieving and thus requires added sensitivity and grace in all communication.

In the event of extenuating circumstances, such as a of death in the family, if the court chooses not to suspend the order, G4S are contractually obliged to continue to follow routine procedure, including compliance and breach investigations for 'out past curfew' events and other missed obligations or violations. Interpersonal difficulties can arise when they phone at 7:00pm for an 'out past curfew' event, have the monitored person's situation explained to them and then are obliged to ring again at 8:00pm to clarify whether the person has returned home and then follow with violation or breach proceedings, despite knowing that the monitored person is elsewhere due to a death having occurred. The information provided to G4S is documented on the monitored person's file and the authorising agency is left to decide on whether this constitutes non-compliance when the case is returned to them as a breach.

5.3.3 Extenuating circumstances: crime victimisation by theft or damage to EM equipment

There are infrequent cases of monitored people's homes being broken into and their EM equipment being damaged or stolen by people who know they are tagged and curfewed, with the intent of causing them to breach and be returned to court or prison. Communication was observed during fieldwork observations involving a monitored person phoning in the evening to tell staff at the NEMC that the HMU had been damaged and stolen by others who forced entry into the house. This prompted a series of phone calls to verify with Police Scotland staff what had happened, and these inter-agency discussions confirmed the self-report. New EM equipment had to be installed in this instance, as well as documentation of all information relating to this case to enable the authorising agency to make a decision about how to proceed in these circumstances.

5.4 The end of EM: de-installation and uplifts of equipment

This sub-section explains what happens when an EM order ends. During a de-install, prior to entering the house, the field officer completes the 'book on' process explained in the 'full installation' section of this report. The monitored person usually knows that they are coming, and approximately what time they will be at the property. If the PID tag has already been removed by the monitored person after the end of their last curfew, it is simply handed over to the field officer. If it has not, the field officer cuts it off. The field officer then checks the HMU box, to ensure that it is working and not damaged. The field officer completes a Visit Report, to state that they have visited and collected the equipment, and this is signed by the monitored person. If they are the premises holder, the monitored person is given a reimbursement form and small amount of cash to cover the cost of the electricity used by the equipment during the monitoring period. The field officer then leaves the property and does a 'book off' procedure, the same as that described in the 'full installation' section of this report. All of this information is documented on the person's file with the NEMC and an order completion report is sent to the authorising agency.

During the day, which is when monitored people are typically not curfewed, extensive phone calls and emails are exchanged by NEMC shift staff and field officers to coordinate the timing of equipment 'uplifts' (collection of equipment that is no longer attached to the person in the case of the PID tag or no longer being used in the case of the HMU box). When a person has reached the end of the last curfew of their order, they are informed that if they are not going to be available during the de-install they can phone the NEMC and are given instructions on how to safely remove the PID tag by cutting it off. In the case of uplifts, regardless of whether the order has been completed or not, the tag has usually been removed by monitored person, police, prison or others, with queries made and answers given throughout each day about the timing of when specific police stations close and when the gates of certain prisons (e.g., HMP Barlinnie) close for the night. De-installations involving field officers are timed, and subject to contractual conditions. 'Uplifts' of equipment, where it is no longer attached to the person, are not timed and not subject to contractual conditions.

Section 6: Compliance and breach

Section 6 describes the current types of issues and behaviours which are considered to be a violation of the conditions of an EM order or licence, and these can result in an order or licence being breached. Following this, research findings from this study reveal how some criminal justice practitioners respond to violations and breach differently. This section explains how and why this is done, and considers the implications of this.

6.1 Violations and breaches

The thresholds for breach are set nationally by the Scottish Government (2013a), and they are included in the contract with the private EM services provider. Currently, there are three categorised groups of breach criteria, however, these 'levels' are not hierarchical and do not indicate increasing or decreasing levels of seriousness (Scottish Government, 2013a: 12):

Level 1

- Damage to equipment;
- Missing the full curfew;
- Strap tamper or attempting to remove PID tag;
- Withdrawal of consent by the monitored person or the premises holder;
- Threatening behaviour to monitoring staff;

Level 2

- Time violations and absences (which may vary depending on order type, but do not include missing the whole curfew);

Level 3

- Entering an exclusion zone or geographical location from which they have been restricted.

While these are called 'breach criteria', they do not necessarily automatically all result in an order or licence being breached. For example, in the case of RLOs, some people can have small periods of absence during curfew that are documented as violations, but do not necessarily immediately return the person to court for breach of the order. Some of the most common types of violations of EM orders and licences are explained below.

6.1.1 Out past curfew

The 'out past curfew' event comes up as an alert in the NEMC system as soon as a person's curfew starts and their tag is not detected as present in the location they are curfewed to. The majority of alerts are derived just after 7:00pm each evening (a common time for curfews to start). There are contractual obligations which dictate the time and manner in which this type of violation is responded to by NEMC shift staff. They place a phone call to the monitored person's HMU box within a set short period of the initial out past curfew alert. When NEMC staff phone, and there is no answer, this data is input into the person's record in the system, constituting an 'absence' violation, and an automatic alert is generated for NEMC staff to call again one hour later to see if the person is present and answers the phone call to their HMU box.

6.1.2 Left home during curfew

The 'left home during curfew' event comes up as an absence alert for the tag of a monitored person leaving the perimeter of the house (which is determined during installation) for a few minutes. The monitored person is phoned, asked for verification details (name and passwords), and asked why the system registered their tag as leaving the house. Their explanation is recorded on their file, and they are reminded of what happens in terms of reporting and the risk of being returned to prison or court when they violate a condition of their order or licence.

6.1.3 Denied absence

If a person registers as being absent during curfew, and the NEMC phones them and they confirm that they were absent, they are asked for their account of what happened and this is documented on their file. An absence is a violation. If the person denies that they were absent, despite the equipment alert and any unanswered phone calls to their HMU box during the period of their absence, all 'denied absences' are investigated. An EM field officer visits the monitored person at an unannounced time during their curfew to inspect and test the HMU box and to verify that its range is the same as that in the NEMC system, to check their PID tag, and to take a statement from the monitored person about their version of events. A re-enactment of those events is then carried out, to determine whether a re-installation is required with new equipment, or whether the equipment is working as it should be – in which case it is a confirmed violation. It is explained to the monitored person that one of the conditions of their order is not to be absent during the curfew, as this constitutes a violation. All information is documented and relayed to the NEMC and put on the monitored person's file.

6.1.4 Tag and strap tamper alerts

A tag is removable for health and safety reasons; for example, so that a doctor can cut it off in the event of a health emergency, or in the event of it getting caught in or on something in the course of doing manual work with machinery. If a tag is removed in these kinds of emergencies, monitored people have been given instructions to keep hold of the PID tag and tell the private EM services provider as soon as possible, so that this can be investigated, verified and documented. However, without an emergency, attempts to tamper with or remove the tag or the strap, or both, are considered a serious violation. An EM field officer visits the monitored person at an unannounced time to inspect and test the PID tag and strap, and to take a statement from the monitored person about their version of events. It is explained to the monitored person that one of the conditions of their order is not to damage or remove the PID tag or strap, as this constitutes a violation. If the PID tag or strap is damaged, or has been removed, a new full installation is carried out. If the person withdraws their consent to be monitored, this is a violation that constitutes a breach and is returned to the authorising agency. All information is documented and relayed to the NEMC and put on the monitored person's file.

6.1.5 Tilt alert

Radio frequency home monitoring units (boxes) are equipped with technology which can tell if the box has been tilted or moved. Most EM orders and licences in Scotland do not give permission for a monitored person to leave the perimeter (walls and threshold) of the *house* during their curfew which may, in some cases, tempt people to move the box. All tilt alerts are investigated. An EM field officer visits the monitored person at an unannounced time to inspect and test the HMU box, and to inspect the tamper proof tape which shows whether the box has been unplugged, and to take a statement from the monitored person about their version of events. It is explained to the monitored person that one of the conditions of their order is not to tilt or move the HMU box, as this constitutes a violation. All information is documented and relayed to the NEMC and put on the monitored person's file. In some cases, a re-installation of the EM equipment may be needed to ensure that it continues to monitor the actual perimeters of the house, which is established during a range test in the installation process.

6.1.6 Damage to equipment

In circumstances where the monitored person's equipment (including tag and home monitoring unit) is damaged or has been altered in a way that prevents the person from being monitored and completing the order, this constitutes a violation. All information is documented and relayed to the NEMC and put on the monitored person's file.

6.1.7 Failure to comply

Where a monitored person does not consent and/or does not allow the field officer to visit during the curfew time (but before midnight) and to allow the NEMC to monitor them in the way required of the order, this is deemed to be a 'failure to comply', which constitutes a violation. All information is documented and relayed to the NEMC and put on the monitored person's file. This information may be used in a compliance and breach report to the authorising agency.

6.1.8 Aggressive or threatening behaviour towards field officers

Where a monitored person speaks or behaves aggressively or in a threatening manner towards a field officer during a visit during the curfew time (but before midnight), this is deemed to be 'aggression towards field officers', which constitutes a violation. All information is documented and relayed to the NEMC and put on the monitored person's file. This information may be used in a compliance and breach report to the authorising agency.

6.2 Who deals with violations and breach? Decision-making and discretion

The authorising agency (e.g., Court, Scottish Prison Service, Parole Board for Scotland) establish the conditions or requirements for dealing with violations in relation to a specific person or order. The parameters of the options available to them are established in national policies and laws. For a standard Court ordered RLO, a few time absences as violations may be allowed before it is determined that the person has breached their order and is returned to court. Staff from the private EM services provider have rather limited scope for discretion or decision-making, and are duty-bound to report non-compliance to authorising agencies within a set amount of time, which differs depending on the order type and authorising agency. The responses to violations may vary if a person has been sentenced by what is commonly referred to among key stakeholders as a 'Special Sheriff', a research finding which is explored further in a sub-section below.

There are different forms of interaction and documentation involved in communicating with monitored people about violations and breach:

- When an alert response is generated, the private EM services provider initiates a **phone call** to the monitored person using the HMU box with a short period of time which is set out in the contract. The timeframe for initiating a phone call following an alert response is even swifter where an 'away from' requirement exclusion zone is established (i.e. the person's tag is detected in an area they are excluded from), compared to other alert responses (e.g., their tag is not present in the home at the start of their curfew).

- Violation and breach **warning letters** clearly explain in detail the circumstances of violation and the event history to account for the actions taken by the private EM services provider to contact them, to verify if they were somewhere else, to confirm information received by third parties and other relevant information.
- Breach **return to court** letters confirm that there is a citation or a warrant for the person on a court order, and that they are being returned to court.
- For those on a HDC, the Scottish Prison Service and the monitored person get copies of the information. However, compared to the capacity for flexibility in the options available to the Court in response to violations and breaches within the parameters of an RLO, breach of HDC or licence conditions 'is likely to result in immediate recall by the prison to custody' (Scottish Government, 2013a: 12).
- For children who have a Movement Restriction Condition within an ISMS order, the supervising officer, rather than the child, receives the written information about violations and breach.

When an EM field officer confirms a breach, which would occur in the course of fieldwork during the evening, the information is documented and relayed/entered to the NEMC system. The following morning, G4S staff working in the NEMC with specific roles devoted to breach and compliance check visit reports and accumulated time violation reports to determine if there were violations in the previous evening. If these have been confirmed, and the monitored person does not deny them, or they have been proven through investigation by an EM field officer, and breach reporting thresholds have been reached, a breach report is compiled using a pro forma template, and there are different templates for different authorising agencies. Breach reports are written and sent according to a priority system, within a set timescale. Parolees and prisoners on HDC licences, as well as children and young people on ISMS orders, are flagged as high priority in the system to indicate that they are the first reports to be sent to authorising agencies. It is the decision of the authorising agency, or their supervising officer, whether a person will be returned to court in the case of RLOs, or breached and recalled to prison in the case of HDCs and Parole licences. All reports of non-compliance are sent within 24 hours, unless otherwise explicitly stipulated in an individual protocol. If the private EM services provider has been notified that the monitored person also has a supervising officer (criminal justice social worker), for example because they are also subject to a Community Payback Order, an update about non-compliance can be sent to that supervising officer only in the event that there is notification that this is in place and details of who that is.

6.2.1 Judicial discretion and 'Special Sheriffs': differences in responses

In Scotland, there is clear variation between sheriffs and courts in how violations and breach are responded to. Ostensibly, 'Special Sheriffs' are those who have established an individual working arrangement with the private EM services provider G4S, above and beyond the thresholds set out by the Scottish Government in the contract. This arrangement prescribes the specific requirements and timeframes of communicating violation information and returning a monitored person to court using a breach procedure. Some 'Special Sheriffs' specify that they will only allow one violation before the person is breached and returned to court. Other sheriffs in Scotland operate in such a way that the full spectrum of violations allowable under the nationally prescribed

breach guidelines set by the Scottish Government (e.g., a series of small violations over the course of the order) will be tolerated before the monitored person is determined to have breached their order and is returned to court. There is one entire sheriffdom that is designated as a 'Special Sheriff Court', whereas variations among others can be identified on a sheriff-by-sheriff basis, even within the same sheriffdom or court. To be clear, all information about monitored people regarding violations and breach is documented in their file, irrespective of who sentenced them. However, the flexibility and differences are observed in the diversity of reporting conditions set by some sheriffs (and not others), and the swiftness with which that documented information is expected to be relayed back to that sheriff, resulting in the monitored person being returned to court.

The special reporting requirement and time thresholds for responses were developed under a previous contract with a different private EM services provider; however, the current services provider, G4S, have retained this as a way of offering an 'additional service' to engage members of the judiciary who might not otherwise impose EM orders as they believe the Scottish Government's 'standard' time thresholds and reporting requirements are not strict enough. A few G4S staff spoke about this aspect of their service provision in interviews, including the following explanation:

Many, many conversations [have been had] with sheriffs where the view is that if they're in court they're telling that person "and if you are absent I will know about it." They then get a report at the end when the person's completed, and that report states that they've had five absences and a warning letter, and the sheriff then complains that "well why wasn't I aware of that? Because I told them when I made the order I would ... Now if the judiciary fully understood the criteria, because it is written there within the contract, if they understood that then they would recognise that that is what they are making -- unless they make a special arrangement with ourselves just to, you know, so they have to intimate to us that they want this special reporting. We will offer that as a service to them because, as we know all sheriffs are very different, but they need to be satisfied that the disposal they make meets the needs of the court, and because of some sheriffs receiving a completion report where there were absences within it that they weren't previously notified about, they took the decision that electronic monitoring wasn't for them. So [we] had a piece of work to do to try and actually get them back on board to say "well that is just a guideline" (Interview 13, G4S staff).

Another G4S staff member explained about the practicalities of the differences in response across Scotland, saying that "all courts are different" and that one person with time violations (absences during curfew) for a RLO might get a warning letter whereas, in a different court, another person with the same order and violations "could be returned to court in front of the sheriff. It just depends on the sheriff and what court" (Interview 9, G4S staff).

Some sheriffs are critical of the current breach thresholds and reporting timeframes set nationally by the Scottish Government. They feel it should be stricter and returned to the sentencer as decision-maker more swiftly.

Interviews with sheriffs in this study included both 'special sheriffs' and sheriffs who used the standard thresholds. In response to questions about why some sheriffs sought to establish these special arrangements with the private EM services provider, sheriffs

were critical of the breach thresholds and process set nationally by the Scottish Government. The phrase 'surprising amount of leeway' was used by more than one sheriff on more than occasion in interviews.

I wasn't satisfied or I was quite shocked when I started imposing them [Restriction of Liberty Orders] to realise the level of non-compliance that was acceptable before reporting to sheriffs in the standard report, but having spoken to them [G4S] now I appreciated that they would set reporting criteria themselves by agreement with me. So G4S would probably be able to tell you what the up-to-date record is as to what they're supposed to do with mine ... Their [the Scottish Government's] criteria I think are completely unrealistic and presumably they're cost driven. I don't understand them and there doesn't seem to be any logic in them ... One of the things I say to the tatee, if that's the correct phrase, the offender when they're getting the tag is that "forget about what your pals tell you about how easy it is just to not comply with it and nothing happens", I just say "I've got a special arrangement with G4S that I don't allow any breach of the order", because I'm sure some of them think "well does it really matter if we miss one of the compliance periods" because their pals have maybe had an order by a sheriff that doesn't have a special arrangement and they say "well nothing actually happens to you", so I do give them a warning that something will happen (Interview 16, Sheriff).

In terms of breach, they do have a surprising amount of leeway, for example, people accrue small absences, like being late for a few minutes. In [place and name of court in Scotland], we tightened up the national guidelines of breach. We made it stricter, so that if a sheriff said to the person, "If you do this, I will know", it was reported to us so that we would know. In terms of process, here [different place and court in Scotland], all the breach reports come to us as sheriffs, and have to decide what should happen. We don't return all of them to court, but we can if we wish. Breach reports are sent to us very quickly in this system (Interview 19, Sheriff).

Well they do actually have a surprising amount of leeway in these ... So they can go through an order constantly being five, six, seven minutes late getting back into the house. In [place and name of sheriff's court in Scotland] we actually tightened up the national guidelines ... because we thought there was just too much leeway, they were too slack really (Interview 20, Sheriff).

Sheriff interview participants consistently articulate affirmation of their belief in the need for swift responses to non-compliance. The theme of time features frequently in their interview conversations.

Some sheriff participants express a preference for their approach to swift, certain enforcement with Restriction of Liberty Orders, compared to enforcement and breach processes associated with other community penalties, in collaboration with criminal justice social workers.

In interviews, some (but not all) sheriffs contrast the approach taken with Restriction of Liberty Orders, working with G4S, and compare this with their somewhat negative perceptions of enforcement and breach processes involving criminal justice social workers supervising people on community orders, for example, a Community Payback

Order involving supervision or unpaid work requirements, but no electronic monitoring. Two of those interviewed explain their views:

A big advantage as far as I'm concerned of a Restriction of Liberty Order is that it's impossible to sort of dodge the thing, because as soon as you step out of the house an alarm rings somewhere and someone is, from G4S is phoning up asking what's happening, and then you know there's a breach report and it's almost impossible really to contest the breach ... Whereas the other alternative to custody, Unpaid Work breach reports are the bane of our lives because you know people don't turn up for their appointments and they get a verbal warning, they don't turn up again they get a written warning, they don't turn up again there's a breach report comes in and then the breach is denied first by them through their solicitor, and then there's an investigation ... So many months later you're having to look and sometimes you end up allowing the thing to continue ... so these things can just go on and on and on. Whereas with the Restriction of Liberty Order, it's you know, it's more effective (Interview 20, Sheriff).

What the probation people would do would be they would get all the reports about him coming in late and going to granny's instead of his girlfriend's, and all this sort of nonsense and they would work away with the person as social workers do, and near the end of the order they would write in and say it hasn't been working and of course you know by that time it was past it you know. I just felt they were usurping their authority and even if they did step in at one point and recommend a breach, with all the bureaucracy it seemed to take months, whereas I knew that if I had an order and I say to them "right if you're home late one night or you go out early in the morning or whatever or you cut it off, a light will go off in the control panel at HQ and I'll get a report on my desk the next day and I'll be granting a warrant right away (Interview 18, Sheriff)

In contrast, one sheriff said that they preferred to work with criminal justice social workers in the supervision of people on community orders.

Some interview participants feel there are too many differences between sheriffs and courts in response to violations and breach reporting and decision-making for EM court orders.

The comments of a criminal justice social worker illustrate the sentiments of others in this research that the implementation of a court-based EM order is influenced by the judicial officer who authorises and monitors the order:

I think that there needs to be more education on [breach] thresholds. I think there should be a wee bit of consistency ... that is also a reflection on our judicial system in that a lot of it absolutely depends on what day it is, what sheriff you've got, what they had for their breakfast, who was there in front of you, how good is your lawyer, you know, how straight are you [laughs] a whole range of factors. It's not necessarily a formula that if you do this and this then this happens to you, it's a whole range of things and I wouldn't necessarily want to lose that, but I think we probably need to have a wee bit more consistency in relation to people's understanding of what it is (Interview 3, Criminal Justice Social Worker).

Overall, differences between the judiciary in their use of EM have been noted by others, with Mike Nellis (2016: 182) observing that ‘sheriffs have been rather variable in their use of EM, as with so many other forms of community supervision, and as geographical inconsistency in sentencing is not commonly perceived as a problem in Scotland, there are no easy judicial or political remedies for this.’ Information on the outcomes of judicial responses to violations and breaches (e.g., a warning and continuance of the order, extension of the order by a few weeks as sanction for non-compliance, or re-sentencing) of EM orders across Scotland is not currently available.

6.2.2 Prisons and decision-making about risk, breach and recall to custody

The Scottish Prison Service (SPS) retain the capacity to make decisions about all aspects of HDC licences, including responses to violations, breach and recall to custody. Where a prisoner’s circumstances significantly change while living in and being curfewed to an address, they can self-return to custody, without this being considered a breach and formal recall to custody – because of the statutory exclusions, the latter would mean that they are not eligible for early release on a HDC licence again. Where a prisoner breaches their HDC and is recalled to custody, they have the avenue of appealing this through the Parole Board for Scotland. Nellis (2016: 187) observes that the Parole Board ‘has found against recall decisions in a third of cases.’

Scottish Prison Staff participants describe a cautious approach to institutional use of early release on HDC, both in terms of granting them and recall following non-compliance. Interview participants relate this concern to the potential risks and ramifications if a prisoner on HDC re-offends and this becomes a cause for concern in the public domain.

We don’t have to go on their [criminal justice social worker’s] recommendation. We tend not to take risks, we tend to do what the criminal justice social worker recommends (Interview 26, Scottish Prison Service).

It’s not dissimilar to any organisation, but the fear of being blamed for something is incredibly powerful in SPS because if you sign a piece of paper to say this person should get something that allows him access to the community and something goes wrong, then there is a fear that people will say “well that’s going to come back to me, I’m going to be in trouble and my job is at risk if this person does something wrong or commits another offence” ... If the risk assessment, if all the information is brought to the person, the attention of the person who makes that decision at the time and the decision is sound then fine, but getting that across to someone who has perhaps worked in an environment where they feel that there is a blame culture then it’s really hard to get across, you know, “you’ll be OK, don’t worry you’ve made that decision on a sound basis”, but it’s still a big factor (Interview 15, Scottish Prison Service).

Professional and institutional concerns about risk, credibility and public outcry, and the use of practitioner discretion are not unique to the Scottish context.

Some interview participants in this study express the view that, because Home Detention Curfews are stand-alone orders, the Scottish Prison Service make decisions about violations and breach independently. Some participants go further to suggest that these decisions are influenced by institutional factors and fiscal pressures. From the

perspective of criminal justice social workers, these comments appear to be raised as a critique that information sharing and collaborative work are aspects of HDC in Scotland which are currently missing and warrant development.

We don't have any involvement in so things like standalone Restriction of Liberty Orders and Home Detention Curfew orders whereby the governors are responsible for the licences of these. If somebody's out for maybe two or three months and something significant does happen, nobody'll know about them ... It would be interesting to see the breach rate of HDCs for a start because there's a lot of pressure put on SPS to get people out of custody ... The governor you know, he'll look at his reports you're not breaching anything but the stuff that's going on in the house might be quite significant and not only to you but it might be actually significant to other people. So it could be that when you go home your dad's just been made redundant, your wife's just got pregnant, you've got a whole lot of other pressures that are, you know, escalating and you could, if people knew about it you could maybe put an intervention in, but we wouldn't know about it (Interview 3, Criminal Justice Social Worker).

Some sheriffs believe that decisions about violation, breach and recall to custody for prisoners on Home Detention Curfews should not be made as an administrative decision by the Scottish Prison Service, but should be made by a member of the judiciary as an independent decision-maker.

The government also brought in Home Detention Curfew which is a whole other ballgame, and most of us sentencers aren't very keen on it because it's operated by faceless people with no transparency in the criteria ... It wouldn't be terribly expensive even if one of us were to go out to the JO once a week or once a month and look down a few deserving cases and let them out early -- that might have a bit more independent credibility than the prison people who want to kind of balance their own books ... so the home detention side of it a wee bit problematic but then it's nothing to do with us (Interview 18, Sheriff).

This sheriff went on to re-iterate their position of seeing Home Detention Curfews as having "some lack of transparency", and they stated their belief that "it is a way of the State usurping public sentencing policy" (Interview 18, Sheriff). Such views resonate with those outlined by Nellis (2016: 187), who notes a more general tendency among Scottish sheriffs and their representation through the Sheriffs Association to criticise the use of early release through the granting of a HDC licence.

In Scotland, there are strictly enforced conditions of compliance with a Home Detention Curfew. Once a prisoner has been breached and recalled, the current statutory exclusion criteria mean that that person is permanently ineligible for early release on HDC ever again.

In interviews, staff from a charitable representative organisation urge the need to further develop responses to minor instances of non-compliance while on HDC, reflecting their support for moving towards more flexible, creative and person-centred uses of electronic monitoring in general.

There is scope for a much more constructive approach to handling breaches ... Breach is used as rather a blunt weapon (Interview 29, representative organisation).

Sometimes it is too risk-averse. There is no leeway or discretion (Interview 30, representative organisation).

They question what is perceived as a strict and relatively automatic breach and recall to prison process followed in most cases for prisoners on early release. Instead, in response to violations and non-compliance which are not serious, they call for a more integrated and communicative review process which directly involves the prisoner themselves, before formal decisions are made about breach and recall.

Both of these interviewees also reject the statutory exclusion which excludes all people who have breached a HDC from ever getting one again if they are incarcerated again at some point in their lifetime. The Scottish Prison Service use early release on licence with HDC as an incentive for compliance and pro-social behaviour while in prison, and being ineligible may have a negative impact on prisoners' behaviour and motivation pre-release.

People who have breached the tag are denied getting it again – and there's no incentive for them to change their behaviour ... They [the Scottish Government] should change it. It is a nonsense argument that if you have breached it once, you will breach it again. With bail, you can breach it and that does not prevent you getting bail again, whereas with HDC that is not the case (Interview 30, representative organisation).

Some Scottish Prison Service staff interviewed express their own frustration, in mild terms, at this particular statutory exclusion as a blanket rule because it renders a significant number of prisoners who may be 'older and wiser' ineligible to be released early, in turn resulting in an institutional burden by inhibiting efforts to reduce the numbers of people in prison.

Interview participants also raised comments about what happens (or does not happen) when some prisoners evade recall to custody. Recently, a very small number of prisoners, having breached their HDC, have avoided recall to custody by remaining 'unlawfully at large' for a period of time. Some of the Scottish Prison Service (SPS) staff interviewed perceived a level of constraint on Police Scotland resources which is seen to be affecting their capacity to prioritise pursuit of arrest and recall to prison of some prisoners who have breached their HDC licence. In these circumstances, more than one interview participant described having to "follow the Police up to ask if they are still looking for them" (Interview 25, Scottish Prison Service). Where a prisoner has been breached and been 'unlawfully at large', the Scottish Prison Service has the discretion to add days to their prison sentence upon their return to custody.

Section 7: Diversity and vulnerability

In recognition of the wide variety of individuals upon whom electronic monitoring might be imposed, and the personal and social circumstances affecting their lives, Section 7 explores research participants' perspectives on responding to diversity and vulnerability. One of the strengths of contributions by Scottish criminal justice actors in

this research is their pervasive social justice ethos and passion for ensuring people with particular needs or vulnerabilities receive tailored support to enable them to complete their EM order.

7.1 Gender

Only a limited amount of aggregate demographic data is collected and publicly released about monitored people in Scotland. The gender of monitored people is collected and reported by order type (G4S, 2016; 2015). In 2015, the gender split for Restriction of Liberty Orders was 86 per cent men and 14 per cent women (G4S, 2016). In the same year, the gender split for Home Detention Curfews was 89 per cent men and 11 per cent women (G4S, 2016). In relation to children and youth, the gender split for the movement restriction condition as part of the intensive support package of care was 44 per cent female and 56 per cent male (G4S, 2016). Tagging is a practice which involves physical contact with a person's body in installing, checking or removing a tag. In Scotland, there is a policy that only female EM field officers can touch the body of a female monitored person, and this applies to both children and adults.

Some interview participants expressed the view that tagging and home curfews are appropriate for women, and could be used more strategically and extensively in the future to reduce the female custodial estate in Scotland. One sheriff pointed out the link between geographical distance and differences in distance in terms of women's and men's prisons across Scotland by noting that, from some court areas, HMP Cornton Vale is "not exactly easily accessible" and that remanding women in custody there "would have made a big impact on their families" (Interview 16, Sheriff). Very similar comments were made by a prison practitioner who highlighted the same impact on women offenders post-conviction and advocated that, in many cases, electronic monitoring would be "a much better option than actually sending them into custody" (Interview 15, Scottish Prison Service).

7.2 Age

The age of monitored people is collected and reported by order type, and is not available as an aggregate mean total for all EM orders in Scotland. In addition to the use of EM with adults (defined as those aged 16 years and older in Scotland), some children and young people are also subject to EM tagging and curfews through a Movement Restriction Condition (MRC) within an Intensive Support and Monitoring Service (ISMS) order, through the Children's Hearings System. ISMS involve intensive, multi-agency service provision and supports tailored to the young person's needs and risks, irrespective of whether or not an MRC is imposed. The average age and the age ranges of children and young people subjected to an ISMS order is not reported, however, they are under the age of 16 years old.

Different perspectives from G4S EM staff illustrate the spectrum of opportunities and challenges of using tagging with young offenders, especially where it involves a curfew to their family home:

If that group [young offenders] could be kept in the community or at home longer, I think all the research shows that the longer they stay out of custody the more chance they have of settling down. I really think that's the most important part of a

curfew is to make sure that young people don't end up in custody too quickly (Interview 11, G4S)

Because they can't go out to see their friends, they then bring all their friends into the family home, so whereas before, you know, instead of going out to see their pals then they'll just say "well I cannae go out so my pals are coming here" and the rest of the family have to sort of accommodate round about the fact that the person with the tag's then got all his pals in and they're drinking and partying and doing whatever they want to do in the family home ... it's difficult but that is, it's the kind of things that all escalates towards the premises holder saying "do you know what, I can't do this anymore" because it's too disruptive to the rest of the family or too disruptive to the household (Interview 12, G4S)

Further research is needed to better understand the lived experience and collateral consequences (positive and/or negative) of tagging and home curfew on monitored people and their families as cohabitants, especially in cases involving youth and young adults. Families also need to be asked about their support needs and who this should or should not be offered by and why (e.g., discussions of statutory involvement compared to third sector services and peer supports), in an effort to prevent households being unduly placed under pressure because a family member is confined to their home for up to 12 hours a day. The premises holder can withdraw consent for a person, including a young offender, to be monitored at their property; however, the potential consequences of this within some family relationships and households may be considerable.

Curfew restrictions for monitored children and young people are routinely later in the evening compared to those most commonly imposed on adults (which are often 7:00pm to 7:00am). A few research participants in our study voiced their support for this flexible and integrated approach, suggesting that using more punitive, tighter controls with this younger age group would "set them up to fail" in terms of increasing the likelihood of non-compliance. Conversely, some participants in previous research studies in Scotland have expressed ethical concerns and ideological opposition to the use of EM with children and young people under 16 years of age (see MacQueen and Rigby, 2010; Orr, 2013). Questions and concerns about the use of EM with this age group are echoed in the comments of an interview participant whose role and professional work history involves working with children, young people and adults:

Most of them, to be fair, are teenagers you know about twelve/thirteen ... but you also need to think about people need to be old enough to understand about restrictions, so if you're fourteen or fifteen you wouldn't necessarily understand or even be able to comprehend the impact of having to stay in your house seven nights a week, you know from seven till seven ... I think they should rethink movement restriction orders for young people, I don't necessarily think they add value. If a child is stable enough and supported enough for that to work then they really shouldnae [shouldn't] be on one (Interview 3, Criminal Justice Social Worker).

G4S staff interviews and fieldwork observations did not necessarily express a view as to whether movement restriction conditions as a part of ISMS orders should exist; however, several participants drew attention to the fact that some children and young

people aged under 16 years have difficulty complying with the conditions of their order, even with the availability of social work supports.

Electronic monitoring is used moderately extensively with young adult offenders in Scotland. In 2015, 39 per cent of people given an RLO were aged 25 years and under (G4S, 2016). Furthermore, one quarter (25 per cent) of the total numbers of HDCs granted were to prisoners aged 25 years and under (G4S, 2016). These figures begin to challenge a common anecdotal perception that some young adult offenders do not have sufficient developmental capacity (e.g., because of impulsivity and limited self-regulation skills, time management skills, criminal peer refusal skills) or sufficient supports and circumstances to comply with and complete an EM order.

The age cohort notably missing from the responses of those interviewed is that of middle aged and older people. This is particularly salient given that one of the potential groups for future targeted use of EM may be older people, especially where this might involve early release from prison. However, in seeking to tailor the uses of EM with middle aged and older people, due consideration is needed for the sensitivities and complexities of differentiating between them by their assessed level of risk (which, in some cases, may be low) or by the offence for which they were sentenced (which may be serious or high profile, or both).

7.3 Language

There are contractual obligations which require the private EM services provider to take certain steps in providing information to people who speak languages other than English. For example, one practitioner confirmed that, when an EM order or licence is imposed by an authorising agency, “it’s stated in the contract that we must provide, if they don’t speak English, we must provide interpreters within a 24 hour period” (Interview 9, G4S staff), and language interpretation may also be required for communication with the person during the EM order. The private EM services provider must provide a written copy of the installation information booklet specific to the person’s order in their language at the start of their order.

7.4 Education and low literacy

A few interview participants discussed the need to tailor responses to monitored people with limited education and low literacy. In one interview, an anonymous example was given of a younger prisoner who was granted a HDC. They could not read or write, and could not tell the time using an analogue watch or clock. The prisoner understood the conditions of their licence, which was discussed verbally with them in detail; however, they needed the wording adjusted as “[they] didn’t understand the times because they were in twenty-four hour format and [they were] used to it being like seven/seven rather than nineteen hundred to zero seven hundred” (Interview 24, Scottish Prison Service). To support the compliance and success of this prisoner to complete their HDC, a multi-faceted and collaborative response was put in place, involving the support of prison staff, educational staff, a speech and language therapist, prison throughcare staff, EM field officers, and their family. A digital watch was used with alarms set for a certain time before their curfew started.

7.5 Deaf and hearing impaired monitored people

A small number of deaf and hearing impaired people are placed on EM orders in Scotland. The following tailoring of procedures and supports are offered to enable their participation in EM. For equipment installations, the private EM services provider will arrange a sign language interpreter as well as the standard provision of written information. Contractually, the time constraints for different types of actions (e.g., an installation) are longer to ensure that a sign language interpreter can be present if the person's hearing is impaired enough that other options are not appropriate. The installations and other types of visits take longer, whether or not an interpreter is present, because time is taken to write things down to ensure that the deaf or hearing impaired monitored person has clear access to and understanding of the information being provided to them.

A special NEMC mobile number is given to deaf and hearing impaired monitored people so that they can text the NEMC. The special mobile number/line is on the Supervisor's desk in the NEMC. Instead of a phone call, violation queries and notifications are sent via SMS text message to that mobile phone, which the monitored person is obliged to check and respond to (like others would a HMU box). Additionally, a number of deaf and hearing impaired monitored people can lip read, and have expressed their willingness to ask the field officer to repeat something or write it down if they do not understand.

7.6 Poverty and social disadvantage

Some interview participants highlight the fact that a person has to have stable electricity to participate in EM, or risk accruing violations when their electricity cuts out, and this is identified as an issue for people who encounter social disadvantage. In the course of fieldwork observations, researchers accompanied fieldwork officers to the homes of monitored people who had run out of electricity, to verify the equipment was working and the battery of the HMU box was fine following a power cut. Multiple phone calls to the NEMC of this nature were also observed.

The comments in the following case study highlight the interactions between poverty and social inequality, and the value of managing the expectations of different workers about a monitored person's compliance. A few of the fieldwork observations in this research involved going into people's homes at the point of installation, and observing similar circumstances.

Case study: Young adult with multiple needs curfewed to a temporary tenancy

A criminal justice social worker gives an example in an interview of a young adult male they worked with who was tagged, who had multiple needs, and had breached other orders. He had multiple social workers and support workers involved. The criminal justice social worker describes the situation:

"We got him released so we brought him back, he had a tag on, he got a temporary tenancy, in care all his life, really damaged with a tag on, got that sorted, got that put on and then I spoke to his social worker and [range of other workers] ... I said to them "you do realise he's [age, a teenager], he can't read and you're asking him to sit in the house, he's got no telly, no radio or anything else and he had his curfew" and they went "well

what are we supposed to do with that?" I said "well do you really think it's going to happen?" I mean I would even rather they said to me "can we get £50 Section 27 money to go and buy him a second-hand telly..." But they've absolutely unrealistic expectations, and these were all really experienced workers, but it was almost like they completely missed it. I always think if it was me [laughs] you know and I didn't, I couldn't read, I didn't have, this is a house that nothing in it's mine I've only got a bag of clothes, I've got no you know, you've got nobody that's going to come up and see me ... Well think about the risk assessment, the reality is we want him to comply and we want him to be going down this path what do we need to do to support that and just restricting him to you know to his flat without taking into account just even just things like they need to have food. I mean it's your basic Maslow's hierarchy of needs!" (Interview 3, Criminal Justice Social Worker).

7.7 Monitored people who have been victims of crime

Some monitored people are phoned in advance to say that a field officer will visit, and this only happens in specific circumstances because visits are routinely conducted without any prior warning. The example given by NEMC staff during fieldwork observations was a male monitored person who has been a victim of crime, with several instances of victimisation occurring at his front door or in his house. This person will not answer the door in the evening because of these events, and can become quite anxious in the fear that he will be attacked again. Field officers call him shortly beforehand so that he knows to answer the door.

7.8 Duty of care and the 'home all day alert'

Framed in terms of 'duty of care' and not directly related to criminal justice concerns, the EM services provider uses a 'home all day alert', which is not contractually obliged. If the EM system recognises that a monitored person *has not left* the house they are curfewed to for a period of three consecutive days, they are phoned to check on their welfare. There have been cases of these home all day alerts and subsequent courses of action leading to the discovery of monitored people who have become seriously unwell and require hospitalisation, or are deceased, by emergency services.

Section 8: Information exchange and multi-agency working

8.1 Increasing integration and multi-agency collaboration

One of the consistent themes across interviews and fieldwork observations is the belief held by most participants that more collaboration, integration and multi-agency work will be beneficial.

The desire for more collaboration and communication is reflected in two consistent types of participant perspectives. The first is the critiques and perceived limitations raised by some participants of the way that EM currently operates in Scotland, predominantly in terms of stand-alone orders and authorising agencies that do not necessarily have to communicate about decision-making and actions to others. For example, criminal justice social workers tended to express a desire for more collaboration and multi-agency information exchange, leading one research participant to offer their view that:

I think SPS [Scottish Prison Service] operate in kind of isolation and they will take things forward, and even when they're taking things forward that we would support, it would be I guess seen as more effective or more productive if we were involved in that process you know (Interview 4, Criminal Justice Social Worker).

The second common participant perspective is to call for more multi-agency work, including support for the integration of EM with other services that offer supervision and support. This is one of the most common suggestions when interview participants are asked about the future of EM.

Support for more integration and collaboration was not a view offered uncritically or without pragmatic due regard for the differences between actors. For example, one participant was circumspect about the challenges of integrating offender supervision by criminal justice social work in the context of a privatised service provision arrangement in Scotland, saying "I'm not sure how far we can go in terms of integration between the two particularly given that one of them's a private provider" (Interview 1, Criminal Justice Social Worker). A sheriff offered the view that "because it's a privatised order, social workers unionised a bit chippie sometimes they never liked these people coming in", suggesting that criminal justice social workers resent the amount of money being given to a private company for service provision to people on RLOs, compared to the funding they get for working with people on other community orders (e.g., Community Payback Orders), "so they really hated that and they virtually never recommend it" (Interview 18, Sheriff). Furthermore, some sheriffs in this study have indicated that, in some cases, they prefer RLOs over other community penalties such as Community Payback Orders because they remain the decision-maker, and some have gone further to state that they prefer this to having to work with criminal justice social workers because they differ in their perspectives of how best to respond to non-compliance and breach. The apparent ideological differences highlighted here are not insignificant, nor are they illegitimate or unimportant in considering the prospect of adopting a more integrated approach in Scotland.

It should be acknowledged that, separately, the authors have already recommended the more integration of EM with multi-agency work to include the option of supervision and support for support monitored people (Graham and McIvor, 2015). This recommendation to examine more involvement by criminal justice social workers and the third sector was affirmed in public comments by the Cabinet Secretary for Justice in August-September 2015, who stated that 'wrap-around support services are just as important as the technology itself', calling for electronic monitoring to be situated in 'a wider package of care' (Matheson, 2015: 6).

In an interview with two policymakers in Scottish Government Justice for this study, the theme of integration of EM with supervision and support was raised:

In the past it's been used more as a sort of a control, control somebody's movements for the curfew periods ... there's been little integration. Look at support for the individual, it's more standalone, which is what we want to move away from (Interview 22, Scottish Government Justice)

The future so there's a sort of strong political view isn't there, a political commitment to boost community sentences because the traditional evidence says that that's how you help people stop reoffending or reintegrate into the community,

and I think electronic monitoring has obviously its part to play in that (Interview 21, Scottish Government Justice)

The capacity for creativity and flexibility needs to be reflected in future EM policy and practice developments, including if and where multi-agency supervision and support options are introduced. If EM orders and licences change from being 'stand-alone' to involve more multi-agency supervision and support, the capacity for creativity and flexibility needs to be designed into these new arrangements. One approach to tagging does not fit all. Many, but importantly, *not necessarily all* monitored people will need or benefit from criminal justice social work supervision or the support of a third sector organisation.

8.2 Data protection and privacy

In terms of overall data ownership of information collected in the course of EM services provision, the Scottish Government own the data, and set the restrictions governing data management and sharing. However, other Government services do not have access to data on monitored people, and data protection protocols apply, including filling out forms to request information. Police Scotland and the Scottish Prison Service do not have access to the phone number attached to an HMU box. They have requested access to this information as a way of getting in contact with the person quickly, but this request was denied on the grounds of privacy and security issues. The monitored person does not know the number of their box. No one other than G4S have the number. In looking to the future, the themes of privacy and who should and should not have access to EM data are discussed in Section 10 in relation to the potential introduction of GPS tagging and tracking technology, which generates a large amount of location data.

Section 9: Effectiveness and impact of electronic monitoring

9.1 Costs and comparisons to custody

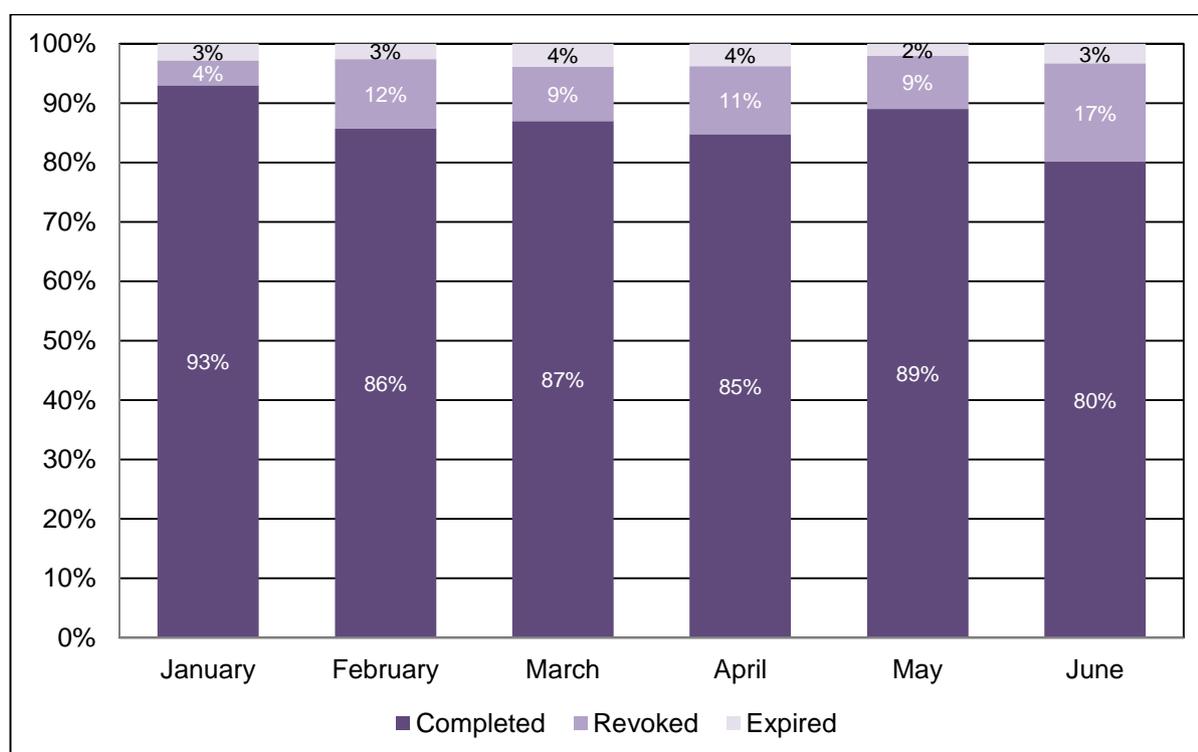
The costs of EM are published annually by the Scottish Government. Currency conversions are offered here based on exchange rates in August 2015. The *average unit cost* for electronic monitoring in 2013-2014 was £743 (€1,043.73) (a significant reduction from £1,940 (€2,725.21) in 2011-2012) (Scottish Government, 2015a; Scottish Government, 2013b). This figure is based on total expenditure across all forms of electronic monitoring, including as part of a DTTO as well as part of Movement Restriction Conditions imposed on children and young people by the Children's Hearings System. In 2013, the *average cost per EM order per day* in Scotland was estimated at £10.17 (€14.29) (Scottish Government, 2013a: 7). Annual costs of electronic monitoring are problematic to estimate, because most EM orders are not imposed for such a long period of time. Conversely, while *per diem* costs are difficult to calculate for prison sentences, the *average cost per prisoner place* during 2013-2014 was £37,059 (€52,058.56) (Scottish Government, 2015a).

9.2 Electronically monitored order completion

There are moderately high rates of order completion, with approximately 8 out of 10 electronically monitored orders completed in Scotland in 2015 (G4S, 2016).

There are complexities in discussing the influence of electronic monitoring on *compliance* with orders or licences in Scotland, as the factors contributing to compliance and non-compliance are multi-faceted (Graham and McIvor, 2015). Therefore, the following relate to EM *order completion* in Scotland which is a similar, but different indicator to that of compliance, because order completion data relate to final outcomes and, as such, do not necessarily give an indication of actual levels of compliance (that is, violations of conditions of the order that do not result in breach). Figure 5 illustrates the rates of (a) persons who have successfully **completed** Restriction of Liberty Orders, (b) who have had their RLO **revoked** by the issuing Court, or (c) their RLO has **expired** whilst the person awaited the outcome of a breach from the issuing court, in Scotland from 1 January – 30 June 2015 (G4S, 2016).

Figure 5 Restriction of Liberty Order completions, revocations and expiries (%) by month in Scotland, 2015



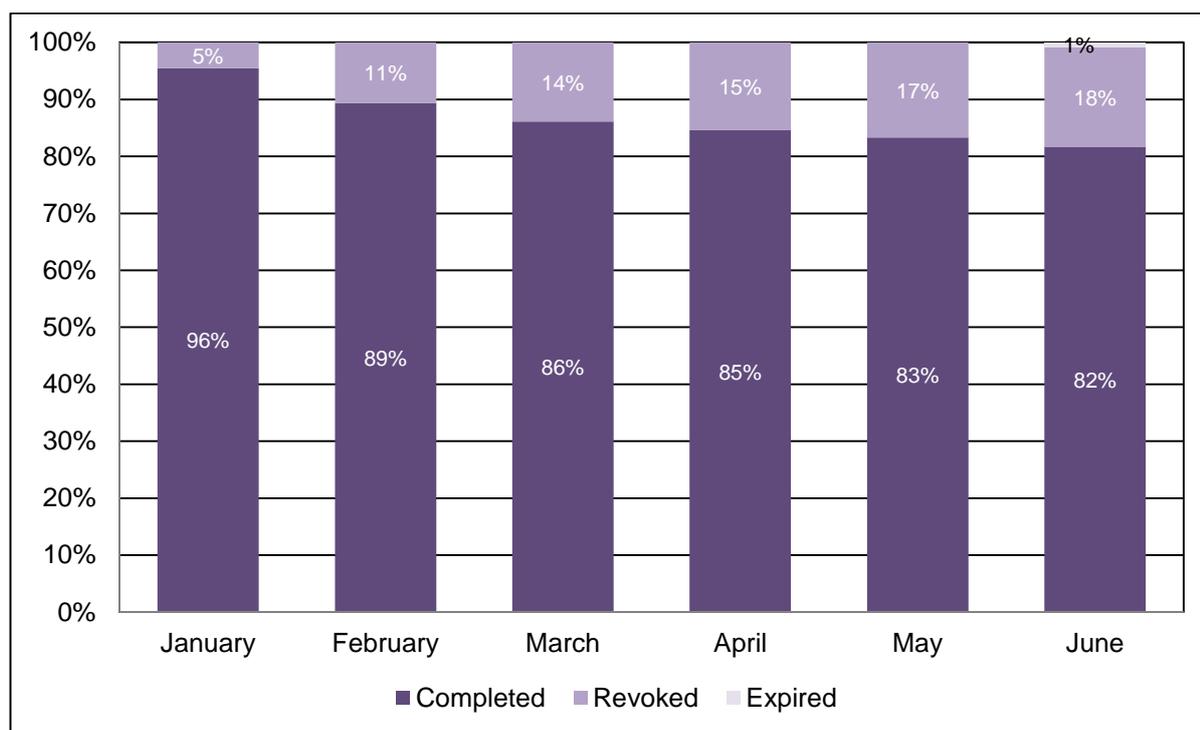
Source: G4S (2016: 4).

There are few notable differences in order completion rates comparing court-imposed RLOs (community sentences) with prison-authorized HDCs (early release from prison). However, commentary by Nellis (2016a: 187) suggests that there have been changes over time in the rates of order completion of Home Detention Curfews in Scotland:

By December 2009, 7,000 short-term prisoners had experienced HDC ... Just over 75 per cent completed the monitoring period successfully: only 1 per cent had been reconvicted of a new offence resulting in custody ... The Scottish Prison Service's (2010) operational review observed that the recall rate (one in four) was twice that of England and Wales and recommended incentivising the longer HDC periods (progressively reducing curfew hours after successful completion of the 'first third' of an order to sustain compliance in the later period) (Nellis, 2016a: 187).

From an average of three out of four prisoners completing their HDC licence period in 2009-2010, the latest figures show that this has improved to an average of four out of five prisoners completing their HDC licence period in 2015. Figure 6 illustrates the rates of (a) persons who have successfully **completed** their HDC licence period, (b) who have had their HDC **revoked** by the issuing prison, or (c) their HDC has **expired** whilst the person is in custody or hospital, from 1 January – 30 June 2015 (G4S, 2016).

Figure 6 Home Detention Curfew completions, revocations and expiries (%) by month in Scotland, 2015



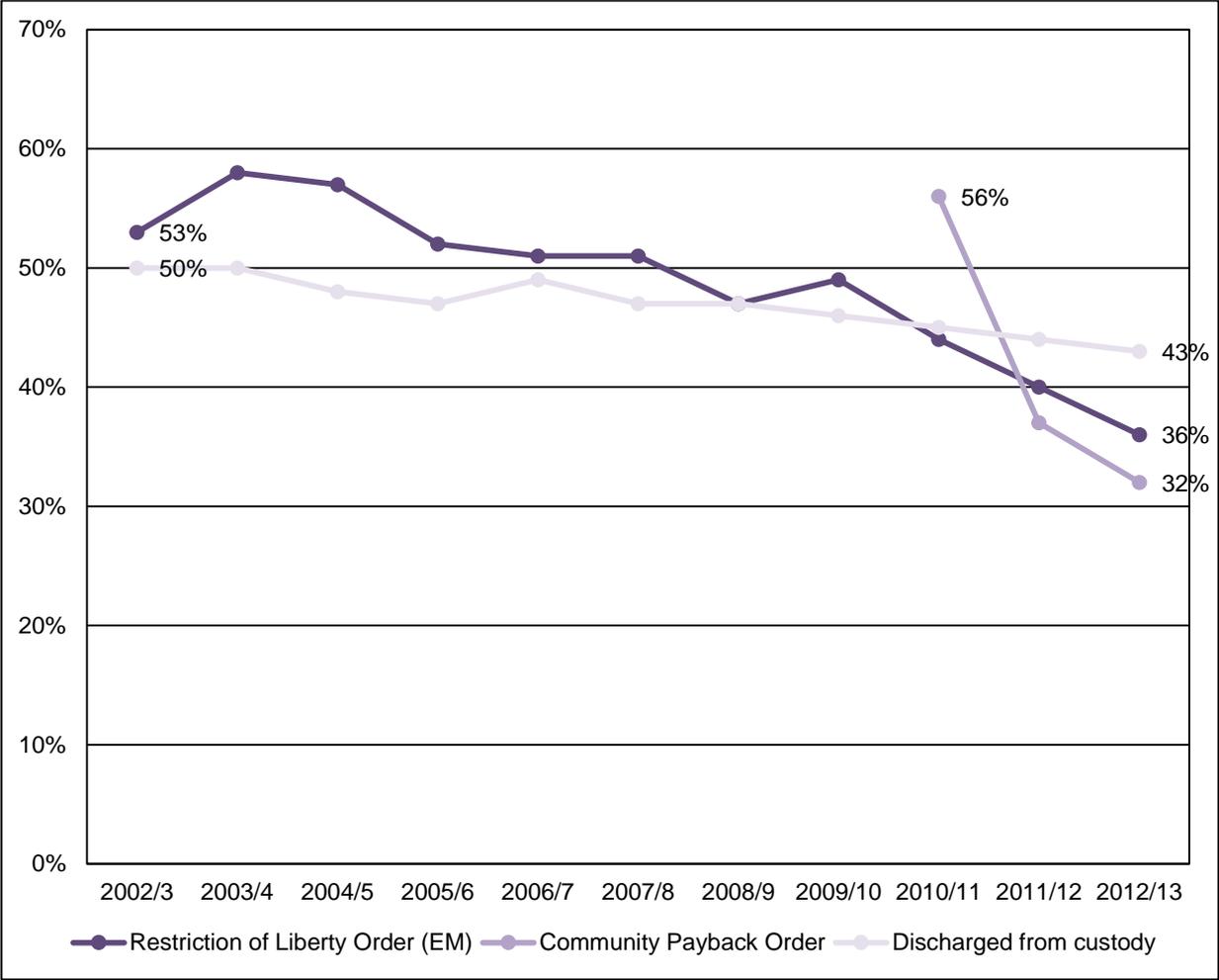
Source: G4S (2016).

Order completion rates give some indication of what has happened during the order, whereas reconviction rates are one way of considering the effectiveness and impact of EM after the order and monitoring has ceased.

9.3 Reconviction

A small amount of data on one year reconviction rates for RLOs and other sentences is published by the Scottish Government. Based on a cohort of offenders sentenced in 2011-12, a reconviction analysis indicates a 12 month reconviction rate of 39.2 per cent among offenders given RLOs with an average of 0.73 convictions per offender (Scottish Government, 2014a). It is also worth noting that the reconviction rate for RLOs has decreased steadily since they were made available nationally in 2002, down from a peak of 57.8 per cent in 2003-4, and it is now lower than the reconviction rate for people discharged from custody – trends which are illustrated in Figure 7.

Figure 7 Trends in reconviction rates (%) (1 year follow-up period) by index disposal in Scotland, 2002-03 to 2012-13



Source: adapted from Scottish Government (2015b: 30).

* Note: Community Payback Orders started in Scotland in 2011.

While similar decreases have occurred in reconviction rates following other disposals, they are more pronounced in relation to RLOs and Community Payback Orders, which started in Scotland in 2011. With regard to EM, this might suggest improved and more tailored use of orders with those who may benefit most from the features of electronically monitored curfews which may contribute to desistance (Graham and McIvor, 2015; Hucklesby, 2008), the increased targeting of RLOs on lower tariff offenders or a combination of both.

However, drawing any inferences from these differential reconviction rates between sentence types is problematic because of differences in the types of offenders who receive different disposals – such as age and previous criminal history - which in themselves would have a bearing on the risk of recidivism. One way to lessen the influence of criminal history on such a comparative exercise is to compare reconviction following different disposals for offenders with similar numbers of previous convictions. The relevant reconviction data are presented in Table 2.

Table 2 Percentage reconvicted within one year by disposal and number of previous convictions in Scotland

Disposal	No previous convictions	1 -2 previous convictions	3-10 previous convictions	More than 10 previous convictions
Custody	10	20	36	61
Restriction of Liberty Order	29	26	36	61
Community sentence*	19	26	36	53
Monetary	12	19	29	49

* includes community payback orders and 'legacy' sentences imposed for offences committed prior to the introduction of CPOs.

Source: Scottish Government (2014a)

These data appear to indicate that, among those with fewer than three previous convictions, rates of reconviction are lower for those given a prison sentence than for those given an RLO. While this might reflect a deterrent effect of imprisonment on first or 'lightly' convicted offenders (that is, with fewer than three previous convictions), it may also reflect differences in the types of offences with respect to which RLOs and prison sentences are imposed. For those who are more 'heavily' convicted (that is, having three or more previous convictions), reconviction rates are similar for those imprisoned and given RLOs. For these offenders, there appears to be no evidence that RLOs are any more or less effective in terms of subsequent recidivism than imprisonment (for further discussions of efficacy, see Graham and McIvor, 2015).

There has been limited analysis of the impact of EM on children and young people under the age of 16 who are tagged and have a Movement Restriction Condition (MRC) as a part of their Intensive Support and Monitoring Service (ISMS) order. The data that is available is 7-9 years old, and is place-based which means it is not necessarily representative of a national cohort or trend. Vaswani's (2009; 2007) quantitative analysis of ISMSs in Glasgow provided some evidence of reductions in reoffending for some children and young people, at time when half of all ISMS orders included a Movement Restriction Condition (MRC). Compared with the six month period prior to an ISMS being made, there was a reduction in the average number of offences per month committed by young people while they were subject to an order, and a 28 per cent overall reduction in monthly offending for those on an ISMS order with an MRC component (Vaswani, 2007). However, it was not possible to identify which elements of the ISMS (as well as any other factors) were responsible for reductions in young people's offending; some questions and critiques have since been raised about the research methods and findings (see MacQueen and Rigby, 2010); and it also appeared that the ISMS order had less of an impact on offending by young women.

Section 10: The future of electronic monitoring in Scotland

Section 10 offers a summary of the key themes to emerge from participant comments when asked to reflect on the future development of electronic monitoring in Scotland,

including their views on the possible future introduction of new EM technologies and modalities.

10.1 Reducing the use of remand in custody: EM as a pre-sentence option

Some participants initiated discussions of EM as a way of reducing the use of remand in custody. Without being prompted to discuss this topic, one participant asked “EM bail – I don’t understand why it was taken away?” and stating that “it would be very valuable to have back” (Interview 19, Sheriff). Indeed, a few participants voiced their support for the re-introduction of the option of EM as a pre-sentence measure in Scotland, linking this to purposes such as reducing the use of remand, achieving resource efficiencies, risk management, as well as perceptions of better outcomes for monitored people compared to being in custody. These perspectives are illustrated by the participant quotes below:

I think more people are remanded than need to be but that’s a personal view ... there are people on remand who could be dealt with in a different way ... I think one of the things that as far as RLOs are concerned that I would like to see is their availability as a pre-sentence measure so as part of bail conditions. I mean quite often bail conditions say you will be at such-and-such a place at such-and-such a time and the only way that that can be checked is by a police officer going round which seems an enormous, I mean you know, wasteful use of resource (Interview 16, Sheriff).

I think using a restriction of liberty order as a direct condition or requirement of bail supervision or bail on its own without the supervision element would be a positive in terms of enabling people to maintain links with families, to maintain links with communities, with work rather than being stuck in a prison or a detention centre for three to six weeks when all that community contact, family contact, employment contact can be lost and in terms of work probably never regained (Interview 1, Criminal Justice Social Worker).

It has been a decade since the EM bail pilot was introduced and then ended in Scotland, without national roll-out. Participant responses in this study suggest that the option of EM at the pre-sentence stage as an alternative to remand in custody warrants further consideration by Scottish criminal justice policymakers and other stakeholders.

10.2 New electronic monitoring technologies

Interview participants were asked for their views on the potential introduction of new tagging technologies in Scotland. A summary of the range of perspectives is provided here.

10.2.1 Remote alcohol monitoring (RAM) tagging technology

In considering interview participant comments in relation to this technology, a clear and coherent view does not emerge. A few interview participants needed the technology explained to them because they had not heard of it before (for a detailed review of the utility and limitations of remote alcohol monitoring (RAM) tagging technology, see Graham and McIvor (2015)). Some interview participants questioned the extent to which the technology would assist efforts to reduce alcohol addiction and alcohol-related offending among monitored people, and instead suggested a stronger focus on other more rehabilitative and recovery-oriented approaches. One criminal justice social worker questioned the use of RAM with people who are habitually dependent or

addicted to alcohol, suggesting that, with this group, RAM “won’t make a difference” and that alcohol addiction “is extremely difficult to deal with, there’s a whole range of things that happen and it’s highly unlikely that putting a bracelet on somebody is going to stop them drinking” (Interview 3, Criminal Justice Social Worker). Similar sentiments were offered by a different criminal justice social worker, who said “I don’t think it’s [alcohol] something that we should be necessarily monitoring”, and instead advocated supervision and support to address the reasons for a person’s drinking, whereas they thought an RAM tag might only have influence during the period of monitoring. Questions of consent and voluntary choice were also raised by a few interview participants.

Another criminal justice social worker held the view that, if it is introduced, RAM should “be used purely as monitoring alongside someone’s rehabilitation or recovery with alcohol use” (Interview 10, Criminal Justice Social Worker). They had concerns about how non-compliance might be defined and responded to, questioning the utility of monitoring abstinence with the pragmatism and flexibility needed in criminal justice social work: “we work with people who struggle to manage on a day-to-day basis, you know, we have to be flexible in how we support people otherwise we would be breaching everybody all of the time and that’s not our job” (Interview 10, Criminal Justice Social Worker).

Prison practitioner perspectives varied. One interviewee held a clear belief that RAM should be used with prisoners on a HDC: “I honestly think we should monitor their alcohol intake” (Interview 28, Scottish Prison Service). Others disagreed, for example, when asked about their views on the potential introduction of RAM tagging technology, one interviewee stated “I don’t see the need for them. They are setting people up to fail because it will be too hard to comply” (Interview 25, Scottish Prison Service).

If there are plans to pilot or introduce the use of RAM technology in Scotland in the future, two issues feature in this study. The first is that there is a lack of familiarity or clarity among some practitioners in understanding how and why this particular EM technology might be used. Furthermore, the second issue is the need to contextualise the technology in relation to the desired goal(s) and professional practice cultures in Scotland, including examination of whether the primary objective is to strictly require and monitor abstinence and, if so, how non-compliance will be defined and responded to.

10.2.2 GPS tagging and satellite tracking technology

There is moderate interest and support among participants for the introduction and targeted use of GPS tagging and tracking technology, with acknowledgement that its use could be tailored and targeted to help achieve outcomes where RF tagging has limited capacity. The main example highlighted by participants was the perceived utility of GPS in being able to monitor restrictions away from exclusion zones for particular groups of monitored people, for example, people convicted of domestic abuse offences and sexual offences, people who repeatedly shoplift in a given area, and people subject to place-based football banning restrictions. One criminal justice social worker suggested that GPS tagging could potentially be used positively in tandem with supervision, giving monitored people the opportunity of “being able to evidence” compliance (Interview 3, Criminal Justice Social Worker). However, a few participants were cognisant that the ability to monitor a person’s movements, especially in relation to an exclusion zone, on its own, should not be conceptualised as a form of protection. One sheriff, who supported the introduction of GPS tagging, was pragmatic in

acknowledging that this technology and the use of exclusion zones “gives a false sense of security if you’re trying to protect somebody from violence or harassment; I think that’s always the danger of these things is that if somebody thinks that this is protecting them but it’s not, it’s just alerting somebody to the fact that somebody’s in the area but that in itself can’t be enough” (Interview 16, Sheriff).

Importantly, various participants, including G4S Scotland staff, warned against the proliferation of widely using GPS tagging as a *replacement* for RF tags. Support for the introduction of GPS tagging appears to be contingent on it being complementary, while also retaining the option of RF tagging technology. Proportionality and the targeted use of this technology remain salient concerns if it is introduced. Several participants questioned the reliability and practicalities surrounding the length of battery life in GPS tags, as they have to be charged regularly, which RF tags do not. For a more detailed review of the strengths and limitations of GPS tagging and tracking technology, (see Graham and McIvor, 2015).

Interviews with criminal justice social workers appeared to evoke different responses depending on the EM technology being discussed. There was a tendency towards subtle scepticism about the current uses of EM and RF technology with home-based curfews, with some raising questions about how a curfew of up to 12 hours a day addresses the underlying reasons for offending behaviour. However, when presented with the question of what did they think about the potential introduction of GPS tagging and tracking, those criminal justice social workers seemed more enthusiastic at the potential prospect of tailoring monitoring to ‘away from’ restrictions, seemingly welcoming this new development *if* they become the supervising officer (i.e. working in collaboration with the judiciary and the courts) and if GPS can be used for the objective of criminogenic risk management and reducing reoffending.

When Scottish Government policymakers were asked in an interview about what more creative uses of EM might potentially look like in Scotland in the future, their response focused on positive practices from other European countries, linking GPS technology with more wider reintegrative approaches to EM:

The Netherlands again use GPS to ensure that people are where they say they’re going to be as opposed to that they’re curfewed to their home so that they are at work, that they are at school, that they are at rehab, that they are at classes where they’re mixing with different groups of friends ... so that’s a real creative use, a real positive and a true reintegration type of use and that’s it, they can do that because they have a different technology and we don’t have that technology, so potentially if we start introducing a different technology then we can use it more creatively (Interview 21, Scottish Government Justice).

The Dutch approach to EM highlighted here by policymakers involves the capacity to use GPS technology in combination with an integrated approach based on supervision, as well as positive opportunities and supports for rehabilitation and desistance. These topics are discussed further in the conclusion and recommendations of this report.

Participants did not tend to raise the suggestion of introducing police-led uses of ‘voluntary’ GPS tagging and tracking technologies of people with convictions who are not currently subject to an order, like the police initiatives in England and Wales. A Police Scotland interview participant was asked for their perspective about these tagging initiatives and whether they thought there would be grounds for introducing this in Scotland? In response, they raised questions about the ethics of consensual

surveillance, as well as a need to consider public perceptions and trust of the institution. They stated that “Police Scotland are in a lot of public contention at the moment because of our use of consensual search in public, so my view may not be the same as my colleagues. I would find consensual surveillance of somebody, however professionally convenient, a little bit of an issue in terms of trust and rights balance between us and the population” (Interview 2, Police Scotland). They also raised questions about proportionality and the need to avoid the proliferation of surveillance, especially in the form of active monitoring enabled by GPS technology, suggesting that, if this was introduced, “there should be a presumption of innocence until proven guilty so we shouldn't, I don't think, be watching the data the whole time for all those people who are monitored” (Interview 2, Police Scotland). An interview participant from a charitable representative organisation raised similar concerns, stating that if police were seeking to have the capacity to do “a sort of trawling exercise looking for information about where somebody is without due cause then I would block that entirely because I think that is not only a waste of police time but that is not appropriate because just because somebody's on some kind of electronic monitoring it doesn't mean that they are necessarily going to go about committing more offences” (Interview 29, Representative organisation). These perspectives highlight the need for in-depth consideration of the penological purposes and ethical and legal ramifications of introducing new technologies, especially where the boundaries around privacy and liberty, as well as proportionality, should be set.

10.3 Lived experiences of electronic monitoring: address knowledge gaps

Different interview participants asked about or commented on the absence of in-depth research involving monitored people, their families and other cohabitants, and victims of crime in Scotland. The earlier sub-section of this report about the scope and limitations of this research acknowledges the absence of their voices and lived experiences. Coproduction of research agendas to encourage meaningful input participation is necessary with these people and groups in the near future in Scotland to ensure that this knowledge gap is addressed.

In this study, a staff member of a representative organisation was optimistic that some initial progress has been made in enabling more consideration and inclusion of the perspectives and experiences of people with convictions by policymakers in the Scottish Government, albeit with the recognition that more of this is needed. In discussing the importance of considering lived experiences, they offered the view that “there is a general feeling that the culture of justice in Scotland is changing, it is getting more progressive ... It is interesting times in Scotland. There is great potential for change. Does EM have a role in that? Yes it does ...” (Interview 30, Representative organisation).

10.4 Policy and practice leadership to make EM more fit-for-purpose

Technology is not and should not be the sole and dominant focus of how and why the use of EM is developed. Objectives and penological purposes remain important concerns. In terms of a key focus of this research project, it is important to consider who should *lead* and influence the use of more creative, flexible, and innovative changes? This is different but still related to the more general question of who should have ‘a place at the table’ of co-producing EM, in terms of the range of stakeholders involved.

In this research, some of those interviewed tend to support more strategic and creative leadership of EM policy and practice development by *government* or public service

actors, for example, suggesting changes that, if enacted, will largely require the leadership of Scottish Government policymakers, Scottish Prison Service staff, Criminal Justice Social Workers, the judiciary, or the Parole Board. In this vein, the consultative and collaborative approach to considering the future of EM in Scotland through a national consultation and an EM Working Group should be recognised and celebrated as grounds from which more innovation and fruitful development might be expected.

Some interview participants are resolute in describing the current role of the private sector EM service providers as one of ‘technicians’, involving contractual compliance to carry out tasks of equipment installation/checking and monitoring administration, not necessarily to change EM substantively nor to ‘drum up more business’. At the coalface, public service actors such as criminal justice social workers and prison reintegration and throughcare staff are better placed to assess and lead changes which seek to better address criminogenic risk with the objective of reducing re-offending and promoting community integration. Similarly, encouragement of greater public service leadership in EM is echoed in recent propositions by Mike Nellis (2016a; 2016b) and the findings of the recent Scottish and international review of EM conducted by the authors (Graham and McIvor, 2015).

Further integration and a more advanced capacity for multi-agency work features in the discussions of future developments raised by two Scottish Government policymakers. One acknowledges that “there’s been little integration”, with EM being used in the past as “more of a control”, but that the use of stand-alone approaches are “what we want to move away from” (Interview 22, Scottish Government Justice). Another emphasised the current political commitment to boosting and building community sentences, including EM, as part of a wider shift in penal policy to focus on helping “people stop reoffending or reintegrate into the community” (Interview 21, Scottish Government Justice). In other words, there is a shift in focus away from the simplistic and standardised approach of using EM as an isolated measure over the last 15 years.

A further important consideration is that of funds and resources for future developments. For example, greater involvement and integration of criminal justice social workers and local authorities, or prison reintegration and throughcare staff, may or may not result in cost savings for prisons and courts. It is more likely to involve some level of cost *shifting*, in the event that less people are sent to prison, and with due recognition that criminal justice social workers and local authorities will require commensurate funds and resources to become more substantively involved in EM than they currently are. Although, any fiscal benefits will be lost if the phenomenon of net-widening is occurring in Scotland. It is imprudent to make any concrete predictions here, due to the lack of available data.

Section 11: Conclusion and recommendations

The primary purpose of this research report is to outline in detail how EM is currently used in Scotland. In a dynamic period in Scottish criminal justice and penal policymaking, this has proven to be a considerable task. There are a few features of this research which we wish to draw attention to in closing, as this particular moment in Scottish criminal justice represents an opportunity for policymakers and practice leaders to co-create more strategic, creative and fit-for-purpose uses of electronic monitoring.

11.1 Recommendations

Consideration should be given to the following, which are based on the findings of this research:

1. Clarify national breach criteria and responses to non-compliance. Consider consolidating breach reporting timeframes and thresholds into two nationally available options – standard and intensive – to foster consistency between decision-makers and authorising agencies.
2. Introduce mechanisms to give courts and prisons the choice of imposing a supervision requirement with EM modalities involving a ‘supervising officer’, or to make EM a condition of other orders, to enable more multi-agency work and reintegrative supports for monitored people. Implementing integration and the option of supervision will necessitate commensurate funds and resources. However, the introduction of supervising officers will enable decision-making to reduce the volume of queries for order variation which are currently being put before authorising agencies such as the courts, which may reduce workload churn and costs.
3. Authorising agencies should consistently instruct the private EM services 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 regard to all parties involved.
4. Introduce and encourage wider use of mechanisms which motivate and reward monitored people’s compliance and desistance, including graduated changes in regimes and conditions, as well as a mechanism to allow authorising agencies to terminate an EM order or condition early.
5. Abolish the statutory exclusion for Home Detention Curfew (HDC) licences which permanently excludes prisoners who have previously breached a HDC licence. It is inefficient and inequitable.
6. Consider more creative collective uses of EM with people given a custodial sentence, similar to Scandinavian and Dutch approaches, which feature integrated supports for desistance.
7. More data should be collected and released about the current uses of electronic monitoring, and more independent research is needed in Scotland in the future:
 - A greater quantity and quality of data (particularly statistical data, as well as aggregate demographic information about monitored people) needs to be collected about the effectiveness of electronic monitoring in Scotland and made publicly available.
 - Ensure future developments in EM policies and practices are informed by the perspectives and lived experiences of monitored people, their families, and victims of crime, as well as other interested citizens. More independent research is needed.
8. Initiate greater awareness-raising among professionals, media and the public about EM in Scotland.

Electronic monitoring is a tool which can be used for different purposes; however, EM is not a panacea and any expectations about its impact after monitoring has ceased should be truncated. Monitored people benefit from positive supports and opportunities

to help them leave crime behind, which extend far beyond time-limited and place-based restrictions. Tagging *technologies* and equipment should not be allowed to unnecessarily dominate discussions of EM and offender supervision, now or in the future. One of the key findings of this study is that interview participants are clear in both their support for the introduction of *targeted* and proportionate use of GPS tagging, as well as their belief that GPS should not supersede or replace the use of RF tagging. Both have utility, and can be used within a wider approach to achieve different penological objectives.

A moderate level of optimism and momentum is observed among Scottish stakeholders about the prospect of integrating the use of EM with the supervision work of criminal justice social workers, shifting EM from an isolated 'stand-alone' approach to include more tailored service provision. In addition to oversight and interventions by practitioners in statutory bodies, there is a place for a wider range of services and support options to be offered to monitored people and their families by third sector organisations, as well as peer mentoring and mutual aid supports. The openness to integration among participants seems to be predicated on a pragmatic and widespread recognition that tagging technology with the requirement of staying home or staying away from a place, in and of itself, does not change lives. This is imposed mostly as a punishment, and it may (or may not) deter certain behaviours for a time. Objectives of supporting rehabilitation and desistance are better realised in the context of supervisory relationships and desistance-oriented supports and regimes in which EM may only be one feature (see Graham and McIvor, 2015).

There remains an onus on policymakers and practice leaders to ensure that, where new mechanisms and options are introduced in moves towards integration and collaborative supports, that there are checks and balances embedded in assessment and decision-making processes to ensure that uses of EM orders or conditions are proportionate and targeted. A greater quality and quantity of data collection and availability throughout such developments will aid appraisal of this. It will be costly and counterproductive to see a surge in the addition of EM in cases where another community penalty would otherwise be imposed anyway – in effect meaning that EM is added because it can be, but not necessarily because it should be.

Access to EM in Scotland appears to be dependent on the decision-maker involved. Two issues are highlighted in this study with regard to access to EM at the 'front end' and 'back end' of the criminal justice process. The disparities between sheriffs and courts as to how much or how little RLOs are imposed across Scotland raise the concerning possibility of 'postcode justice', given that this sentence is understood as one of the main alternatives to imprisonment. Members of the judiciary and their leaders should reflect further on the issues involved and avenues for generating more consensus amongst one another with a view to a more nationally consistent approach to the uses of EM. With regard to access to EM at the other end of the criminal justice process, it is recommended that the statutory exclusion criteria for HDC licences be re-considered. In particular, consideration should be given to the abolition of the statutory exclusion which permanently excludes prisoners who have previously breached a HDC licence. It is inefficient and inequitable. It unnecessarily inhibits decarceration efforts to reduce prison populations where Scottish prisons are compelled to retain statutorily excluded prisoners in custody who may have the capacity to comply with and complete a HDC. Eligibility for early release on a HDC licence should be assessed and decided by staff in the authorising based on a person's current capacity to comply and desist

(given the right supportive circumstances for change, e.g., a suitable and safe address/home environment), which should include consideration of, but *should not be solely limited* to their breach and recall record.

Adjustments to current arrangements are recommended in order to promote increased creativity and flexibility in decision-making and tailoring of EM regimes, as well as increased integration. We recommend the introduction and widespread use of mechanisms which motivate and reward monitored people's compliance and desistance, including graduated changes in regimes and conditions, as well as a mechanism to allow authorising agencies to terminate an EM order or condition early. Such adjustments will allow further responsiveness to the individuals and circumstances involved, as one approach to tagging does not fit all.

The findings of this study show that there is an evident need to clarify the national breach criteria. This includes critically reflecting on how violations are categorised and whether 'breach' criteria is the best choice of language, or whether 'non-compliance' criteria or something similar better communicates what the criteria encompass, thus allowing the word 'breach' to be reserved to describe the actions of the authorising agency regarding an individual's order. In consultation with key actors, consideration should be given to the consolidation of breach reporting timeframes and thresholds into two nationally available options – standard and intensive – to foster consistency and preclude the establishment of individual 'special sheriffs' arrangements. Also, in order to further improve risk management and balance duty of care to the different people involved, it is recommended that courts, prisons and the Parole Board for Scotland should routinely inform the private EM service provider of the number and gender of field officers needed for visits with every tagged person/premises.

In terms of the future development of EM in Scotland, in-depth consideration should be given to more creative collective uses of EM with people given a custodial sentence, similar to approaches in Scandinavia and the Netherlands, featuring integrated and meaningful supports for rehabilitation, desistance and reintegration. For this to occur, it will require more than implicit encouragement of decision-makers and practitioners to use EM more as an alternative to prison. Ad hoc shifts in practice decision-making (which may be realised differently across the country) are not enough to systematically reduce the use of custodial sentencing in Scotland; bolder visions and infrastructure for diversion and decarceration are needed. Learning from the innovations and experiences of other leading jurisdictions is recommended, alongside the need for future developments in EM policies and practices to be informed by the perspectives and lived experiences of monitored people, their families, and victims in Scotland. More independent research is needed in this latter area; people with lived experiences offer a source of knowledge which is valuable in informing policy and practice advances.

Furthermore, it would be beneficial and timely to conduct independent research regarding media and wider community perceptions of EM in Scotland, which may involve conducting secondary analysis of media discourses as well as primary research with members of the public to consider perceptions of credibility, legitimacy and effectiveness (as a penal measure itself, as well as in the context of being an alternative to custody). The modest amount of existing research in this area internationally is mainly derived from the United States, which is a markedly different socio-political and fiscal context to that of Scotland (see Graham and McIvor, 2015 for a review of existing literature in this area). Participants in this study, particularly the judiciary and prison staff, have made comments which indicate they are mindful of public perceptions of EM

punishment and its 'credibility' as a community sanction or in combination with other community sanctions. It is likely that such perceptions of 'credibility' and making decisions about risk and public protection are also relevant if further consideration is given to the potential use of EM at the pre-sentence stage, as one of the findings of this study is that some participants think this modality should be available in Scotland as an alternative to remand. Greater understanding of perceptions can help to inform communication strategies about EM and other community penalties in Scotland.

As more advanced knowledge is developed about EM in Scotland, there is an ongoing need to initiate greater awareness-raising among professionals, the media and the public about the uses of EM as a community sanction. A coherent and persuasive media and communication strategy is needed to inform criminal justice actors and communities about the strengths and utility of electronic monitoring tagging technologies, the differences between RF tagging and GPS satellite tagging and tracking, and their respective limitations, as well as a clear sense of objectives and the target groups being prioritised. Scottish Government policymakers and the EM Working Group have already initiated actions to consider how best to approach awareness raising and media and community engagement efforts; the findings of this research affirm the value of pursuing this.

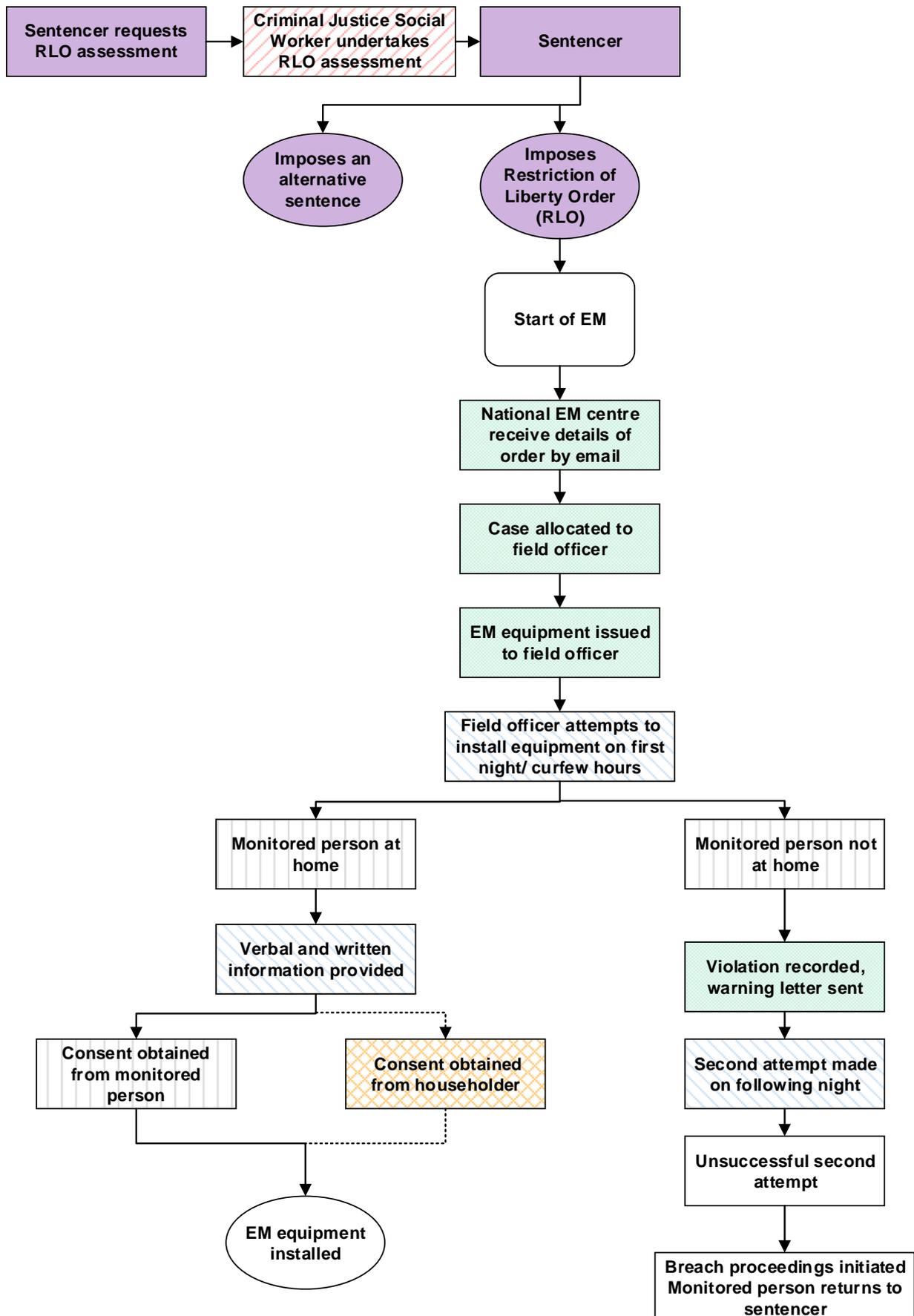
We conclude this report with a reminder raised elsewhere (Graham and McIvor, 2015: 125): in reflecting on the current uses of EM in Scotland and in a wider research project which compares Scottish experiences with those of other European jurisdictions, it seems appropriate to end with observations by Nellis and Vanhaelemeesch (2012: 1) reflecting on international evidence and experience.

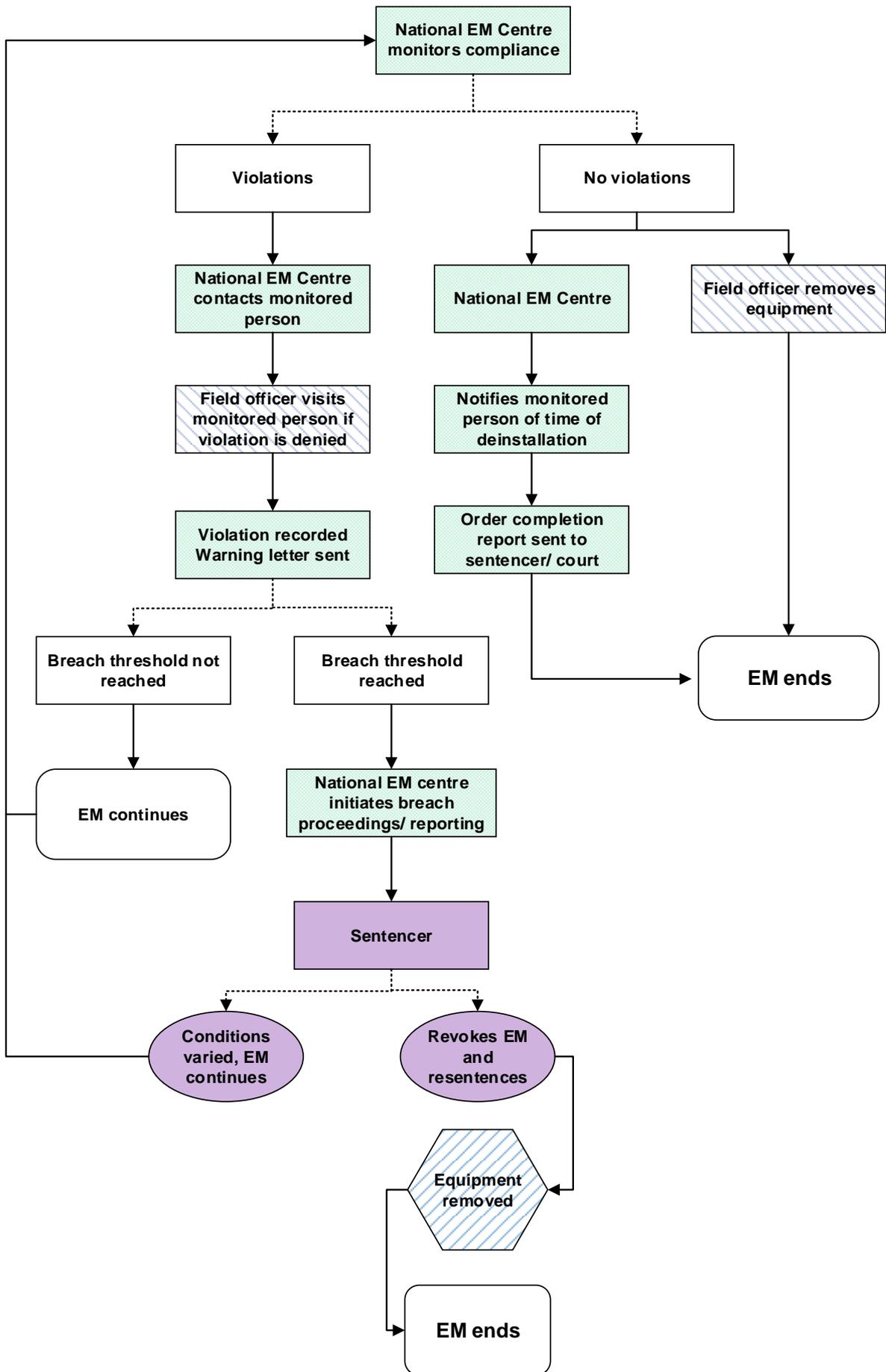
Not all uses of EM have been wise ... So, in thinking about a "gold standard" for EM in all its aspects we should remember that it is not EM in itself that we are judging, but the contribution that EM could and should make to civilised and constructive criminal justice systems, which make only sparing use of imprisonment and which are as firmly committed to the rehabilitation and reintegration of offenders as they are to public protection (Nellis and Vanhaelemeesch, 2012: 1).

Each of these penal aims, and achieving the right balance between them, remain important considerations in the operation, and potential development, of electronic monitoring in Scotland so as to, in the words of Nellis, pursue opportunities to use EM 'wisely and well'.

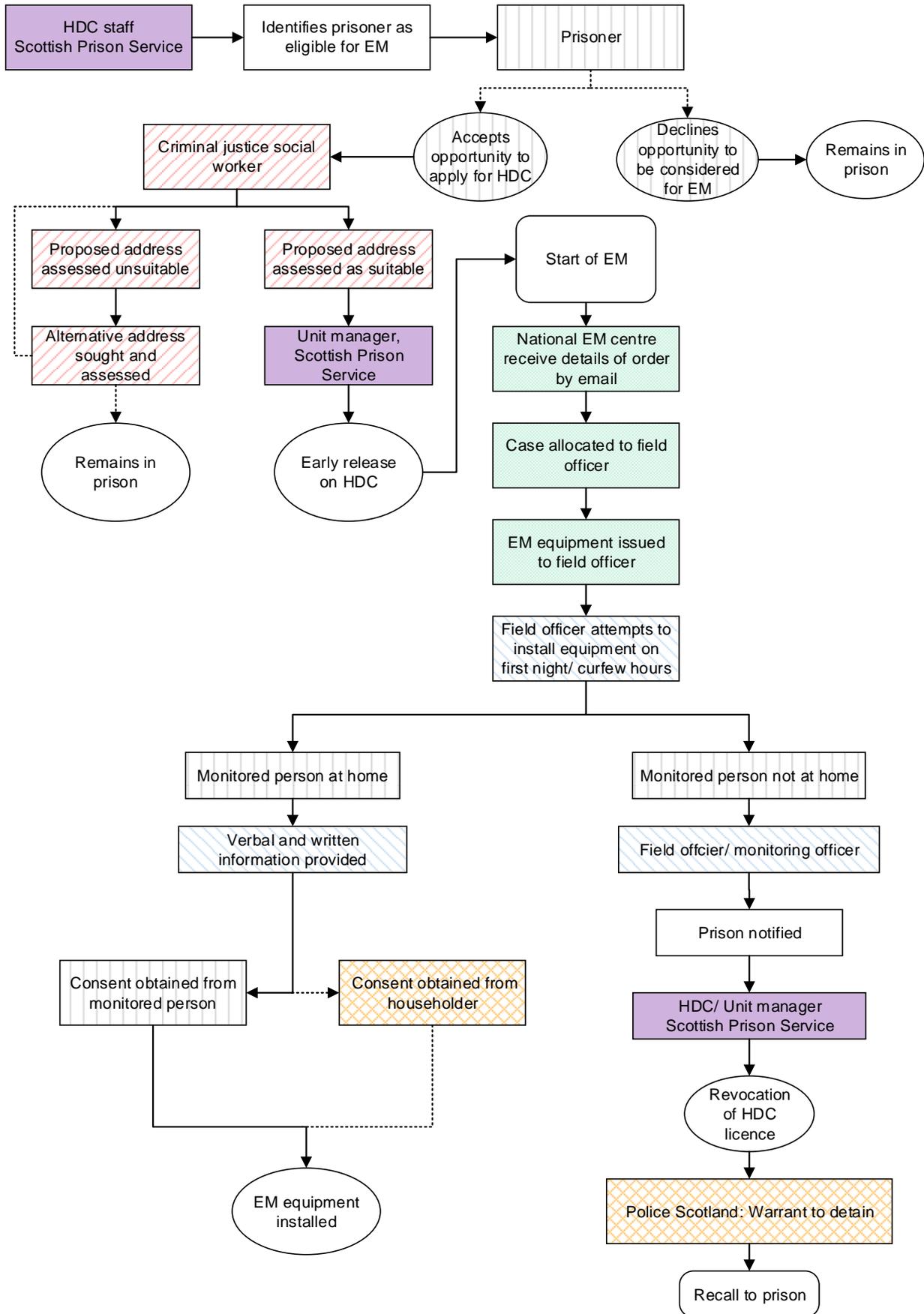
Section 12: Appendices

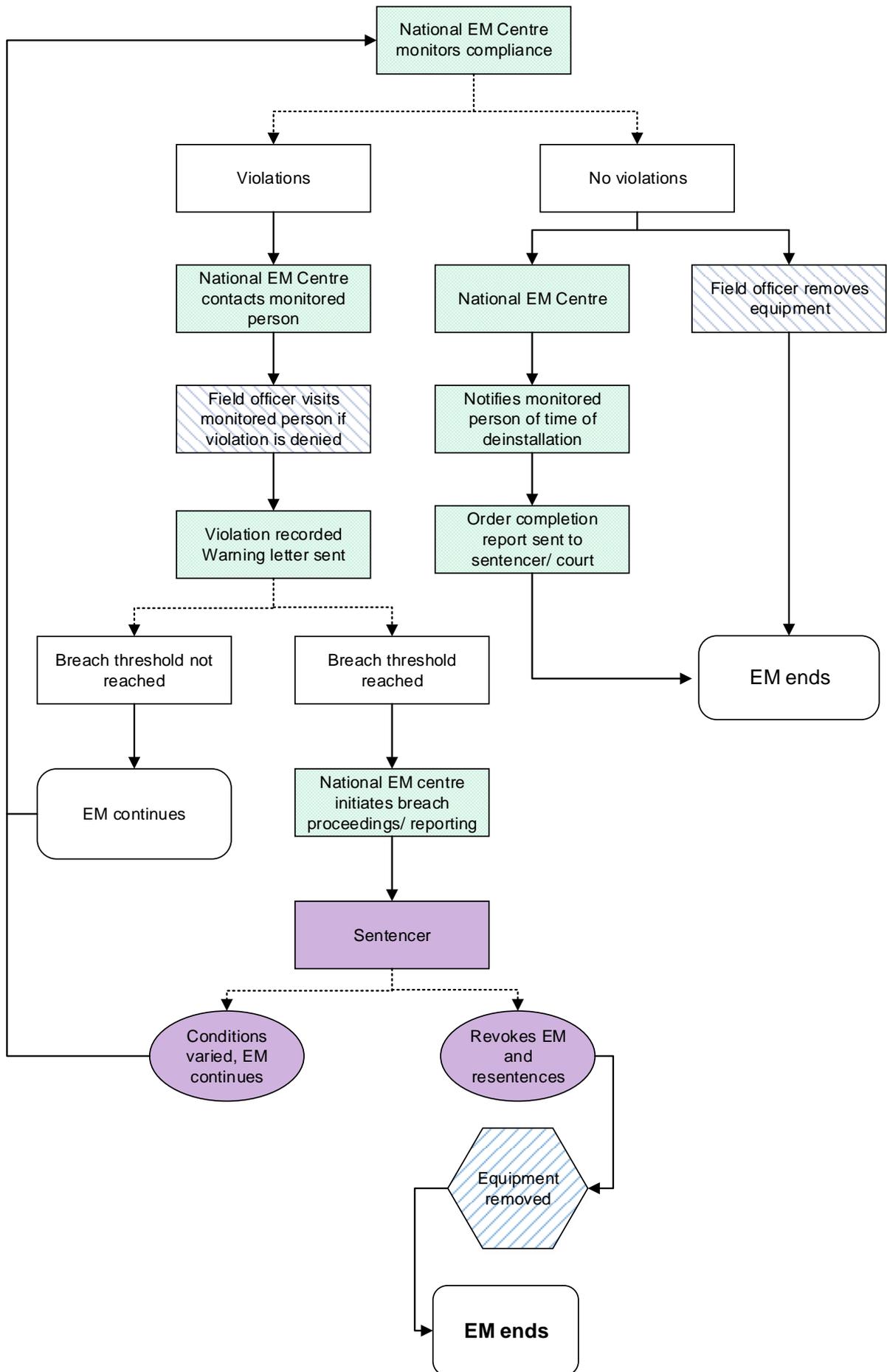
Appendix 1 Restriction of Liberty Orders





Appendix 2 Home Detention Curfew





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