



# Electronic Monitoring in Scotland

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## Key findings

- ❖ Electronic Monitoring (EM) is available at various points in the criminal justice process in Scotland.
- ❖ From 2002-2015, EM relied on the use of radio frequency (RF) tagging technology only. GPS tagging and tracking is set to be introduced in the future.
- ❖ Current uses of EM can be characterised as simple and straightforward, with mostly standardised regimes, but relatively sound in achieving objectives including restriction of liberty, diversion, modest decarceration by early release from prison and order completion.
- ❖ EM order completion rates are fairly high, with 8 out of 10 EM orders completed.<sup>1</sup>
- ❖ Monitoring of mostly 'standalone' 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.
- ❖ Being responsive to issues of diversity and vulnerability matters to Scottish practitioners and policymakers. Interviewees spoke about tailoring EM to the needs of offenders and victims.
- ❖ Clear differences exist between judicial officers across Scotland in the rates at which they impose EM orders, as well as disparities in uses of breach reporting thresholds and timeframes. Some 'special sheriffs' set up their own breach reporting arrangements with G4S Scotland.
- ❖ 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.

## Recommendations

- ❖ Clarify national breach criteria. Consider consolidating breach reporting timeframes and thresholds into two nationally available options – standard and intensive – to foster consistency.
- ❖ Introduce mechanisms to give courts and prisons the choice of imposing a supervision requirement with EM involving a 'supervising officer', to enable more multi-agency work and reintegrative supports. Implementing this will necessitate commensurate funds and resources.
- ❖ 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.
- ❖ 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.
- ❖ Consider more creative uses of EM with people given a custodial sentence, similar to Scandinavian and Dutch approaches, which feature integrated supports for desistance.
- ❖ Ensure future developments in EM policies and practices are informed by the perspectives and lived experiences of monitored people, their families, and victims. More research is needed.
- ❖ Initiate greater awareness-raising among professionals, media and the public about EM.



Co-funded by the Criminal Justice Programme of the European Union.

This briefing paper 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.

## Introduction

This briefing paper summarises key research findings and recommendations about the uses of Electronic Monitoring (EM) in Scotland. It forms a part of a comparative research project examining creativity and effectiveness in the uses of EM as an alternative to prison in 5 European jurisdictions: Scotland, England & Wales, Germany, Belgium and the Netherlands.<sup>2</sup>

The findings and recommendations provided here are based on analysis of 30 interviews conducted in 2015 with various actors in Scotland whose roles are relevant to EM, statistics and literature review, and 53 hours of ethnographic observation of the tagging process involving EM field officers visiting monitored people in their homes and observing EM staff at the National EM Centre. This briefing paper is a synopsis of in-depth discussions in the companion country report.<sup>3</sup>

### Actors involved in EM

EM of offenders has operated in Scotland for approximately 15 years. EM policy and contractual oversight of the private EM services provider are orchestrated at a national level by the Scottish Government.

A range of stakeholders are involved in the implementation and operation of EM. These include judicial officers (mainly sheriffs and, much less commonly, lay justices), criminal justice social workers (Scottish equivalent of probation officers) and criminal justice social work assistants from local authorities, procurators fiscal (prosecutors), Scottish Prison Service governors and staff responsible for the administration of Home Detention Curfews (HDC), the Parole Board for Scotland, Multi-Agency Public Protection Arrangements (MAPPA) in the case of some MAPPA managed parolees with an EM condition, Police Scotland staff, the Children's Panel and Youth Justice in the case of children and young people under 16 years old who are tagged, and a private EM services provider. Victims of crime may have some involvement because of the nature of 'away from' place-based restrictions and EM equipment being placed in their property, as well as opportunities for formal

notification and input with specific types of EM modalities, e.g. HDC for prisoners serving sentences of over 18 months.

EM is available at a number of points in the criminal justice process. It is used principally as a high tariff community based penalty (a Restriction of Liberty Order, 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 4 years).

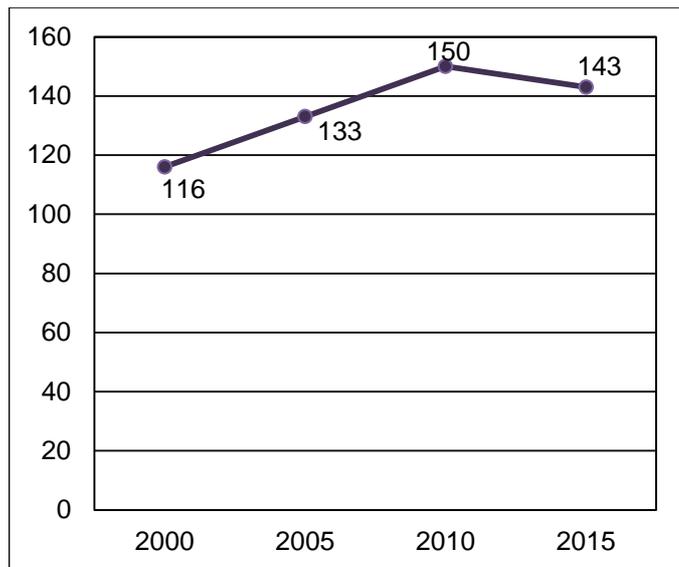
From 2002-2015, EM has relied on the use of radio frequency (RF) equipment, installed by field officers from a private EM services provider. Currently, EM is most often used with adults as a standalone measure without additional criminal justice social work supervision or support from other organisations.

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. Apart from the work of field officers going out to visit addresses, there is one National Electronic Monitoring Centre located just outside Glasgow from which EM service provision across the country is coordinated.

### Objectives and purposes of EM

Scotland has one of the highest prison population rates in Western Europe, with a steady rise in prisoner numbers in the decade from 2000-2010, as illustrated in Figure 1. The most recently available estimate of the Scottish prison population rate is 143 per 100,000 of national population.<sup>4</sup> Against this backdrop, it is unsurprising that the use of EM as an alternative to custody is repeatedly linked by those interviewed in this study to the objective of reducing the Scottish prison population, with particular regard for reducing the fiscal and human costs associated with incarceration.

**Figure 1: Prison population rate in Scotland (per 100,000 of national population) trends<sup>4</sup>**



Since 2013, and particularly in 2015-2016, EM has featured prominently in the discussions of policymakers and practitioners about reducing the use of short-term prison sentences in Scotland. In late 2015, the Cabinet Secretary for Justice (Scottish Government minister) underscored the link between increasing the use of EM and shrinking the traditional custodial estate, citing the number of EM orders given in saying that “we can, and I believe we should, be doing more to increase this number” and that future uses of EM should be “tailored within person-centred disposals”.<sup>5</sup>

All participants interviewed in this research were asked ‘what are the purposes of electronic monitoring?’ As already mentioned, the most common answers related to diversion and decarceration. Various other objectives and purposes were raised by interviewees. Members of the judiciary were 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. Some criminal justice social workers and G4S Scotland staff highlighted 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 spoke about EM as rehabilitative.

Several interviewees raised critical questions about the capacity of current radio-frequency (RF) tagging and curfews to motivate compliance and reduce re-offending, whereas a few others held the view that it is currently adequate in achieving these things. By contrast, the objective of risk management to reduce re-offending featured in several interviews regarding the prospect of GPS tagging and tracking being introduced. 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 offered 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 sex offenders and domestic abuse offenders.

### **Court-imposed EM orders: EM as an alternative to custody**

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.<sup>1</sup> 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.<sup>1</sup> The majority of RLOs involve restriction to a designated place (i.e. home curfew), with the imposition of only 1 order involving an ‘away from’ restriction from a place.<sup>1</sup> ‘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 a RLO are diverse in nature. In 2015, these included offences under the *Criminal Justice and Licensing (Scotland) Act 2010*, assault and theft, as well as offences under the *Sexual Offences (Scotland) Act 2009*, the *Misuse of Drugs Act 1971*, the *Soci-*

al Security Administration Act 1992, fraud, arson, wilful fireraising, and wasting police time.

Some judicial officers and courts use RLOs 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), and Livingston (N=110).<sup>1</sup> 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).<sup>1</sup> 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.<sup>1</sup> 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.<sup>1, 6</sup>

There are significant differences in levels of awareness of what is involved in EM and how the technology works, as well as ideological differences between actors in different court areas and local authorities across Scotland. These differences appear to be influenced by how frequently EM is used by those criminal justice actors, as well as being influenced by the perceptions and attitudes of the judiciary and of members of criminal justice social work teams in that local authority. In court areas and local authorities where court-imposed EM orders are commonly used, practitioners demonstrate a moderately strong and clear awareness of its uses, including its strengths and limitations and the operational procedures involved. In court areas and local authorities where court-imposed EM orders are not commonly assessed for, recommended or imposed, 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.” Some community-

based practitioners, including police, criminal justice social workers, and members of the judiciary, asked questions in research interviews about how the technology works, which community sentences it can be imposed with or as a condition within, who has access to the data about monitored people, and about EM order completion rates and breach rates. However, while there may be a knowledge gap among some criminal justice actors, this is not due to a lack of available information about EM, especially since 2013. Staff from the private EM services provider G4S Scotland and Scottish Government Community Justice regularly provide information resources and tagging equipment demonstrations to promote clearer awareness of the uses of EM in Scotland.

This research reveals that differences in level of awareness between actors and areas are accompanied by differences in implementation processes and expectations. Across Scotland, there are differences in templates and processes for assessment, reporting and recommendations for RLOs as a non-custodial sentencing option. Some members of the judiciary routinely ask for RLOs to be included in social inquiry reports and pre-sentence assessments of suitability for non-custodial sentencing options. Some ask for it to be assessed and written in a separate document specifically for EM-orders, depending on their working arrangement with the local criminal justice social work team. Others rarely ask for it to be assessed.

In some areas, even where criminal justice social workers are asked to assess for suitability for EM, sheriffs and a member of the Parole Board interviewed in this research report a level of resistance among some criminal justice social workers who avoid recommending it. The issue of whether EM orders should be *automatically* and *systematically* included in criminal justice social work assessments is contested. Some advocate that, as an alternative to custody, it *should be* routinely assessed for. Others perceive this as an infringement on the discretion of the judiciary and criminal justice social workers involved. Finally, some offer qualified support for more consistent efforts to increase the amount of RLO assessments

conducted – contingent on this increased load being adequately resourced and funded.

Despite having the flexibility to choose tailored regimes, standardised curfew regimes remain common, for example, a person is restricted to their home from 19.00-07.00, 7 nights a week. However, some judicial officers design individualised and flexible curfew regimes, with sheriffs interviewed in this study who use RLOs in more creative ways describing RLOs as ‘flexible’, as they allow scope for them to set different curfew regimes for different times and days, as long as these fit within the prescribed upper limit of 12 hours per day. With RLOs, there is no requirement about the minimum length in hours of curfews. One sheriff depicts their use of graduated changes in the intensity of an EM regime as being like a ‘staged’ order with ‘incentivised compliance’, offering the example of the first stage starting with a 12 hour curfew every day, and then a reduction to 8 hours per day, and the possibility of days without curfew if they are compliant (Interview 19, judicial officer).

A moderate number of judicial officers routinely impose RLOs as a standalone order. In contrast, a judicial officer in this study indicated that they prefer to impose RLOs alongside a Community Payback Order with a supervision requirement (Scottish equivalent of a probation order), to balance restrictions and monitoring with rehabilitative supports for change.

In an interview, a member of the judiciary spoke about authority and legitimacy in their role of supervising the compliance and progress of monitored people as predicated on the strength of relationship between them. They link effectiveness and calibre of relationship with compliance, motivation and desistance: “if you don’t have an effective relationship then the chances of success are reduced ... quite often they [offenders] actually feel an obligation to you because you’ve given them a chance not to let you down” (Interview 16, judicial officer). Similar views about the importance of a positive supervisory relationship are echoed in interviews by criminal justice social workers, who critically question why they do not currently have involvement in the supervision and support of people subject to

court-imposed EM orders and prisoners on HDC licences.

### **Prisoner early release on Home Detention Curfew licence: decarceration and reducing prison populations**

Home Detention Curfews (HDCs) were introduced in Scotland in 2006 for prisoners serving sentences of less than 4 years through the *Management of Offenders etc. (Scotland) Act 2005*. Initially, prisoners assessed as suitable could be released up to a maximum period of 4 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 EM curfew (for between 9 and 12 hours per day). In 2008, the maximum duration of HDC was extended to 6 months and the scheme was extended to long-term prisoners (serving sentences of 4 years or more) who have been recommended for release by the Parole Board at the half-way stage of their sentence.

Current uses of prisoner early release on HDC licence can be characterised as relatively standardised and strict. They rarely involve ‘away from’ restrictions, and are routinely based on a 19.00-07.00 curfew.

During the period 1 January-31 December 2015, the most common length of HDC licence was a period of between 30-60 days.<sup>1</sup> In 2015, the Scottish prisons which most commonly imposed HDCs were: HMP Barlinnie (N=227), HMP Edinburgh (N=172), HMP Perth (N=161) and HMP Addiewell (N=139).<sup>1</sup>

Early release on HDC licence is used by Scottish Prison Service staff as an incentive to motivate compliance and pro-social behaviour among prisoners, pre-release and post-release. Prison staff involved in the implementation of HDC early release mechanisms emphasise the need to offer a modicum of trust to prisoners, who “need to be given a certain level of choice and freedom” because “in most cases, they will be liberated and without supervision within weeks or months anyway” (Interview 25, Scottish Prison Service).

One of the challenges involved in the implementation and availability of HDC is the level of difficulty that a significant number of Scottish prisoners may encounter in securing a

'suitable' address. Wider structural issues of social inequality and the availability of post-release housing are implicated in this, with the ongoing need for greater alternative accommodation options for prisoners who do not have a suitable address to be released with a tag and curfew.

In interviews, criminal justice social workers and Scottish Prison Service staff highlight the duty of care to balance the rights and interests of different people in the process of assessing risk and the suitability of an address. Most practitioner comments on this topic relate to disclosure and information sharing, as well as risk and decision-making in balancing the rights and best interests of the prisoner and cohabitants, especially partners and children. In instances where cohabitants have spoken with criminal justice social workers during an assessment of the suitability of an address, both criminal justice social workers and prison staff avoid disclosure of information to prisoners which indicates why the report has recommended and the prison has decided the address is unsuitable. Interviews with criminal justice social workers show a moderate level of consensus in the belief that: "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." (Interview 10, criminal justice social worker). The need to be aware of the potentially mixed (positive and/or negative) impact of EM on individual cohabitants and the family as a whole was broached frequently by prison and community justice practitioners in interviews.

### **Diversity and vulnerability**

Being responsive to issues of diversity and vulnerability matters to practitioners and policymakers. The range of actors interviewed in this research, from G4S field officers and social workers to the judiciary through to government policymakers, demonstrate a pragmatic recognition of the duty of care to balance the rights and needs of monitored people with those of their families/cohabitants, the victim(s) of

their crime (where victims are involved), and practitioners.

A social justice ethos features in various interview discussions of diversity and vulnerability, including the importance of tailoring EM to a monitored person's English language skills, ethnicity, age, gender, parental status, relationship status, mental health and cognitive capacity, whether they have a disability or hearing impairment, their employment status and work prospects as a factor affecting reintegration and desistance and issues of poverty, housing quality and capacity to pay for electricity. Furthermore, such diversity-related considerations are in keeping with the responsibility principle of the Risk-Need-Responsivity model of offender assessment and rehabilitation used in Scotland.

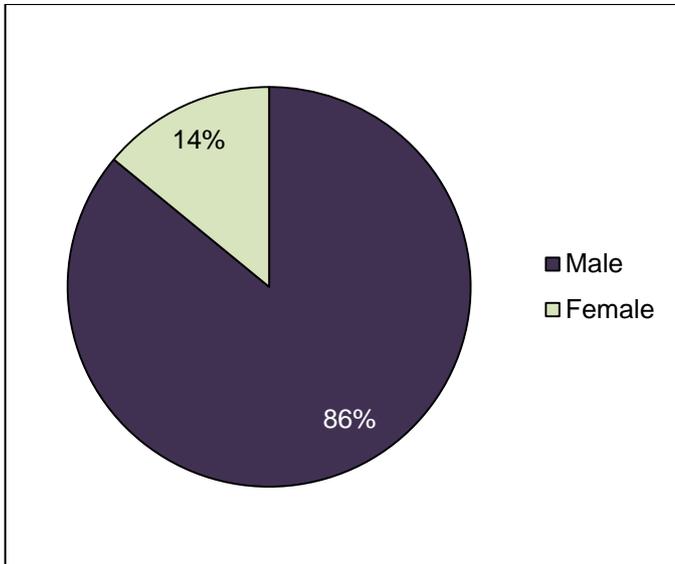
EM is used moderately extensively with young adult offenders. In 2015, 39 per cent of people given a RLO were aged 25 years and under.<sup>1</sup> Furthermore, one-quarter (25 per cent) of the total number of HDCs granted were prisoners aged 25 years and under.<sup>1</sup> These figures begin to challenge a common 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.

One of the most frequently raised topics in interviews regarding diversity was that of gender differences, with the majority of those interviewed speaking about the need to tailor EM in response to women. Most indicated a cautious level of support for the greater use of EM with women *if* it means reductions in the number of women being sent to prison.

Between 2000 and 2014, the women's prison population in Scotland increased by 120 per cent. This research finds that the current use and potential increased use of EM as an alternative to custody continues to be a critical concern amongst practitioners and policymakers. In 2012, the Commission on Women Offenders recommended that greater consideration be given to using EM as an alternative to

custody for women. The number of women given court-imposed EM orders remains modest, with the gender split for RLOs in 2015 illustrated in Figure 2.

**Figure 2: Gender split of monitored people on Restriction of Liberty Orders in Scotland<sup>1</sup>**



At a point when Scotland has the second highest female prison population in Northern Europe, the Scottish Government acknowledged this as a priority in mid-2015, reaffirming its commitment to reducing the number of women imprisoned through plans for a reconfigured and scaled down female custodial estate. These plans are predicated on the increased use of community-based penalties (including EM) and supports for women who are not deemed to require a period of incarceration. Interviewees are cognisant of the need to improve responses to the diversity of women's experiences, which may include histories of both offending and victimisation. If EM is to be used more extensively with women, it needs to be contextualised as one tool or facet, the ethics and efficacy of which is maximised if it is nested in a constellation of trauma-informed community-based supports, including access to services that are not limited to criminal justice and which can cater for women who have children.

### **Breach and compliance**

Breach criteria and responses are set nationally by the Scottish Government, and apply across different forms of EM orders and licences. Currently, and somewhat confusingly,

there are 3 categorised groups of breach criteria; however, these 'levels' are not hierarchical and do not indicate increasing or decreasing seriousness<sup>7</sup> and there is a lack of clarity as to how and why these are grouped in the way that they currently are.

When one of the following actions or issues has been substantiated as having happened, it sparks a reporting process by the private EM service provider to the authorising agency, who is responsible for making the decision about whether they will proceed and formally breach the person from their order, meaning they are recalled to court, the Parole Board or custody and, with court-orders, may be re-sentenced.

#### *Level 1*

- Damage to equipment;
- Missing the full curfew;
- Strap tamper or attempting to remove 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.

Breach reporting thresholds and timeframes for response differ significantly between judicial officers and courts across Scotland. A moderate number of judicial officers use the standard breach reporting thresholds and timeframes which are associated with the national breach criteria. These encompass scope for a number of small violations to be accrued by monitored people without this constituting a breach and being returned to court, for example, there is a confidential time threshold of a number of minutes below which is considered a 'small' time violation.

Some judicial officers, commonly referred to as 'special sheriffs', adhere to these same national breach *criteria* – that is, what constitutes a breach – but have established their own in-

dividual agreement with the private EM services provider G4S which sets out their breach reporting *thresholds* and *timeframes*, that is, there are stricter compliance regimes and quicker reporting of breaches applied to the monitored people who are sentenced and supervised by that individual 'special sheriff'. Some of these 'special sheriffs' want to know as soon as there are 1 or 2 small time violations, whereas sheriffs under the standard reporting and time threshold regime would not be notified of these, even though these are documented in a monitored person's file, irrespective of who sentenced them.

In interviews, the 'special sheriff' arrangements are framed by private EM services provider G4S Scotland staff in terms of an aspect of their service which does not contravene or flout the Scottish Government's national breach criteria and thresholds set out in their contract, but which builds on or tailors these to the requirements of the individual judicial officer or court. It is the discretionary decision-making of the judiciary to arrange to have stricter compliance and swifter reporting regimes which may result in significantly different responses to non-compliance, from a letter to a warrant for arrest and re-sentencing. One of the 'special sheriffs' explains their perspective on the issues involved in this aspect of EM practice:

"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 ... One of the things I say to the targee, 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, judicial officer).

In interviews, numerous G4S Scotland EM staff discussed the differences between courts

and judicial officers, suggesting that 'special sheriffs' arrangements respond to this perception among some of the judiciary that there is a need for stricter restrictions with little "leeway" for non-compliance. The result is different responses: "because all courts are different, someone could get an RLO from one court and have an absence of 15 minutes and receive a warning letter" and another "could be returned to court in front of the sheriff" (Interview 9, G4S Scotland).

Other interviewees are more critical in highlighting the need for greater consensus among the judiciary and more consistency in this area of EM practice. One criminal justice social worker suggests that there needs to be more education, awareness-raising and communication about breach thresholds (Interview 3, criminal justice social worker).

Several participants in this research observed that the rates of use of RLOs have changed when a particular sheriff has moved into or out of a given court area. Similarly, Mike Nellis<sup>8</sup> observes 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, there are no easy judicial or political remedies for this."

Judicial independence and discretion remain fundamentally important to the integrity and effectiveness of sentencing, including EM orders. Sheriffs and courts remain pivotal stakeholders in EM. However, this research reveals significant disparities between 'special sheriffs' in breach reporting and responses and the rest of their judicial colleagues which raise legitimate questions about equity and consistency in the uses of EM across Scotland. Consultation across the judiciary and leadership by senior members of the judiciary among their peers may assist with consolidating a consensus.

In terms of responding to the non-compliance of prisoners, the Scottish Prison Service are responsible for decision-making about breach and recall to prison. Rates of breach and recall to custody of prisoners on HDC licence are not particularly high, with approximately 8 out of 10 completing their HDC licence.<sup>1</sup> Scottish Pri-

son Service staff described situations where it is possible or likely 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 are not high 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. Scottish Prison Service staff also described institutional considerations as relevant, with one stating “we can’t just breach everybody ... if this happened extensively, it would pose issues for prison population numbers” (Interview 26, Scottish Prison Service).

Once a person has been breached and recalled, the current statutory exclusion criteria mean that they are *permanently ineligible* for early release on HDC again. This statutory exclusion does not recognise nor afford opportunities for prisoners to demonstrate human developmental progress over time in terms of their rehabilitation and improvements in compliance and motivation to desist. For example, breach of a HDC licence and recall to prison at the age of 16 or 18 years old should not unnecessarily preclude the opportunity to be assessed and eligible for early release on HDC at a later age and life stage. Interviews with Scottish Prison Service staff indicate a modest level of frustration regarding the discretion for decision-making about granting HDC licences being removed from prison staff because of this statutory exclusion.

Interviews with 2 staff from a charitable representative organisation for people affected by punishment urge the need to further develop responses to minor instances of non-compliance while on HDC, suggesting that, currently, the approach can be “too risk-averse” (Interview 30) and “breach is used as rather a blunt weapon” (Interview 29). Instead, they argue that the statutory exclusion for people who have previously breached a HDC licence needs to be discarded and they question the strict automatic breach and recall to

prison process which is followed in most cases for substantiated violations by prisoners on early release. Instead, they suggest a better, more integrated review process for responding to non-compliance which directly involves the prisoner themselves, as well as the suggestion of establishing peer mentor supports for monitored people, to complement professional supports.

Overall, extensive rules and procedures already exist in response to non-compliance. More creativity and flexibility in the use of EM might result from consulting key actors involved (especially sheriffs and the Scottish Prison Service) and piloting ways of motivating and encouraging monitored people to comply, while offering commensurate supports and opportunities to do so.

### **Future development of EM**

Discussions of ‘the future’ and offering recommendations are tasks made more complex in a period where significant changes are currently being considered and initiated by Scottish Government policymakers and other key actors.

It is important and timely to note that the two most common modalities of EM, that is RLOs and HDCs, currently meet the EU guidelines on effective and ethical uses of EM in Europe.<sup>9</sup> This is a positive strength and a vital threshold to maintain in the further development of EM nationally.

In this research, interviewees were asked to offer their perspective on the potential introduction of new tagging technologies in the future. There is very limited interest and support among research participants in the introduction of Remote Alcohol Monitoring (RAM) tagging technology. Interviewees critically questioned the extent to which the technology would assist efforts to reduce alcohol addiction and related harms and alcohol-related offending among monitored people.

By contrast, there is moderate interest and support for the introduction and limited use of GPS tagging and tracking technology to monitor restrictions away from exclusion zones for particular groups of offenders, namely sex offenders and domestic abuse offenders. How-

ever, various participants, including G4S Scotland staff, warned against the proliferation of widely using GPS tagging as a *total replacement* for RF tags to monitor home curfews. Interviewees offer a coherent view that the choice of technology should be fit-for-purpose and tailored to the person and conditions in which it is used. Some interviewees are also mindful of the practical limitations and ethical implications of introducing GPS tagging and tracking technology.

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 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.

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 to change EM substantively nor to 'drum up more business'. Public service actors are better placed to assess and lead changes which seek to better address criminogenic risk with the objective of reducing re-offending. Similarly, encouragement of greater public service leadership in EM is echoed in recent propositions by Mike Nellis<sup>8, 10</sup> and the findings of the recent Scottish and international review of EM conducted by the authors.<sup>11</sup>

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 standalone 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 may or may not result in cost savings in the areas of 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.

### **Recommendations**

A moderate level of optimism and momentum is observed among Scottish stakeholders about the likely and imminent prospect of integrating more involvement of criminal justice social workers and the third sector to shift EM from 'standalone' orders to include supervision and support. This 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. Objectives of rehabilitation and desistance are better realised in the context of supervisory relationships and desistance-oriented supports and regimes in which EM is only one feature.<sup>11</sup>

Based on the research findings, consideration should be given to a few recommendations raised here. There is a need to clarify the national breach criteria, including reflection 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, 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 should routinely inform the private EM service provider of the number and gender of field officers needed for visits with every tagged person/premises.

It is recommended that the statutory exclusion criteria for Home Detention Curfew (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 that mechanisms be introduced to give courts and prisons the choice of imposing a supervision requirement

with EM involving a 'supervising officer', to enable more multi-agency work and reintegrative supports for monitored people in the community. Implementing this will necessitate commensurate funds and resources. Second, 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.

Third, in terms of the future development of EM, in-depth consideration should be given to more creative 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. 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. More research is needed in this latter area; people with lived experiences offer a source of knowledge which is valuable in guiding any future policy and practice advances focused on creativity, flexibility and integration.

As more advanced knowledge is developed about EM, 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 (e.g. increased use with women offenders to divert from custody? With sex offenders and domestic abuse offenders to prioritise risk management?). Members of the Scottish Government have already initiated actions to consider how best to approach awareness raising

and community engagement efforts; the findings of this research affirm the need and value of pursuing this.

This research has been conducted during a period of time where, in the words of an interviewee, “there is a general feeling that the culture of justice in Scotland is changing ... there is great potential for change. Does EM have a role in that? Yes, it does” (Interview 30, representative organisation). These research findings and recommendations are offered in the hope of informing both short-term and bigger picture changes in vision and practice towards more creative, flexible and effective uses of electronic monitoring in Scotland.

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This briefing paper is one output from the European project: 'Creativity and effectiveness in the use of electronic monitoring as an alternative to imprisonment in EU member states' by Professors Anthea Hucklesby (University of Leeds, UK), Kristel Beyens (Vrije Universiteit Brussel, Belgium) Miranda Boone Utrecht Universiteit, the Netherlands), Frieder Dünkel (Universität Greifswald, Germany), Gill Mclvor (University of Stirling, Scotland) and Dr Hannah Graham (University of Stirling, Scotland). Further information about the project including briefing papers and full reports from each jurisdiction and a comparative report and briefing paper can be found at: [www.emeu.leeds.ac.uk](http://www.emeu.leeds.ac.uk). Alternatively contact Professor Anthea Hucklesby ([A.L.Hucklesby@leeds.ac.uk](mailto:A.L.Hucklesby@leeds.ac.uk))