



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Prison Reform Trust response to Scottish Government consultation on Electronic Monitoring - May 2017

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison. www.prisonreformtrust.org.uk

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

The Prison Reform Trust (PRT) welcomes this consultation and supports the Scottish Government's commitment to strengthening the delivery of community justice and reducing the use of imprisonment. These objectives are being actively pursued by the PRT in Scotland through our programme [Transforming Lives, reducing women's imprisonment](#) and for that reason this response focusses on women. However, PRT support for increased use of electronic monitoring (with appropriate safeguards and support) as an alternative to custody also applies to many male offenders. Also, as partners with Families Outside in our women's programme we endorse their work with families and their expertise in that area. The report of [The Working Group on Electronic Monitoring in Scotland \(2016\)](#) is an excellent resource and provides comprehensive recommendations which we broadly support. It is critical however for the statutory and policy framework and related protocols and practice to be gender-informed, addressing women's specific needs and circumstances otherwise it could well prove counterproductive.

Electronic Monitoring in Scotland – A consultation on proposals for legislation

Question 1: Do you agree that we should introduce legislation to permit the use of GPS technology for electronic monitoring?

Yes

No

Question 1a: Please give reasons for your answer to **Question 1**

Scotland has one of the [highest rates of women's imprisonment](#) in Northern Europe, which has increased by 46% in the ten years since 2003–04. Introducing legislation to permit the use of GPS technology would allow Scotland to take advantage of new technology to reduce the over-use of custody, and could encourage greater use of Electronic Monitoring by increasing the confidence of sentencers and the public. However it is important to ensure that access to improved technology does not have a 'net-widening effect', drawing more individuals into the criminal justice system, and that it is not regarded as a standalone solution. We strongly support the Working Group recommendation that *"EM should be part of a wider package of support, delivered locally by statutory bodies with Third Sector involvement"* and this should be stipulated in the legislation. For women this support should include specialist trauma-informed gender-specific services and recognition of the likelihood that they have dependent children and others for whose care they are responsible. The [UN Bangkok Rules on non-custodial measures for women](#) offenders, to which UK is signatory, "encourages Member States to adopt legislation to establish alternatives to imprisonment and to give priority to their financing" (4).

Question 1b: Who do you consider should determine which technology (RF or GPS) should be used in each case?

The Judiciary

Scottish Prison Service

Criminal Justice Social Work

Other (please specify below)

We note that the [Council of Europe's 2014 recommendation on Electronic Monitoring](#) specifies that *"Decisions to impose or revoke electronic monitoring shall be taken by the judiciary or allow for a judicial review.* Decisions should be informed by Criminal Justice Social Work and take in to consideration the factors listed below under question 1c

In order to enable members of the judiciary to make informed decisions about the different types of technology, appropriate training will be required and should be built in to any plans to expand opportunities for using EM in Scotland. This training should include awareness raising and guidance about factors affecting women and in particular ensuring that impacts on children and the implications for EM of an offender being a sole or primary carer.

Question 1c: What factors do you think should be taken into consideration when deciding which technology should be used?

We agree with the approach envisaged by the Working Group on Electronic Monitoring in Scotland for *“an individualised rather than a categoric approach to the use of EM, based on a rounded risk-needs assessment, and a clear sense of the goals to which EM may, or may not contribute.”*

There should be a gender-informed assessment of the needs, risks and circumstances of:

- The individual who will be subject to EM (for example mental health needs, learning disability, exposure to abusive relationships, caring responsibilities)
- Any dependent children and other affected family members
- Any victim/s

The wider package of support that will be provided alongside the technology should be tailored to those needs and risks.

Again recommendations of the [Council of Europe](#) are relevant:

- Recommendation 4) *“The type and modalities of execution of electronic monitoring shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances of the suspect or offender and shall be regularly reviewed.”*
- Recommendation 6) *“When imposing electronic monitoring and fixing its type, duration and modalities of execution account should be taken of its impact on the rights and interests of families and third parties in the place to which the suspect or offender is confined.”*

Question 2: What response, if any, should there be to an infringement of a buffer zone?

The response should be proportionate and informed by knowledge of the reasons for and circumstances of any infringement. There should be an immediate follow up with the individual to assess this and consider whether any adjustments are needed as a result of changed circumstances. A salutary lesson in the consequences of zealous enforcement of technical breaches is provided by the experience in England and Wales of an 80% rise in the number of women recalled to prison under the 'Transforming Rehabilitation' reforms. This is an unintended (albeit predictable) consequence of imposing post-release reporting requirements on short-sentence prisoners for the first time without sufficient preparation, information or support. See PRT's blog [Total Recall](#). For women, circumstances of an infringement may well include responsibility for or concerns about children, including emergencies.

Relevant support services should also be notified of any infringement of a buffer zone to enable them to work with the individual to prevent reoccurrence, and/or with the courts to seek adjustments to the terms of the EM.

Question 3: Do you agree that we should introduce legislation to permit a voluntary GPS scheme?

Yes

No

Question 3a: If you answered yes, who should be eligible, how would this operate and who should manage the scheme?

The consultation proposes introducing legislation to permit a voluntary GPS scheme for people (eg persistent offenders). We agree that this could be a useful option providing the individual is provided with “a wider support package” as proposed, and care is taken to ensure the person understands what they are agreeing to. As [Mclvor and Graham \(2016, p3\)](#) note, *“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.”*

Eligibility

Each case should be considered on its individual merits but eligibility should certainly include access to appropriate support and consider in particular the impact of any learning disability or mental health needs that may affect both consent and compliance.

Operation and management of the supervision and support elements of the scheme

The Working Group (2016, p31) recommended that, *“Where longer term desistance is the overarching goal, EM should be part of a wider package of support, delivered locally by statutory bodies with Third Sector involvement.”* They suggested that further scoping work is required in relation to what support looks like and who is best placed to provide it. We would add that the support offered should be gender-specific and trauma-informed.

The third sector plays an important role in supporting people within the criminal justice system and is ideally placed to contribute to the wider package of support that would be required around EM, including initiating contacting with the individual in the event of a breach and liaising with monitoring agencies and courts as necessary. Specialist women’s services and family support services have a key role to play where women are involved voluntarily or otherwise in EM.

Operation and management of the technology and monitoring elements of the scheme

The Working Group on EM in Scotland found that, “*compared to many other European countries there has been limited integration with criminal justice social work (CJSW) or the third sector or with emerging support offered by the Scottish Prison Services*”. The Working Group’s report went on to note findings from Hucklesby et al, 2016, that “*Private sector involvement in EM is associated with less integration into broader criminal justice structures*”. For EM to be effective, it must be well integrated into other structures and support services.

Question 4: Should alcohol monitoring be permitted as part of an electronic monitoring programme?

Yes

No

Question 4a: Please give reasons for your answer

As our [briefing on women’s imprisonment](#) in Scotland states, women offenders report significant problems with alcohol (34% reported being drunk at the time of their offence), although there has been a welcome decrease (p.2). A quarter of women reported that drinking affected their ability to hold down a job.

The Working Group recommended further work to explore how alcohol monitoring might be used effectively within the Scottish justice system. The consultation paper proposes that alcohol monitoring should be included in the legislation to enable a demonstration project to be undertaken. We agree that the research base in this area should be expanded and recommend that the research design and analysis should include monitoring impacts and outcomes for women and men. We agree that the legislation should include provision for alcohol monitoring so that this research can take place. The research findings should inform the longer term provision for alcohol monitoring as part of EM.

Question 4b: If you answered yes to **Question 4** in what circumstances do you think alcohol monitoring would be appropriate?

We recommend close consultation with health professionals and experts in this area, as well as consultations with alcohol desistance service users. As stated above, it should be used in conjunction with appropriate support.

Question 5: Should electronic monitoring be an optional requirement of a Community Payback Order when it is initially imposed?

Yes

No

Question 5a: Please give reasons for your answer

Offering EM as an optional requirement may motivate some individuals to take advantage of what the CPO offers and reduce likelihood of non-compliance providing there is appropriate support and supervision.

However, for some it may be experienced as additional punishment and be disproportionate and counterproductive. So each individual needs to be assessed for suitability.

Question 6: Should electronic monitoring be introduced as an alternative to a fine?

Yes

No

Question 6a: Please give reasons for your answer

Fines can place significant pressures on families, frequently result in non-payment and can be difficult and expensive to enforce. For women in particular they can be particularly inappropriate – see [PRT's briefing on the links between debt and women's offending](#). There may be rare circumstances in which monitoring represents a better option than a fine, although in general we would expect lower tariff alternatives to be a more appropriate response to the risk of non payment.

Question 7: Should electronic monitoring be permitted as a condition of a Sexual Offences Prevention Order?

Yes No

Question 7a: Please give reasons for your answer

PRT is not in a position to advise specifically on this but it is likely to be a helpful additional requirement.

Question 8: Should electronic monitoring be introduced as a possible condition of a Risk of Sexual Harm Orders RSHO?

Yes No

Question 8a: Please give reasons for your answer

As above.

Question 9: Should electronic monitoring be introduced as a possible condition of a Structured Deferred Sentence?

Yes No

Question 9a: Please give reasons for your answer

PRT would like to see more use of deferred sentencing and can appreciate that there may be benefits to including electronic monitoring as a possible condition of a Structured Deferred Sentence (SDS). Again, each case would need to be considered on an individual basis and appropriate support and supervision put in place.

Question 10: Should electronic monitoring be introduced as an alternative to remand?

Yes

No

Question 10a: Please give reasons for your answer

Women are over-represented in the Scottish remand population and [only about 30% of them receive a custodial sentence on conviction](#). We support the Working Group's recommendation to use electronic monitoring as an alternative to remand in appropriate cases to help reduce the use of custody for people who have not yet been convicted of an offence. Short term imprisonment can have a range of emotional, practical, social and financial impacts for individuals and their families. Our [Home Truths briefing](#) highlights some of these consequences for the housing options for vulnerable women.

If EM were to be introduced as an alternative to remand, we would encourage the Government to follow the [Council of Europe's 2014 Recommendations on Electronic Monitoring](#):

- "16) *The modalities of execution and level of intrusiveness of electronic monitoring at the pre-trial stage shall be proportionate to the alleged offence and shall be based on the properly assessed risk of the person absconding, interfering with the course of justice, posing a serious threat to public order or committing a new crime.*
- 17) *National law shall regulate the manner in which time spent under electronic monitoring supervision at pre-trial stage may be deducted by the court when defining the overall duration of any final sanction or measure to be served."*

Question 10b: If you answered yes to **Question 10**, when would you consider this appropriate?

The use of EM to be appropriate in every case where remanding in custody is currently used, except where there is reason to believe that the individual is in danger, or represents a danger to others. In each case, appropriate support to facilitate compliance and ensure the safety of the individual, the household and the wider community should also be put in place.

Question 11: Should electronic monitoring be permitted as a condition of Police Liberation or Investigative Liberation?

Yes No

Question 11a: Please give reasons for your answer

The inclusion of electronic monitoring as a condition may help to strengthen confidence in the system and support requirements to appear at court, without the need to resort to custody.

Question 11b: If yes, when would you consider this appropriate?

There is a need to avoid the risk of net-widening Therefore, the condition should only be used where valid concerns that the individual would not comply with their licence or agreement prevent an otherwise reasonable option being put in place (i.e. where an individual would not normally have been liberated). The condition should not apply to those who would have been liberated in any case.

Question 12: Should electronic monitoring be permitted as a condition of temporary release from prison?

Yes No

Question 12a: Please give reasons for your answer

Electronic monitoring could be used to support community re-integration, by supporting activities such as attendance at work placements, appointments with external agencies and home leave.

Question 12b: If you answered yes, when would you consider this appropriate?

Where the additional safeguard of electronic monitoring would enable a temporary release that might otherwise not have been agreed.

Question 13: Should the data collected only be for the purpose of monitoring compliance with an order or licence condition, or should it also be used for other purposes such as the investigation of crime? Please include reasons for your answer.

We believe there would be value in collecting data for the purpose of assessing the effectiveness of electronic monitoring in Scotland. We agree with McIvor and Graham's view that such information should be publicly available ([McIvor and Graham, 2016, p3](#)).

In relation to other uses of the data, we support the following [Council of Europe \(2014\)](#) recommendations about data protection and electronic monitoring:

"29. Data collected in the course of the use of electronic monitoring shall be subject to specific regulations based on the relevant international standards regarding storage, use and sharing of data.

30. Particular attention shall be paid to regulating strictly the use and sharing of such data in the framework of criminal investigations and proceedings.

31. A system of effective sanctions shall be put in place in case of careless or intentional misuse or handling of such data.

32. Private agencies providing electronic monitoring equipment or responsible for supervising persons under electronic monitoring shall be subjected to the same rules and regulations regarding handling of the data in their possession."

Question 15: Please tell us about any potential equality impacts, either positive or negative, that you consider the proposals in this consultation may have.

As CJSV have noted there may be equality impacts associated with signal coverage in different areas. McIvor and Graham (2015, p91) found that *“the accuracy and reliability of both technologies working consistently across Scotland, including in cities, in train tunnels and as far as remote islands, warrants further close scrutiny, and still presents a system that is fallible and yet can have serious consequences for monitored people. These raise legal issues and ethical questions about equality and the impact on monitored people, especially prisoners and parolees who cannot accrue violations, who would be expected to avoid circumstances where GPS signal and mobile phone coverage could be lost.”*

We have noted implications for women throughout and stress that as many vulnerable people end up in the criminal justice system, we would strongly urge that no EM system should be implemented without the provision of some form of support to the individual. Failure to do this will leave many vulnerable groups not only unable to address their responsibilities, but also highly likely to reoffend.

Impacts on children and other family and household members are considered in the Working Paper and we recommend that due account be taken of these.

Question 16: Please tell us about any potential costs and burdens that you consider may arise as a result of the proposals within this consultation.

As highlighted above, appropriate support and supervision will need to be built in to any future development of the EM system. Whilst such support and supervision would be expected to lead to significant benefits, the resource implication of providing it needs to be adequately costed and accounted for.

Sufficient training on EM should also be put in place for members of the judiciary and staff working with those subject to electronic monitoring.

EM can also pose potential costs and burdens for families and other household members. Research by Vanhaelemeesch (reported in the [European Journal of Parental Imprisonment, Summer 2016](#)) found that, whilst co-residents generally found that the benefits of EM mostly outweigh the costs, there are still a number of burdens which need to be considered. This includes co-residents experiencing a sense of punishment themselves, with their own daily routines and social lives affected as well. Some co-residents also felt responsibility for helping to administer the punishment and ensuring that the person complied with the EM requirements.

Question 17: Please tell us about any potential impacts, either positive or negative, that you consider that any proposals in this consultation may have on the environment.

No specific environmental impacts identified.