



# **Community Justice Scotland**

Ceartas Coimhearsnachd Alba

**Management of Offenders (Scotland) Bill  
Consultation Response**

April 2018

## Introduction

1 Community Justice Scotland (CJS) welcomes the Management of Offenders (Scotland) Bill (the Bill) which makes provision for ELECTRONIC MONITORING (EM), periods of disclosure and the functions of the Parole Board for Scotland with the overall aim of transforming justice in Scotland and improving rehabilitation.

2 We recognise the ambition by the Scottish Government to balance the new advances in EM with the rights of people with convictions or accused of a crime with those of victims and witnesses and the wider community.

3 The use of new technologies can support the Scottish Government's intention to maximise community based interventions. Likewise, CJS welcomes the proposed amendments to the Reform of the Rehabilitation of Offenders Act 1974 (the 1974 Act). CJS believes this is an appropriate revision to disclosure. We believe however, that the Bill should be even more ambitious, particularly in the following areas

## Bill Terminology and Short Title

4 CJS wishes to highlight the inconsistent language contained in the Bill and accompanying documents. The Community Justice (Scotland) Act 2016 and national strategy changed the way Scotland approaches language in justice. Terms like 'offender' should be replaced by either a 'person with convictions' or a 'person subject to monitoring' where they are on supervised bail/remand and have not been convicted. The term 'offender' or 'ex-offender' were the subject of much parliamentary scrutiny and debate during the passage of the Community Justice (Scotland) Act 2016 and MSPs agreed that it was pejorative and implied people could not be rehabilitated.

5 S.121 of the Policy Memorandum makes reference to the word "relief" in relation to society – this language goes against the ethos of the 2016 Act and the National Strategy and is potentially pejorative.

6 The Bill is about the uses of EM, the 1974 Act and changes to the Parole Board Scotland. CJS believes another title should be used for the Bill to define the parameters of the Bill more clearly, for example **the Management of Electronic Monitoring and Disclosure Reform (Scotland) Bill**.



## New Powers for Scottish Ministers

7 To achieve the Scottish Government's proposed policy shift away from custodial to community based sentences will require the right balance in development and implementation, so that all risks are effectively mitigated to support the rights of victims and rehabilitation of individuals who have offended. CJS recognises the proposed changes outlined in the Bill will be needed to address the needs of victims, communities and their representative groups.

8 CJS notes that Scottish Ministers will be given a new power to amend or vary the list of order types and disposals in the circumstances EM can be used and a further power to introduce other technologies at a later stage. CJS believes any such proposals or amendments should however be scrutinised by the Scottish Parliament before implementation to ensure the potentially competing rights of different individuals and communities are taken account of prior to the implementation of the proposed changes.

9 CJS notes Section 41 of the Policy Memorandum which makes reference to Rule 136 (temporary release from prison). This Section does not make reference to Rule 135(4)(b) which requires every Scottish Prison Service (SPS) Governor to undertake a risk of harm assessment prior to every person being considered for release under Rule 136. We believe this should be clarified as this is a requirement at release.

10 CJS notes that in both the Bill and the accompanying Explanatory Notes Section 4 (1) & (2) suggests that Ministers can intervene and in some way change the list of disposals in 3(2). This is very unclear and the reference to "except something under which an offender is to be detained in custody" (4(2)(b)) would benefit from rewording to show more clearly the intent and meaning of the proposed powers.

11 Equally section 4(3)(a)&(b), when read with the above parts, needs to be clarified. From our reading. CJS believes it would seem to say that as long as it relates to a legitimate/lawful disposal then it is acceptable to "measure" the persons ("offenders") whereabouts and/or their use of substances. CJS notes both parts are without parameters and/or appropriate guidance and require further clarification as to their intent.



## Bail and remand

12 Section 3 The section defines usage for Restriction of Liberty (RLO), Drug Treatment and Testing Order (DTTO), Community Payback Order (CPO), Sexual Offences Prevention Order (SOPO) and Risk of Sexual Harm Order (RSHO) but makes no reference to use of Bail as an alternative to remand which is the intention of the 2016 Act and National Strategy. This section introduces EM as the 10th CPO requirement under S.227A(2)(j) – currently the Criminal Procedure (Scotland) Act 1995 only incorporates a-i as the ninth CPO requirement – this has significant implications for Criminal Justice Social Work, as stated below. The legal administrators of CPO (and also DTTO) –require additional guidance for local authorities in terms of their legal responsibilities and calls into question the data ownership of GPS-generated data via EM. This also has implications for Police Scotland with SOPOs.

13 The Bill and explanatory notes should ensure that EM (as the 10th CPO requirement) should only be allowed to be imposed if a supervision requirement is also present. CJS believes this will ensure that the person will get appropriate support during the period of EM.

14 There are inconsistencies and ambiguities between the stated intent in the Policy Memorandum and the Bill regarding written reports by Criminal Justice Social Work in relation to EM which need to be addressed. There are potential resource implications for Criminal Justice Social Work arising from the Policy Memorandum (S.90-92) which states that a written report “must” be placed before the court whereas this is not explicitly referenced in the Bill (S1(4)(a)/S14).

## Information and Data Sharing

15 **Sections 1, 2, 5, 6, 8, 9 and 14 / S.59, 60 & 67 of the Policy Memorandum** are unclear and should be reviewed to clarify the specific meaning and powers of the drafted sections before the Bill is progressed, for example in relation to the following:

- 1(1) The terms ‘submit’, – ‘agree’, ‘need’ for consent in the Bill and accompanying materials do not adequately outline issues of agreement/consent.
- 1(5) “Explain the purpose” – again this is not explicit i.e. what the “explain” means in relation to the data protection issues – this part seems to suggest compliance and the requirement for such - but does not fully “explain” the full spectrum of issues and, therefore, cannot be construed as free & fair. 2(3). We also suggest that the term “willingness” should be removed as free, fair and informed consent would be construed as ‘willing’.
- Scottish Ministers “may” make provisions about... “use of information” (1(a))... “information be gathered” (4(b)(i)&(ii))... “sharing of information obtained



through monitoring” (5(a))... “fix periods during which information may be retained” (5(b)(i))... “destroyed”(5(b)(ii)) should be reviewed.

16 CJS believes Sections 1 & 2 use conflicting and confusing terminologies and fails to fully define the issue of consent. This is further compromised as the term “explain” is not defined and does not seem to include the issues around data. We would therefore strongly advise this section is revised.

## **Reform of the Rehabilitation of Offenders Act (1974)**

17 The Scottish Government states the Bill is part of their commitment to continue to transform the way in which Scotland supports individuals who have offended, ensuring that Scotland’s justice mechanisms retains its focus on prevention and rehabilitation, whilst enhancing provision for victims. CJS believes this Bill and the amendments to the 1974 Act are a positive change to the direction of justice mechanisms in Scotland. Any changes should maintain the balance between rehabilitation and support for individuals who are the victims of offending.

18 **Regarding Sections 17/18/19 of the Bill relating to disclosure periods,** CJS is keen to ensure that young people and their representative groups and the Commissioner are fully consulted on these parts of the Bill, to ensure changes are appropriate and proportionate.

19 **In Section 30 of the Bill relating to disclosure periods** CJS views the accompanying Policy Memorandum table at S.114 as problematic. The maximum length of a CPO is 36 months and it states disclosure would be “12 months or length of order, whichever is the longer”. If it is a 36 month disclosure period then this equates to the same as 12 months custody disclosure period (i.e. 36 months). This does not seem fair. However, it appears to be reiterated at S.134 & 136. We would seek clarification from Scottish Government on the reasons for this.

20 **In Section 33** it is unclear as to how disclosure requirements will translate if ordinary residence is shifted cross border and assurances of the approach that will be taken in such circumstances would be helpful.



## Electronic Monitoring

21 CJS is supportive of the new allowable technologies for electronic tagging and tracking indicated in the Bill; including Global Positioning System (GPS) technology. These potentially provide a real opportunity to improve the effectiveness of community based interventions, by operating exclusion zones. Victims and their representative groups have stated their apprehension about further use of technology and community based interventions<sup>1</sup>, therefore, CJS proposes that there should be a co-productive exercise to inform the implementation stage of the new technology to achieve the policy aims of this Bill.

## Transdermal Electronic Monitoring

22 The link between offending and alcohol consumption is of concern to CJS. The Scottish Crime and Justice Survey 2014/15 states that in 54% of violent crime, the victim said the offending person was under the influence of alcohol. In the past 10 years, half of those accused of murder were under the influence of alcohol and/or drugs at the time of the at the time of the alleged offence. Alcohol harm costs Scotland £3.6 billion per year<sup>2</sup>. Given this context CJS is encouraged by the proposals contained in the Working Group on Electronic Monitoring's 2017 report<sup>3</sup> for Scottish Government. We are therefore disappointed at the lack of progress on inclusion for Transdermal EM uses within the Bill. CJS is not convinced by the arguments put forward by Scottish Government as to why this EM technology is not being given parity with GPS EM and would urge further consideration. The Scottish Centre for Crime and Justice Research 2015 report in the Scottish and International Review of the Uses of Electronic Monitoring on Transdermal EM<sup>4</sup> states that it achieves high rates of compliance.

23 CJS believes the use of Transdermal EM technologies is proven and fits within the ethos of this Bill, the Scottish Government's Community Justice Scotland National Strategy, the 2009 Scottish Government Framework for Action on Alcohol and the new Scottish Drug and Alcohol Strategy for more community based interventions. We believe that without Transdermal EM, Scotland's communities will continue to struggle with the issues set out in the MESAS report 2017<sup>5</sup>. Therefore, we ask the Scottish Government to reconsider their position on Transdermal EM in the Bill and give this technology equal status to GPS EM.

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<sup>1</sup> <https://www.womensaid.org.uk/womens-aid-responds-sentencing-councils-new-domestic-abuse-guidelines/>

<sup>2</sup> <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/crime-and-justice-survey>

<sup>3</sup> <https://beta.gov.scot/publications/electronic-monitoring-scotland-working-group-report/>

<sup>4</sup> <http://www.sccjr.ac.uk/wp-content/uploads/2015/08/Scottish-and-International-Review-of-the-Uses-of-Electronic-Monitoring-Graham-and-McIvor-2015.pdf>

<sup>5</sup> <http://www.healthscotland.scot/publications/mesas-monitoring-report-2017>



## **Additional technologies**

24 As stated above changes to order types and disposals in the circumstances EM can be used will inevitably be met with concern by victims and their representative groups. Therefore, CJS welcomes the fact that Scottish Government has reaffirmed that the new technologies will be rolled out alongside the existing technology and will not replace current equipment. We believe this will build confidence amongst stakeholders in how the technologies will be used. However, CJS believes these changes should be piloted to ensure any implementation is responsive to need.

## **Addition of restricted movement requirement**

25 CJS welcomes the proposals in the Bill that Scottish Courts can now impose a Community Payback Order (CPO) with the option of a restricted movement requirement. However, CJS is concerned this will require more work by Criminal Justice Social Work. The Policy Memorandum in s.319 states “no detrimental effect” on local authorities yet new responsibilities are being placed on local authorities under Schedule 1 Court Orders 245DA. This appears to be a small obligation on Criminal Justice Social Work, though this has not been tested. However, S.12 of the Financial Memorandum states that EM as the 10th CPO requirement will “in turn lead to increased costs associated with monitoring these orders” CJS has yet to see evidence that this is attainable given the current resourcing of Criminal Justice Social Work and further work will be required on the financial implications arising from a potential increase in reports.

## **Costs**

26 CJS notes that the Scottish Government believes the proposed changes to electronic monitoring will not increase their costs for monitoring and uses the approved installation and daily rates applicable under the present monitoring contract. As noted above Criminal Justice Social Work will have an increased case load as a result of the changes. This has not been factored into the implementation costs.

27 CJS also notes the financial costs seem to be only compared to RF with no consideration about the implications of GPS being utilised. The memorandum also reflects the use of EM or restriction of movement in relation to existing orders and not as the 10th requirement of a CPO. S.318 of the Policy Memorandum states “no detrimental effect” on Island Communities. Some island, remote and rural areas however cannot get GPS signals due to Scotland’s topography and geographic spread and broadband availability. Therefore, CJS would suggest that further research is needed on the viability of GPS across Scotland’s diverse geographies.



28 CJS believes there needs to be a thorough assessment of implementation and on-going costs involving relevant stakeholders. The National Audit Office in England has highlighted issues in the administration of EM contracts and noted 'Governance and management arrangements in the criminal justice system are complex, and changes to one part of the system can have unexpected consequences for others<sup>6</sup>.' Given our concerns on the resourcing of Criminal Justice Social Work, and the geographical spread issues, CJS believes the costs of implementation should be comprehensively and accurately identified.

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<sup>6</sup> [https://www.nao.org.uk/wp-content/uploads/2013/11/10294-001-MoJ-Electronic-Monitoring\\_final.pdf](https://www.nao.org.uk/wp-content/uploads/2013/11/10294-001-MoJ-Electronic-Monitoring_final.pdf)





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