Justice Committee

Management of Offenders (Scotland) Bill

Written submission from Glasgow Bar Association

The Glasgow Bar Association is an independent body that for over half a century has been active in promoting, representing and protecting the rights and interests of its members in the practice of law and by extension those of its members’ clients and therefore the wider public including the most vulnerable members of society. It advocates on behalf of access to justice. It considers and monitors proposals for law reform and, if necessary formulates responses to such proposals. In addition the Association operates an extensive professional development Programme for members. The Association currently represents the interests of around 450 members.

1. Overall, do you support Part 1 of the Bill concerning the electronic monitoring of offenders?

Subject to the issues raised below in response to Question 3 the Glasgow Bar Association supports Part 1 of the Bill.

2. The Scottish Government wishes electronic monitoring to play a greater role within the criminal justice system. Will the reforms in Part 1 of the Bill help enable this? If not what further changes (legislative or non-legislative) are required?

Part 1 of the Bill extends the scope for the use of electronic monitoring when disposing of cases but does not introduce the possibility of it being used as a condition of an accused person’s bail. While there are obvious logistical difficulties with this in terms of checking accommodation and installing equipment quickly, it may well be that increased use of electronic monitoring in cases where the alternative is remand pending trial, would be a more worthwhile use of increased electronic monitoring. There is authority in the act under s4 for the Scottish Ministers to extend the situations where electronic monitoring may be used and this may be considered in the future.

3. Do you have any views on any specific aspect of Part 1? - For instance, revision to the list of circumstances in which electronic monitoring may be imposed or the creation of a power to enable future monitoring devices to contain GPS technology or technology that can measure alcohol or drug ingestion?

Part 1 of the Bill makes provision for electronic monitoring to be part of a range of orders including Community Payback Orders and Drug Treatment and Testing Orders rather than a separate Restriction of Liberty Order also having to be imposed as is the current situation. The new legislation will allow a restricted movement requirement to be part of these orders. One concern may be that this will simply lead to Community Payback Orders and Drug Treatment and Testing Orders being effectively upgraded rather than more of them being imposed as alternatives to a
custodial sentence. The extension of Electronic Monitoring would only be beneficial if it leads to an increase in these orders being made as alternatives to a custodial sentence rather than the same offences simply now attracting a CPO with additional electronic monitoring conditions.

There may also be issues with the length of time an offender would be subject to electronic monitoring. A CPO can be imposed for over 3 years and if it has a requirement for electronic monitoring that marks a significant increase in the time an offender may be subject to intrusive monitoring or restrictions on his or her movements. Currently most Restriction of Liberty Orders imposed are for considerably shorter periods. The average length of these orders in 2017 was 3 to 4 months.

The possibility of GPS technology or technology that monitors alcohol or drug ingestion raises significant issues. The ability to track an offender’s whereabouts 24 hours a day and exclude them from or confine them to particular areas or is a marked increase in power from the ability to enforce a curfew through electronic monitoring. This raises questions about a person’s Article 8 rights and how the information obtained from the constant tracking of an individual is used and ultimately disposed of.

In relation to monitoring alcohol or drug use, it is submitted that more investigation and consideration needs to be given as to how that would work in practice. It is unclear as to what kind of order would require constant alcohol monitoring and at what level of alcohol consumption someone would be deemed to have breached the order and who would determine that. It is accepted that many offenders have difficulties with alcohol but more information requires to be obtained about how electronically monitoring consumption would be a more effective means of addressing this issue than what is currently in place through supervision and support during Community Payback Orders.

4. **Overall do you support Part 2 of the Bill? The Scottish Government’s view is that it will provide a more appropriate balance between the public’s right to protection and a former offender’s right to ‘move on’ with their life, by, overall reducing the need for disclosure. Do you agree?**

The Glasgow Bar Association supports Part 2 of the Bill which now provides a better opportunity for offenders to move forward and gain employment whilst also leaving the requirements for enhanced disclosure unaffected.

5. **Do you agree with the Scottish Government that other reforms in Part 2 will make the law on disclosure of convictions more intelligible, clear and coherent?**

The Glasgow Bar Association supports the reforms in Part 2 and agrees that Part 2 of the Bill provides a clearer framework in relation to disclosure of convictions.

6. **Do you have any further views on law and policy around disclosure of convictions?**
The Glasgow Bar Association has nothing further to add.

7. **Do you support Part 3 of the Bill, which makes provision for the Parole Board for Scotland, in terms of membership and appointment system; its functions and requirements in relation to prisoners, its independence and its administration?**

The Glasgow Bar Association broadly supports Part 3 of the Bill which modernises the position in respect of the Parole Board whilst maintaining its independence in terms of judicial decision making, governance and management. The Association would comment that it is important to retain a balance of expertise in relation to membership of the Parole Board and care should be taken to ensure that any changes do not compromise this.

8. **Do you have any further views on the role, purpose and functions of the Parole Board?**

The Glasgow Bar Association has no further comments to make.

Glasgow Bar Association
20 April 2018