We thank you for the opportunity to respond to the above call for views, to which I respond on behalf of the Scottish Courts and Tribunals Service (“the SCTS”).

This response is limited to Part I of the Bill and the electronic monitoring of offenders and is submitted by the SCTS in fulfilment of its function to provide efficient and effective administration to the courts. This response does not include the views of the Judiciary.

By way of background, the SCTS responded to the Scottish Government’s “Electronic Monitoring in Scotland” consultation (“the consultation”) on 18 May 2017 (a copy has been provided at Annex A). The SCTS also contributed to the Financial Memorandum to the Management of Offenders Bill (“the Bill”).

In addition, the SCTS notes that clause 1(1) of the Bill provides for a discretionary order:

“1 Requirement when disposing of case
(1) When disposing of a case in respect of a person (“offender”) wholly or partly as mentioned in the list in section 3(2), a court may additionally require the offender to submit to monitoring by means of an approved device.”

The SCTS acknowledges that much of the detail for electronic monitoring will be set out in regulations under the provisions of the Bill. In relation to the discretionary order under clause 1(1), it is unclear to the SCTS how for example a Restriction of Liberty Order will operate if such an order is not made.

The SCTS is of the view that further consideration may be required on the provisions of section 245A (and others) of the Criminal Procedure (Scotland) Act 1995 and what is envisaged by way of non-electronic monitoring and how it is to be conducted if the court elects not to impose an order under clause 1(1) in relation to the disposals listed in clause 3(2) of the Bill.

The provisions of the Bill will allow for the future extension of electronic monitoring to be applied to other circumstances including other court disposals/orders. For example there may be scope for electronic monitoring to be used as an alternative to certain sentences or remand as part of bail. If there is intention in the future to expand electronic monitoring to other particular court disposals or indeed the Bill is amended to include such provisions during its passage through the Scottish Parliament, any impact (financial or otherwise) will require to be considered and costed fully by the SCTS.

On the matter of electronic monitoring of bail, the SCTS would respectfully draw the Justice Committee’s attention to the remarks made before it in 2010 which were
reproduced in our response to the consultation at Annex A and in particular the pilot scheme which was conducted in 2005/06.

The provisions of the Bill propose significant changes to the current provisions for electronic monitoring which will impact on the SCTS’s criminal and civil IT systems. As a result, the SCTS will require sufficient time to make the appropriate amendments to these systems as a consequence of the Bill and any subsequent secondary legislation, such as new or amended court rules and prescribed forms.

If you need any further information, please do not hesitate to contact me.

Mark Kubeczka
Legislation Implementation Team
18 April 2018
Dear Sir/Madam

Electronic monitoring in Scotland – A consultation on Proposals for Legislation

I refer to the consultation document on the proposals for legislation relating to electronic monitoring in Scotland, to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by SCTS acting in its role to provide efficient and effective administration to the courts and does not include the views of the Judiciary.

Whilst SCTS cannot comment on whether it is appropriate to amend legislation in accordance with the suggestions in the consultation paper, as these are matters of policy, I do provide comment on the impact on SCTS should any of the proposed options be followed.

GPS Technology

If the view is taken that it is for the judiciary to determine which form of technology should be used for each electronic monitoring (EM) order made, judicial training on the available technologies is likely to be required.

Additionally if there is any expectation that the reasons for choosing a particular form of technology are specified in court, additional court time per case and associated staff and accommodation resources will be required. If this information was to be recorded in court minutes/orders, there would also be IT costs to SCTS to enable these to be produced.

Electronic Monitoring in Domestic Abuse Cases and as an Alternative to Remand.

We note that there is reference to considering how GPS technology can offer victims of domestic abuse more choice and support their safety in the community. If it is envisaged that this would form part of a court order, there will be resource implications for SCTS in terms of additional court time and associated staff and accommodation costs. This would include: adjournments to obtain reports, (for example on the suitability of a property where any equipment requires to be
installed); additional court time to explain to the subject the conditions and consequences of failing to comply with an order; an increase in applications to vary orders (e.g. to change address) and for breaches of orders.

The same impact as outlined above would result if EM was used as an alternative to remand in any case calling in court.

To demonstrate the potential costs, the tables below, which are based on 2015/16 data outline estimated costs to SCTS if EM of bail was used in 100% and 50% of cases. Given the status of accused persons can change during court proceedings, the actual costs are likely to be higher than those estimated below. Costs will also depend on whether the legislation/court rules require the application to be dealt with in court or in chambers. Cost estimates are provided for both scenarios.

The cost estimates do not take account of breach of bail conditions as these will be dealt with as new offences. The standard per case costs would apply as outlined in the Scottish Government costs of the Criminal Justice System in Scotland dataset publication to the increase in cases which would occur.

Domestic Abuse

The data below is based on those who were released on bail/were remanded at first appearance for an offence with a domestic abuse aggravator.

<table>
<thead>
<tr>
<th>15403 accused released on bail/remanded at first appearance for offence with domestic abuse aggravator in 2015/16</th>
<th>Electronic monitoring applied in 100% of cases</th>
<th>Electronic monitoring applied in 50% of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications for review dealt with in chambers</td>
<td>£186k per annum</td>
<td>£93k per annum</td>
</tr>
<tr>
<td>Applications for review dealt with in court</td>
<td>£211k per annum</td>
<td>£105.5k per annum</td>
</tr>
</tbody>
</table>

Alternative to Remand and Support to pre-trial conditions

The data below is based on accused who were remanded at first appearance for any offence.

<table>
<thead>
<tr>
<th>10345 remands at first appearance in 2015/16</th>
<th>Electronic monitoring applied in 100% of cases</th>
<th>Electronic monitoring applied in 50% of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications for review dealt with in chambers</td>
<td>£192k per annum</td>
<td>£96k per annum</td>
</tr>
<tr>
<td>Applications for review dealt with in court</td>
<td>£209k per annum</td>
<td>£104.5k per annum</td>
</tr>
</tbody>
</table>

SCTS notes that a pilot scheme using EM as a condition of bail took place across 4 courts during 2005/06; and that the Criminal Justice and Licensing (Scotland) Act 2010 repealed sections 24A to 24E of the Criminal Procedure (Scotland) Act 1995.
These provisions enabled the court to impose an electronically monitored movement restriction condition as a condition of bail. We note that the Minister, at that time, made the following comments when the matter was considered by the Justice Committee in 2010:

“Repealing sections 24A to 24E of the 1995 act will remove any concerns to the effect that the Scottish Government intends now, or in the future, to resurrect them” and

“I make it clear that if amendment 132 is agreed to, it will entirely remove tagging for bail because of the results of the evaluation of the pilots, which were undertaken as I described and were found to demonstrate that electronic tagging does not work”.

The reason for the change in this position is unclear to SCTS.

Voluntary GPS schemes for people who offend persistently and Alcohol Monitoring Technologies

Whilst proposed voluntary schemes will not have a direct impact on SCTS, their interaction with any court proceedings will need to be considered. If there is an expectation that a court when sentencing an accused for an offence should consider how successful an individual's involvement in a voluntary GPS scheme has been, there may be resource implications in obtaining appropriate reports. Consideration will also have to be given to how a voluntary scheme would operate/continue if an individual was subsequently sentenced for an offence.

Similarly, if it is intended that alcohol monitoring technologies would be used to form part of a court sentence/be used to monitor compliance with bail conditions, there will be costs to SCTS in terms of additional court time, and associated staff and accommodation resources. It is likely that costs for judicial training and IT changes would also be incurred.

Electronic Monitoring Requirement as part of a Community Payback Order

Amending legislation to enable an EM requirement to be imposed as part of a community payback order would assist in dealing with the issues currently experienced, and highlighted in the consultation, with the difference in overall length of the two sentences. Such an amendment is likely to have an impact on SCTS however, as it is likely that if the length of the order increases, there will be an increase in the number of breaches of orders and applications to amend addresses and curfew times. This would impact on court time and associated staff and accommodation resources.

There are also likely to be IT costs for SCTS to enable such an order to be produced.
Orders as a condition of another sentence or as an alternative to a fine

The consultation proposes the use of EM as a condition of some other sentences or as an alternative to a fine. For each of these proposals, the impact on SCTS would result from the need to obtain reports as to the suitability of EM (and therefore adjournment of cases); additional court time to explain the conditions of, and consequences of not complying with an order; and resources required to deal with applications for variation and any breach of orders.

Cost estimates using 2015/16 data are provided below to demonstrate the impact there would be if EM was imposed in 100% and 50% of cases in which a structured deferred sentence was imposed and in which a fine was imposed. The percentage of cases in which applications to vary or breach a RLO have been used to estimate the expected volume of applications should EM be extended.

As a condition of a structured deferred sentence

<table>
<thead>
<tr>
<th>Number of structured deferred sentences in 2015/16</th>
<th>Electronic monitoring applied in 100% of cases</th>
<th>Electronic monitoring applied in 50% of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>733</td>
<td>£154k per annum</td>
<td>£77k per annum</td>
</tr>
</tbody>
</table>

As an alternative to a fine

Financial penalties are often imposed at the time of a guilty plea/verdict, however an EM requirement would require the court to obtain a report as to the suitability of that form of sentence for the accused and the property they reside in (or an area that they are to be prohibited from).

Fines Enforcement Officers deal with the enforcement of fines, and can provide advice and support to those who want to pay but are finding it increasingly difficult to do so. As a result there are very few court hearings following on from the imposition of fines.

<table>
<thead>
<tr>
<th>Number of fines imposed in 2015/16</th>
<th>Electronic monitoring applied in 100% of cases</th>
<th>Electronic monitoring applied in 50% of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>50426</td>
<td>£4870k per annum</td>
<td>£2435k per annum</td>
</tr>
</tbody>
</table>

EM as a condition of a Sexual Offence Prevention Order (SOPO) of Risk of Sexual Harm Order (RSHO)

EM is also proposed as a condition of a SOPO, and an RSHO. The process for imposing EM as a condition of these orders, and dealing with subsequent applications in unclear given that RSHO’s can only be made in civil proceedings, and SOPO’s can be made in civil and criminal proceedings.

We would also note that these orders will no longer be available once the relevant provisions of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 come...
into force. For these reasons, and given that there are relatively few orders made at present, cost estimates for these proposals are not provided.

**Police Liberation on Undertakings and Investigative Liberation**

If EM was available as an option for Police when releasing an individual on investigative liberation or undertaking, this would again have an impact on SCTS. It is expected that there would be an increase in applications to the sheriff for review of such conditions, under sections 19 and 30 of the Criminal Justice (Scotland) Act 2016 respectively. As these provisions are yet to come into force, we cannot provide any cost estimates on the impact of these provisions on SCTS.

**Electronic Monitoring Equipment**

Whilst the proposals for the uplift/return of any EM equipment do not affect SCTS directly, any proposal for rights of entry (and how that right is obtained) may impact on SCTS. If it is considered that such a right of entry could only be obtained through the courts, this may involve a form of application to the court with additional court time, and associated staff and accommodation resource implications.

Given the impact that the proposals outlined in the consultation are likely to have on SCTS, we would be grateful for the opportunity to contribute to any financial memorandum associated with any legislation.

If you need any further information, please let me know.

Nicola Anderson
Deputy Head of Policy and Legislation Branch