Further to the Scottish Courts and Tribunals Service ("the SCTS") recent appearance, we now provide our response to the follow up matters which arose during the above session.

**Data Protection and GDPR protocols in relation to electronic monitoring**

In the context of the Bill’s provisions on electronic monitoring, the SCTS is of the view that those who are currently contracted to provide electronic monitoring services in Scotland would be best placed to set out the impact of the Bill on the retention and sharing of the information it (the contractor) would gather under those provisions.

It is worth highlighting that the processing of criminal court case information for a “law enforcement” purpose is not regulated by the GDPR. The regime followed is instead set out in Part 3 of the Data Protection Act 2018 ("the 2018 Act"), which implements a separate EU Directive in respect of data protection in law enforcement cases. The SCTS is listed as a competent authority in schedule 7 of the 2018 Act.

Where the court currently makes an order for electronic monitoring (in the prescribed form), a statutory duty is placed upon the clerk of court to send a copy of that order to the person responsible for monitoring the offender’s compliance with the order (for example section 245A of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). This information is “shared” with the current contractor by the Criminal Justice Secure email service for the purposes of setting up the necessary equipment and monitoring compliance with the order. We anticipate that this process will not alter once the provisions of the Bill come into force. It is our understanding that this would fall within “law enforcement” purposes under the 2018 Act, as processing required for the administration of justice.

As is the case currently and in the context of the provisions of the Bill, the SCTS understands that any information which would be “shared” would be the information necessary to report any alleged breach to the court as set out in clause 14 of the Bill. That information would be provided to the courts in terms of the breach provisions of the over-arching disposal under the provisions of the 1995 Act, in terms of clause 13 of the Bill. To facilitate an early response to alleged breaches, agreement was reached in 2013 whereby the current contractor could intimate a breach report to the court via the secure email service. Again, we do not anticipate that there will be any change to this process.
Breaches and compliance issues

The SCTS is unable to provide any further information on what a sheriff or judge may take into account when considering a proved breach of a court order. These matters whilst touched on by the SCTS during the evidence session, are in our view, entirely a matter for the sheriff or judge. In addition, how the sheriff or judge deals with an offender after a breach is again entirely a matter for the bench and in accordance with the relevant provisions of the 1995 Act.

Electronic monitoring contract

The Justice Committee may wish to explore further, with the Scottish Government, what any future contract may set out by way of the necessary controls in respect of personal data to govern the data processing concerned by the contractor as a result of GDPR and the 2018 Act.

SCTS preparation

In general terms on data protection and the GDPR, the SCTS has been preparing for the coming into force of both the 2018 Act and the GDPR on 25 May 2018 and updated its privacy notices (available on the SCTS website) in advance. In addition, a number of data sharing agreements are in place with key justice partners.

Information for staff has also been updated, including the launch of a new Data Handling Hub which contains advice and guidance on information law for staff together with a revised Data Security Policy.

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

Mark Kubeczka
Legislation Implementation Team
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