Following the Justice Committee’s evidence session on 8 May 2018 you wrote to me seeking clarification from the Scottish Government on a number of points. Please find a response to each below.

**LANGUAGE AND TERMINOLOGY**

The Committee was interested in the use of the word “offender” in the Bill and whether the language and the terminology in the Bill meets the standard that the Parliament set in 2016. One witness suggested that this may not be the case because this Bill refers back to the Rehabilitation of Offenders Act 1974, which is an Act of the Westminster Parliament and so we are unable to make amendments to that. Is the current use of the word "offender" and other language/terminology used a consequence of the way the Bill is structured and link to the 1974 Act? Is there scope to move away from the language being used?

**SG Response**

Each Part of the Bill must be read separately for the subject-matter contained in that Part, as the legislative and policy context of each Part is unique.

However, the short title of the Bill needs to be of an umbrella variety so as to be capable of accurately and succinctly covering the three different topics of the Bill. The Scottish Government’s view is that use of the term ‘offender’ is suitable in the Bill’s formal name because it is sufficiently wide to cover a range of people at different points of the criminal justice system.

Part 1 of the Bill uses the term ‘offender’ as a descriptor for persons who can be made subject to electronic monitoring under the terms of sections 1 or 5. Section 1 uses the term to describe persons who can be made subject to any of the court disposals in section 3. Section 5 uses the term to describe persons who can be made subject to the licence conditions described in section 7. In these circumstances the Scottish Government believes that the term offender - given its regular usage - is correct.

The changes to Part 2 of the Bill are being made to pre-existing legislation, (i.e. the 1974 Act). As this legislation is a mix of devolved and reserved statute, it cannot simply be repealed and replaced as this could lead to wider and possibly unintended consequences. On that basis we have proposed changes within the existing operation of the 1974 Act so as to avoid those wider consequences.

Nevertheless, we are sympathetic to the issues raised in respect of how people with convictions are referred to. That is why for the changes in Part 2 of the Bill we have proposed changes to terminology currently used in the 1974 Act to try and avoid unfortunate labelling that stakeholders have advised can occur under the existing
legislation (by moving away from the concept of ‘rehabilitation period’ and ‘rehabilitated person’ and instead propose using ‘disclosure period’ and ‘protected person’).

In respect of the changes proposed to the 1974 Act in Part 2, we have not used ‘offender’ and indeed the effect of our proposed changes would be to remove many uses of the term ‘offender’ from the 1974 Act.

Within the constraints outlined above in relation to amending an existing piece of legislation that covers both devolved and reserved aspects, we are of course happy to consider any further action that could be taken in this area.

PILOTS

The Committee heard evidence that there were a number of bail pilots involving electronic monitoring in the mid-2000s. Could you send further information on these if that was the case. Secondly, we heard that a number of pilots for electronic monitoring were ongoing and it would be good to know more about these, including timescales. Finally, one witness mentioned a commitment from the Justice Directorate to carry out a domestic abuse pilot around electronic monitoring, which may result in different outcomes from such a pilot depending on whether it was done in a very rural and remote area or an urban area. Can you send details of what is planned?

SG Response

Bail Pilot:

In April 2005, the piloting of electronic monitoring as a condition of bail was introduced across 4 courts (the High Court sitting at Glasgow and the sheriff courts in Glasgow, Kilmarnock and Stirling). The stated aims of the pilots were to:

- reduce the use of custody for those accused deemed eligible for electronically monitored bail who would otherwise be remanded in custody; and
- offer additional security to the general public against the likelihood of offending or intimidation of witnesses by accused people who are seen as a potential risk if not remanded in custody.

The report of the evaluation of these bail pilots can be found on the Scottish Government website at the following address:  

The conclusion of this report found that the pilots did not fulfil their aims of either increasing perceptions of public safety or reducing the custodial remand population in any significant way.

That notwithstanding, the report suggested that EM bail had an intrinsic value as a means of imposing greater and more verifiable control over an accused person than ordinary bail. It further noted that EM bail allowed individuals pending trial to maintain social commitments and family contacts that they might not otherwise have done if remanded in custody.
EM Demonstration Projects:

The Electronic Monitoring Working Group report recommended that a demonstration project be undertaken to determine what ‘support’ or interventions should be provided to monitored persons to support them to successfully complete their order and aid longer term desistance. Three demonstration projects were set up in various locations:

**Ayrshire (HDC focus)**

The aim of this project is to evaluate the effectiveness of introducing voluntary through-care support to prisoners eligible for Home Detention Curfew in East and North Ayrshire.

**Dundee (RLO focus)**

The purpose of this project is to identify the positives and challenges of addressing the needs of monitored individuals within the community and provide additional, more tailored, support to those individuals. It also provides support to families hosting a monitored family member with the intention of increasing the willingness of families to host a family member on EM in the future.

**Midlothian (HDC & RLO focus)**

This project provides support to people from Midlothian that are either on HDC or subject to an RLO. The project provides support to them to look at the reasons for their offending (e.g. drugs, alcohol, accommodation, employment, health, mental health etc.) The aim is to reduce the number of individuals who breach their HDC or return to prison on a separate offence within 12 months.

**SWA Domestic Abuse Pilot:**

Officials are working with Scottish Women’s Aid to design an electronic monitoring project focused on domestic abuse. Planning is at an early stage and no further details are as yet available.

**USE OF GPS IN PRACTICE FOR ELECTRONIC MONITORING**

Finally, I would be grateful if you could provide further information around how GPS-based electronic monitoring is going to work in practice in remote or rural areas. Will we know where it will work and, if so, how will this be known? How much coverage of Scotland can we expect? Can steps be taken to improve coverage and, if so, when will these be carried out and what would be involved (including costs) etc.? Witnesses also referred to differences between active and passive GPS monitoring. Could you provide further information on these different approaches and whether either / both approaches will be used?
**SG Response**

**GPS in Remote or Rural Areas:**

The GPS element of a monitoring device will function anywhere that the tag is able to communicate with a sufficient number of satellites to allow it to generate a location fix. As such, the fact that the tag is in a remote area does not cause difficulties with it knowing where it is. Potential difficulties may arise however when the communication element of the device is in a location where it does not have sufficient access to an over the air network to transmit that information back to the monitoring centre for processing.

When in areas of no signal, the device continues to record GPS positions, but cannot transmit to the control centre. In this situation, the device stores in memory all un-transmitted positions, which are date/time stamped to the second. Once in a better signal area, these positions are automatically downloaded to the control centre along with any other outstanding events. Devices can call in on GPRS (2G) but can also use 3G.

In advance of any rollout of GPS technology the Scottish Government will undertake user acceptance testing to ensure that any devices used are fit for purpose.

**Active vs Passive Monitoring:**

Active monitoring is where the device is calling in constantly (for example every 60 seconds) giving near real time monitoring, whilst passive is where the device calls in at longer intervals (calling in daily or hourly) downloading all positions retrospectively. In passive mode, high priority events are still sent immediately.

Most devices currently available now use hybrid mode; that is passive mode when normal circumstances, but automatically switching to active mode when in a breech condition (for example in an exclusion zone or buffer zone). This arrangement extends the battery life on the device and also prevents stakeholders from being flooded with un-necessary data by following the principles of management by exception.

No decisions have yet been taken about the approach which will be adopted by the Scottish Government.

Should you require any further information on any of the above points please do not hesitate to contact me.

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