CJ/S7/26/12/5

Criminal Justice Committee
Wednesday 18 November 2026
12th Meeting, 2026 (Session 7)

Note by the Clerk on Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026 [draft]

Overview

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Justice and officials on the Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026 before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.

2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

   Title of instrument: Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026 [draft]

   Laid under: sections 9(1)(a) and (b) and 15(1) of the Management of Offenders (Scotland) Act 2019

   Laid on: 21 October 2026

   Procedure: Affirmative

   Lead committee to report by: 4 December 2026

   Commencement: If approved, the instrument comes into force on 19 December 2026.

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.

4. Once laid, the instrument is referred to:

   - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

   - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:

   - an evidence session with the Minister and officials, followed by
   - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 3 November 2026 and reported on it in its 16th Report, 2026. The DPLR Committee noted that the original draft of this instrument was withdrawn and the present version was re-laid to correct errors that were identified in the instrument. The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

9. The purpose of the instrument is to make GPS electronic monitoring legally available for certain court-imposed bail conditions in the Sheriffdom of Tayside, Central and Fife. This would be a non-time-limited pilot and its impact would be evaluated.

10. The Management of Offenders (Scotland) Act 2019 allows a court, when making certain disposals, to require a person to submit to electronic monitoring of their compliance with a specified aspect or aspects of the disposal. It also allows the Scottish Ministers to require electronic monitoring of relevant conditions imposed on a person released from custody on licence.

11. Section 9 of the 2019 Act gives the Scottish Ministers power by regulations to make provision about the use of approved devices and the information obtained through monitoring. The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 currently regulate those matters.

12. These Regulations amend the 2025 Regulations to add circumstances in which an approved GPS device may be used for a court-imposed electronic monitoring requirement. The new circumstances apply where a sheriff, sheriff principal or summary sheriff in the Sheriffdom of Tayside, Central and Fife has imposed a monitoring requirement under section 1(1) of the 2019 Act in relation to a specified aspect of pre-conviction or post-conviction bail. It is expected to apply to solemn and summary cases, before and after conviction, and may be used

alongside radio frequency monitoring where appropriate. GPS monitoring will not be used with people under the age of 18.

13. These Regulations also widen the circumstances in which monitoring information may be shared for local-authority functions. This will allow information to be shared for relevant reports made available by a local authority to a court, a procurator fiscal or the Lord Advocate, as well as for relevant supervision, advice and guidance.

14. GPS electronic monitoring was introduced in Scotland on 31 January 2025 for specified geographical conditions imposed on a person released on Home Detention Curfew licence. That was Phase 1 of the phased introduction of GPS electronic monitoring, which has now been evaluated. These Regulations support Phase 2, concerning monitoring requirements imposed by a court in connection with bail.

15. The pilot would test whether GPS technology can provide a proportionate and effective way of monitoring compliance with geographical bail conditions, particularly exclusion zones. The pilot would assess:

- whether suitable cases can be identified quickly enough within bail processes
- whether clear and workable geographical conditions can be set and monitored,
- how non-compliance and technical issues can be managed consistently; and
- whether GPS monitoring could support the use of bail in cases that might otherwise lead to remand.

16. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument and the anticipated financial effects. The following impact assessments have been carried out:

- Data Protection Impact Assessment (DPIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)
- Equalities Impact Assessment (EQIA)
- Island Communities Impact Assessment.

17. The assessments conclude that the instrument is compatible with equality and children's rights obligations. In particular, GPS monitoring under these arrangements will not be available for people under the age of 18.

Evidence received

18. The Cabinet Secretary for Justice wrote to the Committee on Wednesday 11 November to highlight the recent evaluation of Phase 1 use of GPS electronic monitoring. The evaluation examined the implementation and operation of GPS

monitoring within the Home Detention Curfew (HDC) context. It provides a summary of evidence on its use, including experiences of those involved in delivering and managing the service.

19. The evaluation report explains that Phase 1 was designed primarily to assess the operational implementation of GPS monitoring within HDC and to support the introduction of the technology, rather than to evaluate longer-term outcomes.

20. The correspondence and evaluation document have been published on the Committee's webpage.

Report

21. A draft report will be prepared and circulated separately, as a private paper, for consideration at the Committee's meeting on Wednesday 25 November.

22. The final report will reflect any evidence taken and any conclusions reached by the Committee during consideration of the instrument.

Clerks to the Committee
November 2026

Annexe: Scottish Government Policy Note

POLICY NOTE

THE ELECTRONIC MONITORING (USE OF DEVICES AND INFORMATION)

(SCOTLAND) AMENDMENT REGULATIONS 2026

SSI 2026/XXX

The above instrument is to be made in exercise of the powers conferred by sections 9(1)(a) and (b) and 15(1) of the Management of Offenders (Scotland) Act 2019 ("the 2019 Act").

The instrument is subject to the affirmative procedure.

Summary Box

The 2019 Act allows a court, when making certain disposals, to require a person to submit to electronic monitoring of their compliance with a specified aspect or aspects of the disposal. It also allows the Scottish Ministers to require electronic monitoring of relevant conditions imposed on a person released from custody on licence.

Section 9 of the 2019 Act gives the Scottish Ministers power by regulations to make provision about the use of approved devices and the information obtained through monitoring. The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 ("the 2025 Regulations") currently regulate those matters.

These Regulations amend the 2025 Regulations to add circumstances in which a GPS approved device may be used for a court-imposed electronic monitoring requirement. The new circumstances apply where a sheriff, sheriff principal or summary sheriff in the Sheriffdom of Tayside, Central and Fife has imposed a monitoring requirement under section 1(1) of the 2019 Act in relation to a specified aspect of pre-conviction or post-conviction bail.

The Regulations also widen the circumstances in which monitoring information may be shared for local-authority functions. This will allow information to be shared for relevant reports made available by a local authority to a court, a procurator fiscal or the Lord Advocate, as well as for relevant supervision, advice and guidance.

Policy Objectives

Radio frequency technology can monitor whether a person is at, or away from, a specified location. GPS technology enables monitoring over a wider geographical area and can support monitoring of compliance with one or more exclusion zones. An exclusion zone may concern a particular address, street or wider area, depending on the terms of the condition imposed by the court.

GPS electronic monitoring was introduced in Scotland on 31 January 2025 for specified geographical conditions imposed on a person released on Home Detention Curfew licence. That was Phase 1 of the phased introduction of GPS electronic monitoring. These Regulations support Phase 2, concerning monitoring requirements imposed by a court in connection with bail.

The policy objective is to test whether GPS can provide a proportionate means of monitoring compliance with geographical bail conditions, initially exclusion zones, where radio frequency monitoring does not provide an equivalent practical capability. The pilot will consider whether suitable cases can be identified within bail timescales, whether sufficiently clear and workable geographical conditions can be imposed and configured, whether apparent non-compliance and technical issues can be handled consistently, and whether GPS can support the use of bail in cases which might otherwise have resulted in remand.

The Regulations make GPS monitoring of geographical bail conditions legally available where the monitoring requirement is imposed by the relevant judiciary in the Sheriffdom of Tayside, Central and Fife. Operational introduction will be phased within the Sheriffdom, with the participating courts and commencement of operational delivery determined through the implementation arrangements.

Subject to final implementation arrangements, the initial operational scope is intended to include solemn and summary proceedings, pre-conviction and post-conviction bail, and the monitoring of exclusion zones. Where the court has imposed separately monitorable requirements, GPS and radio frequency monitoring may be used together where operationally appropriate. The Regulations do not permit GPS to be used for bail monitoring where the monitored person is under 18. This restriction does not alter the existing arrangements for radio frequency electronic monitoring.

The legal availability of GPS does not mean that it will necessarily be imposed routinely. The court will remain responsible for deciding whether bail is granted, the conditions imposed, whether electronic monitoring is required and that the specified aspect to be monitored. Ordinary bail, bail supervision, radio frequency monitoring where suitable and other available measures remain available, and in certain cases may be more effective than GPS monitoring. Legal enablement alone will not make GPS-monitored bail operational: the court must have sufficiently reliable and timely information to frame a clear condition which the monitored person can understand and the electronic monitoring provider can configure.

The GPS device will generate location and technical information while GPS monitoring is active, and this data will be gathered and stored by the monitoring provider according to clear data protection principles. Monitoring by GPS (or by any other electronic means) does not mean constant manual checking of whereabouts, and a GPS non-compliance alert will not, by itself, determine that a breach has occurred. Monitoring information must be assessed by the appropriate person or organisation before enforcement action or court reporting.

The 2025 Regulations permit information obtained through GPS or radio frequency monitoring to be retained for a maximum of 12 years from the date on which it was obtained. The statutory maximum does not, of itself, determine how long each category of GPS-bail information should be retained.

These Regulations also amend the 2025 Regulations to widen the circumstances in which monitoring information obtained from the use of approved devices may be shared by the Scottish Ministers with local authorities. Currently the Scottish Ministers may only share the information under the 2025 Regulations for supervision, advice and guidance services provided by the local authority in respect of the monitored person. This is being expanded to allow sharing for the purposes of other local authority functions in the criminal justice system, including for the purposes of providing reports to the courts, the Lord Advocate or a procurator fiscal.

Interaction with the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2026

The Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2026 amend the 2020 Regulations so that the approved devices for court-imposed monitoring include the GPS personal identification device and relevant charging equipment. These Regulations regulate the circumstances in which the approved GPS device may be used for the Phase 2 bail proposal.

The Phase 2 provisions are not intended to be time-limited. The operation and impact of the pilot will be evaluated. Any proposal to expand GPS use beyond the scope permitted by the Regulations, including any future proposal to make GPS monitoring available to people under 18, would require separate policy development, supported by appropriate consultation and impact-assessment work.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers are required to make a written statement about the extent to which, in their view, the Regulations are compatible with the UNCRC requirements as defined by section 1(2) of that Act. The Scottish Ministers consider that the provisions of the Regulations are compatible with the UNCRC requirements.

EU Alignment Consideration

This instrument is not considered relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Consultation was undertaken during development of the legislation which became the Management of Offenders (Scotland) Act 2019. This included the potential use of new electronic monitoring technologies, including GPS.

Development of the Phase 2 GPS bail proposal has involved engagement with the judiciary, Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, Community Justice Scotland, representatives of Justice Social Work and the electronic monitoring provider.

The Scottish Government is consulting the Information Commissioner's Office under the Article 36(4) process.

Impact Assessments

Impact assessments have been prepared. The current position is:

- an Equality Impact Assessment has been prepared;
- a Data Protection Impact Assessment has been drafted and will be kept under review alongside the policy, legislation and implementation arrangements;
- a Child Rights and Wellbeing Impact Assessment has been prepared. The Regulations do not permit GPS to be used for bail monitoring where the monitored person is under 18. The assessment identifies possible indirect effects on children and an overall neutral impact;
- an Island Communities Impact Assessment has been prepared;
- A Business and Regulatory Impact Assessment is not required, and agreement is sought from the Cabinet Secretary for Justice on this matter.

Financial Effects

The Scottish Government meets the cost of electronic monitoring from central budgets under its existing contract with the electronic monitoring provider. The contract provides for radio frequency and GPS monitoring. The contractual charge for GPS monitoring from 1 April 2027 is £6.14 per monitored person per day, compared with £5.20 per day for radio frequency monitoring. The single fee covering both installation and de-installation is £139.87 for either form of monitoring.

The overall cost of GPS-monitored bail will depend on the number of people made subject to monitoring and the duration of each monitoring requirement. The costs will be met through the existing electronic monitoring contract and from the electronic monitoring budget, and the financial impact will be monitored during implementation. Electronic monitoring of bail using radio frequency technology is undertaken now and all of these same partners have a role. The financial memorandum for the 2019 Act set out estimates for increased resource in support of electronic monitoring expansion. The phased introduction of GPS-monitored bail may have resource implications for Justice Social Work, Police Scotland, the Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service. These may arise from the assessment and administration of relevant cases, communication of court orders and monitoring information, consideration of apparent non-compliance, and any associated court or enforcement proceedings.

The scale of any impact will depend on the number and complexity of cases and the final implementation arrangements and cannot yet be quantified. The Scottish Government will continue to work with the relevant justice partners and local authorities as those arrangements are developed and during implementation and evaluation of the pilot.