



Law Society
of Scotland

Consultation Response

Electronic Monitoring in Scotland

A consultation on Proposals for Legislation

May 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Criminal Law Committee (the Committee) welcomes the opportunity to respond to the Scottish Government consultation: "Electronic Monitoring in Scotland – a consultation on proposals for legislation" and has the following comments to make.

The Committee notes that this consultation is seeking views on the next steps in taking forward private legislation to extend the use of electronic monitoring in Scotland in support of broader community justice policy and that these proposed changes reflect the findings and recommendations of the Electronic Monitoring Expert Working Group who published a report on 4 October 2016.

The Committee believes that there are other criminal justice stakeholders who are better placed to answer the questions contained in the consultation paper. It believes, however, that issues such as the proposed introduction of GPS Technology would be very much a policy matter and that the determination as to whether RF or GPS Technology should be used in each case should be the matter for judicial consideration.

With particular reference to question 11 "Should electronic monitoring be permitted as a condition of Police Liberation or Investigative Liberation?" the Committee notes that this is intended to be a restriction on freedom and the use of electronic monitoring in these circumstances would be much more intrusive than the current conditions that can be placed following an undertaking to appear in court.

The Committee believes that to be of any value, this monitoring process would require to be very closely monitored in that Article 8 ECHR Rights (Right to respect for private and family life) would no doubt engage. The Committee believes that such restrictions should be a matter for the Court rather than for Police Officers.

The Committee also questions whether the terms of the Regulation of Investigatory Powers Act 2000 and, in particular Section 26(3) should be taken into account.

The Committee has further comment on question 13 of the consultation paper “Should the data collected only be for the purpose of monitoring compliance with an order or licence condition, or should it also be used for other purposes such as the investigation of crime?”.

In this regard, the Committee suggests that access to this data for the purposes beyond reporting a breach of a condition of liberation should only be accessible with a warrant or other similar order granted by the Court.