

Response ID ANON-1KC2-13KC-3

Submitted to **Electronic Monitoring in Scotland**

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Exploiting the opportunities afforded by new technology

1 Do you agree that we should introduce legislation to permit the use of GPS technology for electronic monitoring?

Yes

1a Please give reasons for your answer to Question 1

Please give reasons for your answer to Question 1:

The impact on victims must be the paramount consideration in the implementation of this technology. In particular, their safety concerns must be taken into account and they should be consulted about whether a perpetrator is electronically monitored.

VSS understands that GPS technology is superior to RF technology in a number of respects and offers new opportunities to give greater consideration and benefits to victims of crime.

For example, there are possibilities for monitoring movement across different areas or zones (not just in a single place as with RF), making it possible to create exclusion and inclusion zones to safeguard victims of crime. More emphasis in this area has potential to give the victim a sense of security by limiting the movement of the offender and creating 'safe spaces' for victims.

Inclusion zones in particular limit the places which an offender can travel. This security is enhanced by the possibility, in certain cases, of monitoring an offender's movements in 'real time' and alerting authorities when an offender has breached the parameters of their zone.

Further, hybrid systems, which combine retrospective tracking with a switch to real time tracking if an exclusion zone perimeter or buffer zone is breached is a way to improve the safety of victims of crime and their perception of safety which is important psychologically. This may be pertinent in domestic abuse or stalking cases, where there may be concerns an offender could still be a risk to their victim.

Moreover, the use of EM at different stages of the criminal justice process means that the use of exclusion zones and hybrid systems could be utilised in instances where the accused has been granted bail – which enhances perceptions on safety for the victim.

The Electronic Monitoring in Scotland Working Group (hereinafter referred to as "The Working Group") notes that, internationally, the use of such exclusion and inclusion zones has been used primarily to create safe spaces for victims of crime and protect them. In this way they are less likely to experience the heightened fear which surrounds the possibility of encountering the offender.

In the implementation of GPS monitoring, VSS would like to see concerns related to the safeguarding of victims and an understanding of the impact of crime on victims. We believe this should be central to legislation enacted in this area, and in turn may strengthen the community's faith in the criminal justice sector.

VSS supports the recommendation made by the Working Group, that there should be an end to the traditional 7pm to 7am curfews engaged so far with EM. These curfews reflect that the use of EM has, thus far, been used mostly as a punitive measure; using curfew as a punishment and primarily as a stand-alone measure. Under the proposals of the Working Group, EM should be used in conjunction with other efforts to rehabilitate and reintegrate offenders as part of a person-centred approach, utilising a number of support practices.

VSS supports this person centred approach and the move away from a punitive use of EM. We hope that this type of support will assist offenders in their rehabilitation and reduce the number of victims of crime in the future.

1b Who do you consider should determine which technology (RF or GPS) should be used in each case?

Scottish Prison Service

Other, please specify:

This consideration should become an aspect of Social Enquiry Reports, which would include a risk assessment to consider any potential impact or risk to victims, and any potential impact on the family or co-residents of the offender where RF base unit is installed.

Where there is social work involvement, it would be more achievable to ensure EM technology is used in more integrated ways, and alongside a range of supportive measures, to help prevent and reduce further offending.

1c What factors do you think should be taken into consideration when deciding which technology should be used?

What factors do you think should be taken into consideration when deciding which technology should be used?:

The impact on victims, the community, and family of the offender would need to be fully considered. The Working Group recognised that there is some evidence acknowledging stand-alone EM can create undue stress and strain for co-residents - which more integrated approaches, may be able to reduce.

In deciding what technology to use, it should be considered whether home confinement would be useful or whether a series of exclusion zones would better protect a victim.

Social Work should also consider what type of curfew is required and any restrictions required. It would be crucial when conducting an assessment, to consider

whether the use of the technology would be beneficial to the community at large, and if it offers rehabilitative, and reintegrative possibilities.

It is also important to consider the risk of an offender absconding and or breaching an order and entering restricted zones or breaching curfews, and attempting to make contact with victims. It is therefore necessary to consider what levels and forms of support the offender would require in order to facilitate their rehabilitation - particularly where work patterns, criminal behaviour, and alcohol and drugs misuse are concerned.

The emotional response of victim(s) to the justice sector ought to be assessed around their fears and apprehensions of the offender not complying with the order, accepting that the response of victims will not be uniform.

However, of particular consideration to victims might be whether an EM response is proportionate to the crime which has been committed. In which case, EM is advantageous, in that it can have varying levels of intensity and duration of the schedules and requirements used in its enforcement. It can be combined with other methods at different stages of the sentencing tariff, so that a goal-oriented, tailored approach to EM can incorporate both punitive and rehabilitative goals. This has capacity to help satisfy a victims need to see justice delivered, while also offering rehabilitative opportunities, which should help an offender reintegrate into the community.

VSS agrees with the Working Group that GPS technology is versatile and decisions on its use should be made as part of an individually tailored system - rather than a 'one size fits all' approach. This should include where it can aid public and victim safety.

We recommend that the protection of victims, their rights and interests, and maintenance of public safety should be the critical consideration of community justice, and so any prospective legislation must focus on these objectives.

An individualised approach to risk assessment is incredibly important as the safest way to approach this technology, in order to protect victims and enhance the security of the community.

2 What response, if any, should there be to an infringement of a buffer zone?

What response, if any, should there be to an infringement of a buffer zone?:

For EM to be effective there should be clear implications for infringement of a buffer zone. This is necessary to sustain compliance among offenders and crucially, to maintain the trust of victims and the community, who must be assured of the effectiveness of the technology, and in turn their faith in the justice system should be enhanced.

Where rehabilitative goals are being pursued, the response to a violation, such as infringement of a buffer zone, must be proportionate and consider the progress being made to wider goals - without compromising the security of victims. There are instances where considering the context of the breach; it may be adequate to simply work more closely with the monitored person in order to support them with compliance. Such an approach would need to take cognisance of the nature of the violation, if we are to safeguard victims at all times.

Therefore, VSS agrees with the working group that responses to non-compliance should consider the reason behind the non-compliance and should be adequate and proportionate, and that incentives being put in place should encourage compliance and effective structures to manage non-compliance.

3 Do you agree that we should introduce legislation to permit a voluntary GPS scheme?

Not Answered

3a If you answered yes, who should be eligible, how would this operate and who should manage the scheme?

If you answered yes, who should be eligible, how would this operate and who should manage the scheme?:

VSS notes that voluntary consent models of GPS tracking used in England and Wales appear to have a number of merits and this is an avenue which might be explored further in Scotland.

However, we express some caution, noting that the Working Group Report suggests experimental voluntary schemes in Scotland have not been successful. It suggests that without a legal framework, and responses to non-compliance, volunteer monitoring is not as strong as it could be.

It may be that a Voluntary GPS Scheme requires further research into its likely effectiveness before a final decision is made as to whether it should be introduced.

4 Should alcohol monitoring be permitted as part of an electronic monitoring programme?

Yes

4a Please give reasons for your answer

Please give reasons for your answer:

Alcohol plays a role in the lives of many offenders, resulting in a significant number of crimes. The use of Trans-Dermal Alcohol Monitoring Technology has the potential to aid in addressing an offender's alcohol dependency, and as a result, reduce offending.

VSS is encouraged by the Working Groups conclusion that the evidence on the effectiveness of this alcohol monitoring technology was convincing.

4b If you answered yes to Question 4 in what circumstances do you think alcohol monitoring would be appropriate?

If you answered yes to Question 4 in what circumstances do you think alcohol monitoring would be appropriate?:

We believe the possibilities for using remote alcohol monitoring in a Scottish setting should be explored further, perhaps through a demonstration project, which would identify how this technology might be used effectively, and at which points within the justice system it could be best utilised.

Extending the use of Electronic Monitoring in a Community Setting

5 Should electronic monitoring be an optional requirement of a CPO when it is initially imposed?

Yes

5a Please give reasons for your answer

Please give reasons for your answer :

Yes, it should be open to the judiciary to impose if they feel it would be beneficial in a specific case and is in keeping with VSS's person focused approach to EM.

6 Should electronic monitoring be introduced as an alternative to a fine?

Yes

6a Please give reasons for your answer

Please give reasons for your answer :

Fines offer no rehabilitative aspect. For example, by affecting a person's attitude or behaviour, whereas, EM offers potential as part of an integrated approach. Fines can result in financial hardship among low income families, which negatively impacts on an offender's family. EM can be used as a punitive measure through imposing a fine on time, rather than money, particularly in instances where a financial penalty would not be proportionate to the seriousness of the offence, and/or because it may be beyond the means of the offender.

7 Should electronic monitoring be permitted as a condition of a SOPO?

Yes

7a Please give reasons for your answer

Please give reasons for your answer :

As Sexual Offences Prevention Orders (SOPO) are intended to control the behaviours of those convicted of a sexual offence, EM has potential to aid the chances that an offender complies with the SOPO. The use of EM as a condition of a SOPO has the capacity to increase the protection of the public or particular members of the public from being subjected to sexual crime.

There are particular advantages to the use of inclusion and exclusion zones. As mentioned previously this security is enhanced by the option of monitoring an offender's movements in 'real time', and alerting authorities when an offender has breached an exclusion zone.

There is also potential within hybrid systems, which combine retrospective tracking with a switch to real time tracking if an exclusion zone perimeter or buffer zone is breached. This is an excellent way of improving the safety of specific members of the public.

However, a rigorous risk assessment would need to be carried out, particularly if an offender is deemed to be high risk. EM use would need to be tailored to the individual, whilst giving the utmost consideration to the impact on victims when an offender is returned to the community.

8 Should electronic monitoring be introduced as a possible condition of a RSHO?

Yes

8a Please give reasons for your answer

Please give reasons for your answer :

Risks of Sexual Harm Orders (RSHO) are used to facilitate protecting children and to proactively target individuals who pose a risk to children.

They are preventative orders which prohibit an individual from doing something specific. There is a potential benefit to incorporating EM into the early monitoring stages of an RSHO to assess an individual's behaviour and offending risk. This could then be used to inform risk assessment and decisions made about those individuals further down the line. EM technology should increase the protection of children by monitoring individual's issued with an RSHO through GPS and alerting authorities when an individual has entered a restricted zone (such as a children's swing park).

9 Should electronic monitoring be introduced as a possible condition of a SDS?

Yes

9a Please give reasons for your answer

Please give reasons for your answer :

This is a low tariff sentence which already has high levels of supervision support provided. Perhaps, this is somewhere a voluntary GPS scheme could be utilised if an offender feels it would be helpful in supporting them, or where Trans-Dermal Alcohol Monitoring Technology might be useful at supporting individuals with alcohol dependency.

Alternative to Remand and Support to pre-trial conditions

10 Should electronic monitoring be introduced as an alternative to remand?

Yes

10a Please give reasons for your answer

Please give reasons for your answer:

Yes - as long as the impact on victims is considered.

Questions surrounding public protection and the interests of victims must be asked, particularly where the offender is high risk. VSS agrees with the Working Group recommendation that where EM is being used to supervise the movements of a suspect or an offender, it is essential to obtain the victim's prior consent and to make sure as far as possible that the victim understands the capacities and limitations of the technology.

While EM offers a community based alternative to short custodial sentences, which is likely to reduce offending, it should also be recognised that prison sentences offer victims of crime a sense of security and respite not available in other forms of intervention.

The responses to the PASS consultation from victims' groups suggest many are concerned that EM measures do not offer the same level of control for victims that custodial sentences can offer. The Working Group suggests anxiety may be due to unfamiliarity with the kinds of control that new EM technologies make available and suggests there is an urgent need for further consultation with the 'full range of crime victim interest groups to ensure that the diverse ways in which EM can be used have legitimacy with them'.

VSS would therefore welcome a consultation with crime victim interest groups - including ourselves.

10b If you answered yes to Question 10, when would you consider this appropriate?

If you answered yes to Question 10, when would you consider this appropriate?:

It would be appropriate when it enables an offender to maintain employment and/or housing, which has been shown to support desistance from offending.

Also, as an alternative to short prison sentences, which have shown to be ineffective at preventing further reoffending and/or utilised as part of a Community Payback Order. This would incorporate a variety of support methods to facilitate a robust community based criminal justice response.

11 Should electronic monitoring be permitted as a condition of Police Liberation or Investigative Liberation?

Yes

11a Please give reasons for your answer

Please give reasons for your answer:

See 11b.

11b If yes, when would you consider this appropriate?

If yes, when would you consider this appropriate?:

Only when deemed suitable by the judiciary having taken risk factors into consideration.

Extending the use of Electronic Monitoring for the purposes of temporary release from prison

12 Should electronic monitoring be permitted as a condition of temporary release from prison?

Yes

12a Please give reasons for your answer

Please give reasons for your answer :

However, so long as the information collated by the service provider can be accessed should the prisoner abscond, and as long as victims are considered, particularly in the context of providing full risk assessment on the effect prisoner release has on the victim and the community.

12b If you answered yes, when would you consider this appropriate?

If you answered yes, when would you consider this appropriate?:

To allow suitable prisoners to have opportunities to gain work experience and to facilitate housing, or family issues prior to release.

Information, Data Sharing and Retention

13 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? Please include reasons for your answer.

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? Please include reasons for your answer.:

Significant consideration should be given to the collection, storage and use of data collected as a consequence of GPS monitoring. VSS believes it is vital data protection is not breached and procedures should be put in place for instances where information is to be obtained out with the normal conditions of the order.

VSS agrees with the Working Group recommendation that a clear framework be put in place to ensure that the control and processing of data collected as a result of electronic monitoring is appropriate and that such data is only used for the purpose for which it was intended.

13a What appropriate safeguards should be put in place for the collection, use, retention and destruction of data?

What appropriate safeguards should be put in place for the collection, use, retention and destruction of data?:

We agree any storage facilities for archived data and retrieval and access procedures should ensure that personal data is held securely and access provided on a controlled basis only.

Electronic Monitoring Equipment

14 Who should be responsible for the safe return of the monitoring equipment?

Who should be responsible for the safe return of the monitoring equipment? :

The order could be expanded to include safe return of equipment by the offender, however this raises questions of where equipment is to be returned, and the issue of financing the return of items. For example, if the offender has no transport and/or no money for bus or rail fares.

14a Should there be sanctions for not doing so?

Not Answered

14b If you answered yes, what do you consider these sanctions should be?

If you answered yes, what do you consider these sanctions should be?:

Maybe.

This would be dependent on the offender's circumstances and so, a prescriptive approach might not be workable, and possibly counter-intuitive in terms of crime prevention and reduction.

Currently tampering with equipment results in a breach of the order so a sanction could be considered in relation to non-compliance for not returning equipment.

14c If the sole key holder to a property is not available should a legal right of access be given to Scottish Ministers (and their agents) to enter a property to recover their equipment?

Yes

14d If you answered yes, should this access only be via a court warrant?

Yes

14e Please include any further comments below

Please include any further comments below:

Impact Assessments

15 Please tell us about any potential equality impacts, either positive or negative, that you consider the proposals in this consultation may have.

Please tell us about any potential equality impacts, either positive or negative, that you consider the proposals in this consultation may have.:

EM technology has the potential to enhance the protection and security of victims of crime. VSS welcomes the introduction of these technologies in order to deliver community justice.

The technology also has the potential to reduce further offending when utilised alongside other supportive methods which will encourage rehabilitation and reintegration in the community and offers successful alternatives to custodial sentences.

As noted in the working group report, some research evidence shows that EM has a crime reduction effect in itself (for the duration of the monitoring period), but that if longer term desistance is required it must be combined with measures which support individuals to change their behaviour.

This highlights the importance of an individualised risk-assessed approach to EM which combines it with other supportive measures to aid rehabilitation and reintegration.

In individual cases, EM should be used in a goal oriented and person-centred way, tailored to achieve specific purposes, including the protection of victims of crime, which should be at the forefront of the implementation of this technology.

The use of EM as a condition of a Sexual Offences Prevention Order and EM as a condition of a Risk of Sexual Harm Order is welcomed for the potential it has to reduce the number of victims of such crimes.

VSS welcomes the implementation of these new technologies within the criminal justice system, so long as the Scottish Government's vision of fairer justice for

victims is central to the introduction of all future related legislation.

VSS is encouraged that there is a strong emphasis on robust community sentences which are focused on addressing the underlying causes of offending behaviour. This can lead to the prevention and reduction of further offending and in doing so, has the effect of reducing the number of victims of crimes in the future.

Public safety and the risk to victims should be the most important factor in determining suitability for EM, the intensity of use, and the type of EM used. VSS is encouraged that different levels of intensity can be deployed, so that it is proportionate to the offence itself and relative to whether the individual concerned is low risk or high risk. The approach used for higher risk individuals is most important, given the potential impact on victim safety and public protection.

VSS is encouraged by the potential of exclusion and inclusion zones to increase security of victims and offer them increased protection.

Further, there is potential to address the gender power gap in upcoming domestic violence cases, offering reassurances to victims, by helping to keep the perpetrator away from the victim.

16 Please tell us about any potential costs and burdens that you consider may arise as a result of the proposals within this consultation.

Please tell us about any potential costs and burdens that you consider may arise as a result of the proposals within this consultation.:

Protection for victims of crime should not be compromised in cost cutting efforts. Victim protection must be at the forefront of the implementation of legislation around these new technologies.

17 Please tell us about any potential impacts, either positive or negative, that you consider that any proposals in this consultation may have on the environment.

Please tell us about any potential impacts, either positive or negative, that you consider that any proposals in this consultation may have on the environment. :

About You

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Victim Support Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: