



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 18 December 2024

Session 6



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CRIMINAL JUSTICE COMMITTEE

40th Meeting 2024, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

- *Katy Clark (West Scotland) (Lab)
- *Sharon Dowey (South Scotland) (Con)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Rona Mackay (Strathkelvin and Bearsden) (SNP)
- *Ben Macpherson (Edinburgh Northern and Leith) (SNP)
- *Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Angela Constance (Cabinet Secretary for Justice and Home Affairs)
- Louise Miller (Scottish Government)
- Graham Robertson (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 18 December 2024

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 [Draft]

Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2024 (SSI 2024/354)

The Convener (Audrey Nicoll): Good morning, and welcome to the 40th meeting in 2024 of the Criminal Justice Committee. We have no apologies this morning.

The first item of business is to take evidence on an affirmative Scottish statutory instrument and a negative SSI, namely, the draft Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025, and the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2024 (SSI 2024/354).

We are joined by the Cabinet Secretary for Justice and Home Affairs. I also welcome to the meeting from the Scottish Government: Graham Robertson, head of the public protection unit; David Gallagher, from the public protection unit; and Jamie MacQueen, from the legal directorate.

I refer members to papers 1 and 2, and invite the cabinet secretary to make some opening remarks on both of the SSIs.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning. If the regulations that the committee is considering today are approved, they will enable the use of GPS monitoring devices for the first time in Scotland, for the monitoring of people as part of the criminal justice system.

We have laid the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2024 under the negative procedure. Those regulations amend the Electronic Monitoring (Approved Devices) (Scotland) Regulations 2020 to approve GPS-enabled devices as the types of electronic devices that are designated as approved for the purpose of electronic monitoring. The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025, which is an affirmative

instrument, will govern the use of those devices. The regulations will work together to prescribe the terms of use of GPS devices for monitoring compliance with certain conditions of a home detention curfew licence on release from prison.

The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 limit the use of GPS to monitoring conditions imposed when Scottish ministers release an individual from custody on HDC licence. The regulations also allow for a continuity of current monitoring arrangements by allowing existing radio frequency electronic monitoring devices to continue to monitor the court disposals set out in section 3 of the Management of Offenders (Scotland) Act 2019, and the conditions imposed on an individual when they are released on licence, which are set out in section 7 of that act.

The regulations also clarify the maximum period for which information obtained through the use of radio frequency and GPS-enabled electronic monitoring devices will be retained, and the purposes for which the Scottish ministers, or those acting on their behalf, may share that information.

I invite the committee to consider the regulations.

The Convener: Thank you, cabinet secretary. I open up the meeting to members' questions.

Katy Clark (West Scotland) (Lab): Cabinet secretary, I warmly welcome the regulations that you have brought to the committee today. As you know, Pauline McNeill and I have been calling for some time for GPS monitoring to be introduced in Scotland. The legislation was passed in 2019, and it would be helpful to understand why it has taken so long to get to this point. I appreciate that the position is far from unique, and that there are often delays between legislation being passed and the policy being implemented, but it would be helpful for the committee to get a better understanding as to why there have been such delays.

Angela Constance: I would not describe it as a delay. However, I welcome your support for GPS technology, which adds to the tools that we have. It represents a step in the right direction in realising our ambitions to expand the use and widen the scope of electronic monitoring.

Members are probably aware that the new contract with G4S came into force in 2020. Thereafter, we wanted to ensure, as a priority, that our plans for electronic monitoring aligned with the community justice strategy. That is why, in the first instance, there was a big focus on electronic monitoring of bail and on the use of electronic monitoring in community payback orders when they are applied at first instance.

We are now moving to the introduction of GPS monitoring and the initial phase of that is focused on home detention curfew, for which the numbers are quite small. We have done that in order to test the processes, because this tool is shared between our justice agencies and our justice partners and it is important that, in engaging and operating with each other, those agencies and partners have the opportunity to learn from the initial phase before it is scaled up.

However, I appreciate that, across the political spectrum, there is an interest in different forms of electronic monitoring.

Katy Clark: Given the problems that we have in relation to overcrowding in prisons, those kinds of tools are incredibly important. However, GPS monitoring is already used widely in England and across Europe, and has been for many years. There must be much that can be learned from that.

Cabinet secretary, could you give us an indication of the timetable? Many of us are frustrated because it has been many years that the tool has not been put into operation, so it would be helpful to know how soon such monitoring will be in place. Could you provide us with an update on that?

Angela Constance: It is fair to reflect that GPS and other forms of electronic monitoring are used widely elsewhere on these islands and across Europe. We have certainly learned much from the pursuance of GPS in England. For example, we will not require people to be tethered to a wall to charge their devices. One of the valid lessons that we have learned is that if we do not treat people like human beings, their prospect of success diminishes. I am sure that Ms Clark appreciates that point.

The numbers in the initial phase will be quite small, because home detention curfew is a bespoke intervention. Yesterday, out of the total prison population, 138 people were out on home detention curfew. Members will be aware of the steps that we have taken in recent times to increase the use of home detention curfew. However, we anticipate that, at any one time, there will probably be up to about 20 people on GPS monitoring and home detention curfew.

We want to have an initial phase that lasts for around a year. Once we are absolutely sure that there are no issues with the operational processes of engagement, the important next stage would be to scale that up in relation to other orders. Much depends on what we learn. It is important that, due to the complexity of operational processes among justice partners, in the first instance, we use GPS with one order, as opposed to rolling it out across a range of orders.

Sharon Dowey (South Scotland) (Con): You have covered some of my questions in your answers to Katy Clark, but I am also interested in the financial impact of GPS monitoring.

At the moment, the policy note accompanying the instrument says that there is a one-time cost of £210,000 for the roll-out of GPS monitoring and that the cost of information technology change will “fall to the Scottish Government”. It then says that G4S has GPS monitoring in its contract. It also says that only around 10 to 20 people will be monitored with GPS initially.

I want to get more detail on that. Does the cost refer to money that G4S has already been given? My concern is that that money has already been spent on other things, such as the radio frequency monitoring that G4S already does. We welcome the fact that people will be on GPS monitoring, and I am glad to see that being brought in. However, my concern is that, if G4S has already spent the money on other things, it will not do the GPS monitoring that is required. Does G4S have the capacity to do that monitoring?

Angela Constance: We have always found that our partners are keen to expand on electronic monitoring, so I do not have any concerns in that respect.

Let me run through the costs. The GPS service will cost £210,000 per annum. There is the one-off installation cost of £139.58, which covers both the fitting and the removal of a tag, and there is a monitoring cost, which is slightly more expensive per day for GPS monitoring in comparison to radio frequency monitoring, at around £7.20 compared to £5.99.

The Government is increasing investment in electronic monitoring, and the budget has had a 10 per cent uplift, meaning that an additional £500,000 has been put into the budget. Graham Robertson may have more to say on the details of the contract.

Graham Robertson (Scottish Government): As the cabinet secretary has said, bands are provided for both types of monitoring. The figure of £210,000 is an estimate based on expected usage—in other words, what we think it will cost. It is not money that has already been handed over but is an estimate of what will be handed over when we see the GPS numbers.

The Convener: As no other members have indicated that they would like to speak, we shall now consider a motion to approve the affirmative SSI on which we have just taken oral evidence. I invite the cabinet secretary to move motion S6M-15677.

Motion moved,

That the Criminal Justice Committee recommends that the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 [draft] be approved.—[*Angela Constance*]

Motion agreed to.

The Convener: As members have no comments in relation to the negative instrument, the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2024, is the committee content to make no recommendations and for that instrument to come into force?

Members indicated agreement.

The Convener: Lastly, are members content to delegate responsibility to me to approve a short factual report to the Parliament on the affirmative instrument?

Members indicated agreement.

The Convener: Thank you. That report will be published shortly.

I will briefly suspend the meeting to allow for a changeover of officials.

10:13

Meeting suspended.

10:14

On resuming—

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft]

The Convener: Our next item of business is an oral evidence-taking session on an affirmative instrument. I welcome back the Cabinet Secretary for Justice and Home Affairs and Graham Robertson, head of the public protection unit at the Scottish Government. I also welcome Louise Miller from the legal directorate of the Scottish Government.

I refer members to paper 3. I intend to allow about 15 minutes for the evidence session. I invite the cabinet secretary to make some opening remarks on the order.

Angela Constance: The purpose of the order is to enable Police Scotland to be able to lodge extract conviction information on spent convictions at the same time as making an application for sexual harm prevention orders and sexual risk orders. Those new orders, which were introduced in March last year, replaced sexual offences prevention orders and risk of sexual harm orders.

The Rehabilitation of Offenders Act 1974 provides that, once an individual's conviction has become spent, they are treated for all purposes in law as a person who has not been convicted of—or sentenced for—that particular offence. There are exceptions to that rule, which include applications for sexual offences prevention orders and risk of sexual harm orders. That means that Police Scotland can request relevant extract spent conviction information from the Scottish Courts and Tribunals Service in support of an application for those behavioural orders.

At the time of the enactment of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, a consequential amendment could have been made to amend the 1974 act or to make provision under it to ensure that the new behavioural orders were treated in the same way as the previous sexual behaviour orders, and could also be exempt from section 4(1) of the 1974 act. Following a period of operational running, it has become apparent that making such a change would indeed be helpful as it would allow Police Scotland to lodge relevant extracts of spent convictions alongside applications for sexual harm prevention orders and sexual risk orders.

Under general disclosure, any conviction that leads to a sentence of greater than 48 months is never spent and can always be disclosed. As such, it will have been possible to use the higher-tariff sexual offences to inform applications for the

new behavioural orders, where that is relevant. The new order allows for the consideration of lower-tariff offences that have become spent to be included in an application for a new behavioural order, where appropriate.

Although those court extracts are not a prerequisite for lodging an application for a behavioural order, and we understand that the court might more often be concerned with individuals' recent behaviour than with what they did years ago, the SSI will help to ensure that court extracts of relevant convictions can be lodged at the same time as an application in order to provide potentially useful background information about the individual. That is a change to facilitate the current operation process, and it is supported by Police Scotland.

That is a brief overview of the draft order and its context. I am happy to answer any questions.

The Convener: Thank you very much, cabinet secretary.

I will come in before I open it out to members' questions. You probably set this out in the final remarks that you made with regard to the rationale for Police Scotland requesting the change, but when I was reading through the papers, it occurred to me that more recent information about an individual would perhaps be more relevant in the context of an application for an order. Is there anything more that you can say about Police Scotland's rationale for seeking more historical conviction information?

Angela Constance: As I said in the statement, relevant convictions of 48 months and beyond are never spent. The issue is around ensuring that the relevant provisions are in place so that we can extract information on those lower-tariff offences, which are currently not accessible at the point of application.

That is an important distinction, because courts can and do release extract information on convictions to the police. However, that involves a dialogue and a process. In terms of efficiency, we want that information to be made available at the time of the application.

As I said, that is not a prerequisite for making an application. Very often, courts will have that information on a historical basis, because people are known to them. However, the order is about having the fullest possible information made available at the time of the application, as opposed to having a process in place thereafter.

Pauline McNeill (Glasgow) (Lab): Good morning. I am trying to get my head around this. Do you mean that, prior to this SSI, extra information for lower-tariff applications has not been available?

Angela Constance: That information was not utilised at the time of the application, but the courts can and do share information on unspent convictions with Police Scotland. The flow of information can happen but not at the time of the application. That would involve a process—

Pauline McNeill: Is it about getting that information a bit earlier?

Angela Constance: Yes—so that the information is all there at once when it is presented to the court by the police.

Pauline McNeill: You said “unspent convictions”. Does the order also include spent convictions for lower-tariff applications?

Angela Constance: The purpose of the order is to make it clear that Police Scotland can access information on spent convictions for lower-tariff offences.

Pauline McNeill: That is because such information would not normally be available, because the convictions are spent—I understand. I am trying to understand the purpose of the order so that I understand what it does. The SSI will make that information available slightly earlier and give more information in relation to the application for the relevant orders.

In your view, is it more likely that such orders would be granted if we legislate for the change? What is the purpose of the SSI? Why is the information needed earlier? Does having that information give the police, who obviously think that it is required, a better chance to get the application granted?

Angela Constance: It is more an issue of process. It would be for the court to put a value on current behaviour and past behaviour. I could not possibly say whether having access to that information will increase the police's prospects of success in achieving those orders. Obviously, it is about common sense. We want the fullest range of relevant information to be presented, to which the court will then attach a value.

We do not want a post-application to and fro between the courts and Police Scotland. As I said, there is, potentially, a gap in the legislation. The new orders replaced the previous orders from March last year, and Police Scotland raised the issue with us in August.

Pauline McNeill: So, the SSI will make the process smoother. I ask for completeness: will the change to the process include information that was not previously given in relation to lower-tariff offences?

Angela Constance: It is not as direct as that, because the courts—

Pauline McNeill: That is the confusing bit. You are saying that the issue is one of process—I understand that—but you specifically said that the new process will include lower-tariff offences, whereas it used to apply to higher-tariff offences only. That looks like a substantial change.

Angela Constance: It is not a substantial change—

Louise Miller (Scottish Government): I will clarify. It is not purely a matter of process. When a conviction is spent, the position is that evidence about it is not generally admissible in future court proceedings. That is the reason why Police Scotland has had difficulty requesting extracts: it is because there is not an exception for the new orders to allow evidence about previous convictions to be admissible in the applications.

There was an exception in place for the old orders—

Pauline McNeill: Right. I see.

Louise Miller: —and the legislation relating to the old orders was repealed in March 2023. There is not currently an exception for the new orders. We do not think that that has derailed any applications. The Scottish Courts and Tribunals Service is aware that it is a technical issue that is in the process of being sorted. We just need provision to allow evidence about the convictions to be admitted where it is relevant. Police Scotland can then obtain extracts to show that the convictions have taken place.

Pauline McNeill: Thank you. That makes sense. There is a gap. I just wanted to be clear before we come to a conclusion. We always have to be careful about spent convictions—if they are included, it must be for a reason. I just wanted to be sure that what we are doing is proportionate, and I am satisfied about that.

Liam Kerr (North East Scotland) (Con): A similar question occurs to me. You said that there was a potential gap; however, earlier in your remarks, you said that it has become apparent that the change is needed. That rather implies that there have been some cases in which the police have been hamstrung or perhaps less able to put together an application. Is that correct? If so, are you aware of any negative consequences of this change not having been in place already, such that it is now needed?

Angela Constance: The matter was brought to my officials' attention in August, and we want to rectify it. I described it as a potential gap, but—if I can put it this way—it is a matter of fact that there was not the same issue for the previous orders as for the new orders.

Based on the assurances that I sought from officials and the information that my officials have

received from the courts and Police Scotland, there has not been any negative impact. That goes back to the fact that courts tend to be more interested in current behaviour—I appreciate that that is a generalisation—and that they can, and do, share information with the police on previous convictions and extract information. Court is in public, so that information is available, and we want it to be included as part of the original application—hence my comment about process, although, as Louise Miller emphasised, the issue is not just a two-dimensional matter of process.

It is a matter of completeness. We want the orders to work on a par with previous orders. However, to the best of our knowledge, there has been no negative impact, and any impact has been minimal. It has just required a bit more work between the police and the Scottish Courts and Tribunals Service.

Liam Kerr: I understand. Thank you.

The Convener: As no member wishes to comment further, I move to our next item of business, which is to consider the motion to approve the affirmative SSI on which we have just taken oral evidence. I invite the cabinet secretary to move motion S6M-15515.

Motion moved,

That the Criminal Justice Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft] be approved.—[*Angela Constance*]

Motion agreed to.

The Convener: Finally, are members content to delegate responsibility to me to approve a short factual report to the Parliament on the affirmative instrument?

Members indicated agreement.

The Convener: That report will be published shortly.

That completes our business in public this morning. I thank the cabinet secretary and officials. I wish you all a very happy Christmas and a good new year.

The committee will meet again on Wednesday 8 January, when we will look at the challenges facing Police Scotland when police are called to an incident involving vulnerable members of the community.

10:31

Meeting continued in private until 11:36.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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