

Meeting	SPA Policing Performance Committee
Date	17 March 2022
Location	Video Conference
Title of Paper	Electronically Monitored Bail
Presented By	Chief Superintendent Gordon McCreddie, Criminal Justice Services Division
Recommendation to Members	For Discussion
Appendix Attached	No

PURPOSE

The purpose of this paper is to update members on the implementation of Electronic Monitoring of Bail Orders by the Scottish Government.

Members are invited to discuss the content of this report.

1. BACKGROUND

- 1.1 Legislative changes in the Management of Offenders (Scotland) Act 2019 allow for Electronically Monitored bail (EM bail) which changes the way in which bail can be monitored. They do not change the underpinning bail legislation or the criteria for determining the suitability of an individual for bail. Those aspects remain a decision for the Court based on the circumstances before it.
- 1.2 Electronic monitoring of bail in Scotland is delivered in the form of radio frequency monitoring, which has been in place since 1998. In the longer term there are plans to introduce a GPS technology into the range of options available in Scotland. Electronic monitoring at the moment will be by way of the existing radio frequency form of monitoring (a receiving device in a curfew location or an "away from" location, monitoring presence at or absence from, a place).
- 1.3 In keeping with the principle of equitable access to justice, the Scottish Government is keen to ensure the possibility of Electronic Monitoring will be available across the country. Initially, the provisions will be introduced nationally, but will be driven by availability in the Local Authority Area.
- 1.4 There are two distinct cohorts who will make up subjects who might be considered suitable of being Electronically Monitored:
 - Those who would be on bail with curfew conditions
 - Those who would be remanded but are considered suitable for release subject to EM provisions.

2. FURTHER DETAIL ON THE REPORT TOPIC

OPERATIONAL PLANNING

- 2.1 Police Scotland, through Criminal Justice Services Division (CJSD) have been working with Criminal Justice Partners including Justice Social Work, Scottish Courts and Tribunal Services, Community Justice Scotland, COPFS and Scottish Government towards delivery of the project.
- 2.2 Scottish Government have continued to press for ambitious timescales for implementation. They have recently advised a commencement date in March 2022 with implementation from May 2022.

- 2.3 Partnership readiness is a significant dependency for implementation and Scottish Government has accepted that implementation will be effectively dependent upon all partners being ready to proceed. Subject to any specific guidance or instruction from COPFS in relation to reporting, Police Scotland is prepared for implementation. Whilst preparatory work is in place, there will undoubtedly be an increase in demand as a consequence. This single service demand is discussed in more detail from section 2.7 of this report.
- 2.4 Understanding collective public service demand has been an ongoing challenge for the group. Whilst there is no directly analogous situation in Scotland, Electronic Monitoring of Bail does exist in England and Wales.
- 2.5 Pre-pandemic data obtained from England and Wales shows that the number of individuals subject to EM Bail consistently sat just below the 3000 mark. However, as a result of the pandemic this had increased to just over 6000 at 31 March 2021. Whilst the level of use in Scotland by the Judiciary is unclear, based on 10% of the population of England and Wales would lead to an estimate of 500 to 600 persons on EM Bail at any one time. However, this will be heavily influenced by policy and sentencing decisions.
- 2.6 At this stage it remains an unknown in terms of how often the court will add Electronic Monitoring as a condition of bail.

IMPACT ON POLICE SCOTLAND

- 2.7 During early work, it was identified that monitoring Bail through electronic means was likely to result in an increase in the number of reports of bail breaches to the organisation.
- 2.8 The current position with managing bail conditions such as curfews is based on the assessment of risk and availability of resources to confirm compliance. In effect, breaches are either identified proactively by officers conducting 'spot checks' or reactively when police are called to a matter at which time the offence is identified. As such, it is recognised that the police will not identify every breach of bail.
- 2.9 However, with the application of EM Bail this offence rate will be detected on the majority of occasions, if not all, through the effective use of technology. Whilst positive in terms of keeping people, places and communities safe, it will realise a likely large increase in demand on local policing resources. A reporting

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procedure is now being developed between Police Scotland and the Electronic Monitoring Service provider.

2.10 Any increase in the reported breaches will have an impact on the following policing areas –

- Contact, Command and Control Division (C3) – an increase in calls/notifications to record.
- Local Policing Divisions – an increase in requirements to attend at reported breaches and investigate whether or not a crime has been committed. In rural, remote or island communities it may increase travelling times for officers.
- Criminal Justice Services Division (CJSD) – an increase in those who may come into and remain in custody; an increased number of reported cases being managed through Case Management; an increase in the number of orders to be added to the Criminal History System etc.

As the level of compliance with EM Bail orders is not known at this time it is not possible to predict what the actual levels of demand on the service will be.

2.11 Post implementation, there will be a quarterly review to better quantify demand, the impact on the organisation and to take account of any learning from partners.

3. FINANCIAL IMPLICATIONS

3.1 There are financial implications in this report.

3.2 Based upon the assumptions made, there will undoubtedly be an additional cost to Police Scotland which cannot be accurately quantified at this time.

3.3 In line with the quarterly review, the financial impact on the organisation will be assessed based on the available data at that time.

4. PERSONNEL IMPLICATIONS

4.1 There are no further personnel implications associated with this paper beyond those outlined in the financial implications.

5. LEGAL IMPLICATIONS

5.1 There are no further legal implications in this paper to those listed above.

6. REPUTATIONAL IMPLICATIONS

6.1 There are further reputational implications associated with this paper.

6.2 As a partner within the Criminal Justice System, it is rightly expected that the Police will support the management of offenders who are subject to bail orders. The unknown volume and demands on current resourcing profiles will likely add to demand and impact on operational capacity.

7. SOCIAL IMPLICATIONS

7.1 There are further social implications associated with this paper.

7.2 It is widely acknowledged that the impact of short term periods of imprisonment can have a detrimental effect on individuals. This can affect their relationships with family, ability to retain employment and broader social impact. The ability to remain within the community whilst awaiting trial would allow for support to be provided through a number of agencies including the use of supervised bail, where available.

7.3 The introduction of electronic monitoring and the Police response to managing those subject to it in the community supports this broader consideration.

8. COMMUNITY IMPACT

8.1 There are further community implications associated with this paper.

8.2 Where individuals who may have been considered for remand are released on Electronically Monitored Bail, it may have an impact on the victims of crime and their confidence in the Criminal Justice System.

9. EQUALITIES IMPLICATIONS

9.1 There are no further equality implications associated with this paper.

- 9.2 Article 5(3) of the European Convention on Human Rights states that "Everyone arrested or detained...shall be entitled to trial within a reasonable time, or to release pending trial". Corresponding provisions within Scottish Domestic law give this effect and it is anticipated that the availability of Electronic Monitoring will further expand the availability of Bail.
- 9.3 The measures which will be implemented support the rights under Article 5(3) in keeping with our overall approach as a rights based organisation.

10. ENVIRONMENT IMPLICATIONS

- 10.1 There are no further environmental implications associated with this paper.

RECOMMENDATIONS

Members are invited to discuss the content of this report.