

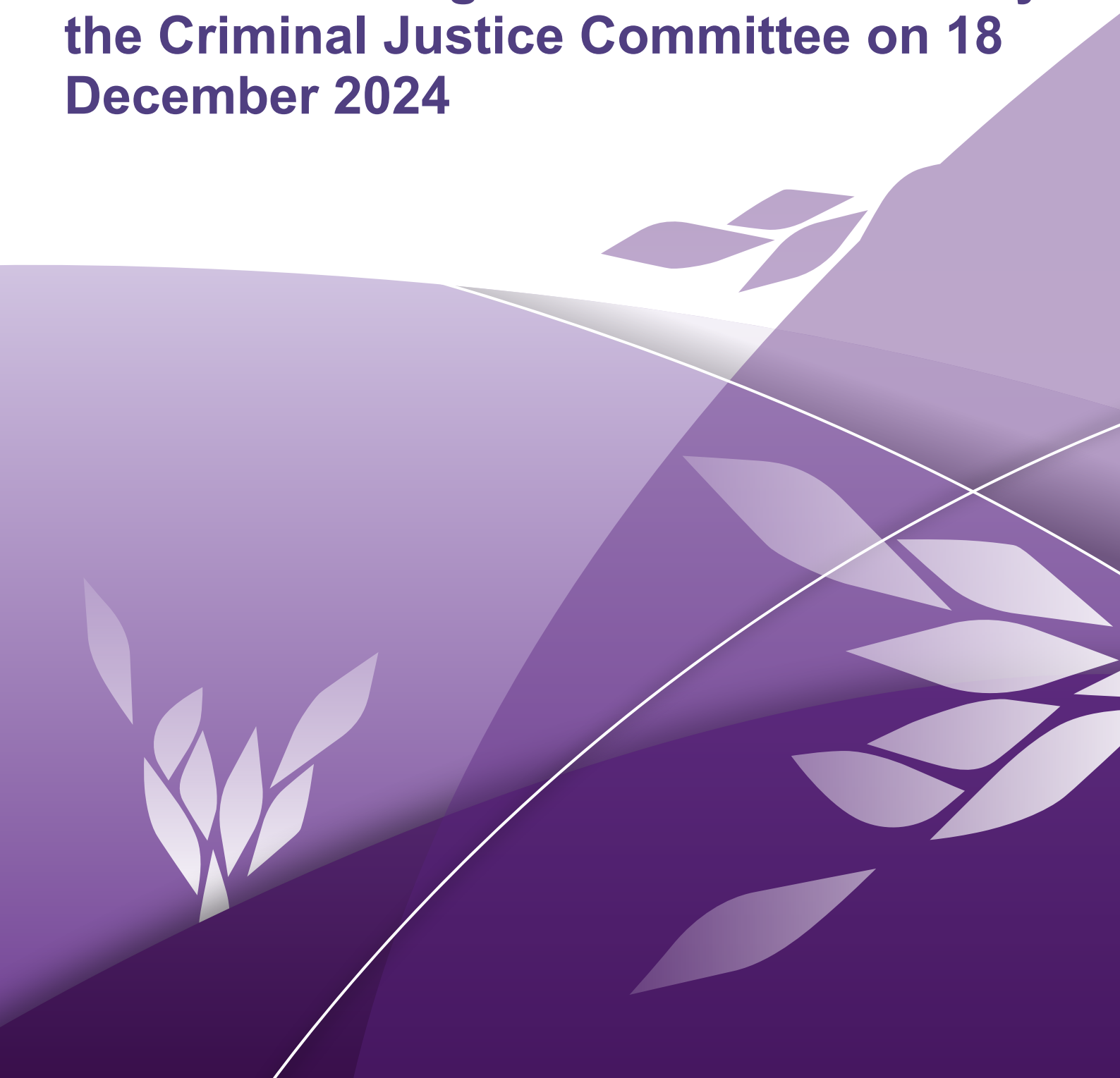


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Criminal Justice Committee

Subordinate Legislation Considered by the Criminal Justice Committee on 18 December 2024



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Home Affairs, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on 18 December 2024, the Criminal Justice Committee considered the following affirmative instruments:
 - [The Electronic Monitoring \(Use of Devices and Information\) \(Scotland\) Regulations 2025 \[draft\]](#)
 - [The Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2025 \[draft\]](#)
2. The instruments are subject to the affirmative procedure.

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

3. The Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 [draft] were laid before the Scottish Parliament on 22 November 2024 and referred to the Criminal Justice Committee.
4. The [Management of Offenders \(Scotland\) Act 2019](#) (“the 2019 Act”) makes provision allowing the courts, when making certain disposals, to require a person to submit to electronic monitoring of their compliance with a condition of their disposal. The Scottish Ministers can do the same when imposing conditions on an individual being released from custody on licence.
5. Section 9 of the 2019 Act gives the Scottish Ministers the power by regulations to regulate the use of electronic monitoring devices and the information obtained from them.
6. The regulations will limit the use of GPS enabled electronic monitoring devices to monitoring certain conditions imposed on an individual when released from custody by the Scottish Ministers on a home detention curfew licence. It will also allow existing radio frequency electronic monitoring devices to continue to monitor the court disposals set out at section 3 of the 2019 Act and the conditions imposed on an individual on their release on licence set out at section 7 of that Act.
7. The instrument also clarifies the maximum period for which information obtained through the use of radio frequency and GPS enabled electronic monitoring devices would be retained and the purposes for which the Scottish Ministers, or those acting on their behalf, may share that information.

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

8. The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft] was laid before the Scottish Parliament on 18 November 2024 and referred to the Criminal Justice Committee.
9. The main policy objective of the Order is to allow Police Scotland to request relevant extract conviction information from Scottish Courts and Tribunals Service to support applications for Sexual Harm Prevention Orders (SHPO) and Sexual Risk Orders (SROs).
10. The Order ensures that limitations on protections under section 4 of the [Rehabilitation of Offenders Act 1974](#) apply to the new behavioural orders (SHPOs and SROs) introduced by the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#).

Consideration by the Delegated Powers and Law Reform Committee

11. The Delegated Powers and Law Reform Committee ("DPLR Committee") considered the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 [draft] at its meeting on 10 December 2024 and reported on it in its [76th Report, 2024](#). The DPLR Committee [raised two questions with the Scottish Government](#) but made no recommendations in relation to the instrument.
12. The DPLR Committee considered the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft] on 26 November 2024 and reported on it in its [70th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Consideration by the Criminal Justice Committee

13. Motions S6M-15677 and S6M-15515 were lodged proposing that the Committee recommends approval of the instruments. The Committee took oral evidence from Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs ("the Cabinet Secretary") and her officials, at its meeting on Wednesday 18 December 2024.
14. During the evidence sessions, the Cabinet Secretary outlined the purpose of each of the instruments to the Committee.
15. In response to questions around timescales relating to the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025, the Cabinet Secretary told the Committee that after the new contract with G4S came into force in 2020, the Scottish Government wanted to ensure, that their plans for electronic monitoring aligned with the community justice strategy. As such, in the first instance, the focus was on electronic monitoring of bail and on the use of electronic monitoring in community payback orders .
16. They 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, in order to test the processes. The Cabinet Secretary advised that on 17 December 2024, out of the total prison population, 138 people were out on home detention curfew and that it is anticipated that, at any one time, there may be up to about 20 people on GPS monitoring and home detention curfew.
17. She indicated that the Scottish Government plans to have an initial phase that lasts for around a year. The next stage will be to scale that up in relation to other orders, once they are sure that there are no issues with the operational processes of engagement.
18. In response to questions around the financial impact of GPS monitoring, the Cabinet Secretary advised that the GPS service will cost an estimated £210,000 per annum. She told the Committee that there is the one-off installation cost of £139.58, which covers the fitting and the removal of a tag, and that there is also a monitoring cost of £7.20 per day. The cost for radio frequency monitoring is £5.99 per day. She also stated that the the budget for electronic monitoring has had a 10 per cent uplift, meaning that an additional £500,000 has been put into the budget.
19. The Cabinet Secretary went on to answer questions from Members on the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft]. She told the Committee that the Order closes a potential gap stemming from the introduction of sexual harm prevention orders and sexual risk orders in March 2023. Police Scotland raised the issue of them having difficulty with requesting extract conviction information from the Scottish Courts and Tribunals Service, in support of an application for those behavioural orders, with the Scottish Government in August.
20. Louise Miller, Legal Directorate, Scottish Government, went on to say that there was previously an exception in place for the old sexual offences prevention orders

and risk of sexual harm orders but the legislation relating to the old orders was repealed in March 2023. As there is not currently an exception in place for the new orders to allow evidence about previous convictions to be admissible in the applications, Police Scotland has had difficulty requesting extracts. The Order will therefore enable Police Scotland to lodge extract conviction information on spent convictions at the same time as making an application for the new orders.

21. The Cabinet Secretary also noted that, based on the information received from the courts and Police Scotland, she does not believe there has been a negative impact due the change not having been in place already.
22. Following the evidence sessions, the Cabinet Secretary moved the motions in her name:
 - S6M-15677—That the Criminal Justice Committee recommends that the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 [draft] be approved, and
 - S6M-15515—That the Criminal Justice Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft] be approved.
23. Motions S6M-15677 and S6M-15515 were agreed to without debate or dissent.

24. **The Criminal Justice Committee recommends to the Scottish Parliament that it approve the Electronic Monitoring (Use of Devices and Information) (Scotland) Regulations 2025 [draft] and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2025 [draft].**

