

Annex C – GPS Tagging on licence pilots

1. INTRODUCTION

Following a commitment in the Mayor's Office for Policing and Crime (MOPAC)'s London Knife Crime Strategy, the GPS for knife crime pilot for offenders released on licence was launched in February 2019 and was expanded in March 2021 to include high risk domestic abuse perpetrators. The MOPAC GPS for release on licence pilots are open to any offender being released from a London prison to an address in a London borough. The current end date of the pilots is 31st March 2022 with some offenders continuing to be monitored until 31st September 2022.

2. CONTINUITY BETWEEN THE CURRENT PILOT AND THE NEW PILOT

In general the GPS data involved in the GPS on licence pilots will be the same in type and scope as that involved in the previous GPS pilots and will be processed for the same purpose, namely to enforce the sentence imposed on the individual, to monitor compliance and to reduce the risk of further crime. Specifically the following factors will continue in to this new pilot which are relevant to data processing:

- The monitoring provider for this new pilot will be Buddi and the same protection for data storage and retention will still apply.
- The data accessed by MOPAC will continue to be used mainly for evaluation purposes – as described in the main document.
- The same agencies will have access to the data involved in this pilot, with the exception of HMCTS, who will have no involvement in this new pilot.
- The type of data will remain the same, as described in Annex B.

3. OPERATIONAL DIFFERENCES BETWEEN THE PAST AND NEW MOPAC GPS PILOTS

3.1 Whose data

The major change in these pilots is that all data collected and processed will be of those who have committed a criminal offence and are being released on licence with GPS monitoring as a mandatory condition of their licence (rather than as part of a Court Order). The data will be used to monitor compliance with specified licence conditions and only applied to licences when this is necessary and proportionate to the assessed case and using the approved licence condition wording (see Annex X). To be eligible an offender must be:

- Aged 18+
- Serving a custodial sentence for
 - either a knife possession offence or another offence which involved the use of a knife or bladed object
 - OR
 - a domestic abuse related offence¹ and be assessed as posing a high risk of serious harm

¹ Domestic abuse is defined as 'Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality'

- Being released during the pilot from an eligible prison² to any London borough.
- Being released to a suitable address to enable charging
- Additional screening of cases will be done locally by Probation to ensure that only those cases whose risk and need can be proportionately and justifiably managed by GPS have it included in their licence conditions (for example cases who pose a risk to a known victim, cases assessed as high risk of serious harm, cases with a previous pattern of knife related violence).

3.2 Volume of those affected

Between February 2019 and 30th April 2021, 488 knife crime offenders and 16 domestic abuse perpetrators on licence were monitored as part of this programme. In period between 1st May 2021 and 30th March 2022, it is estimated that up to 550 offenders on licence will be monitored as part of the MOPAC GPS on licence pilots. It is possible that the scope of the pilot will be extended to include new cohorts, however, as it currently stands this will only include knife crime offenders and domestic abuse perpetrators on licence. This document will be updated to reflect any change in the scope of the pilot.

3.3 Relationship with subjects

The personal and location data involved in this pilot will only be for those subject to licence release from custody following a sentence of imprisonment, see section 5 for the lawful basis to collect this data. Only those subjects who have a specific, approved GPS condition included in their licence will have their data collected. One consequence of this difference is that if enforcement action is taken due to non-compliance this will usually result in a series of warning letters followed by being recalled back to custody, rather than a Court breach. Enforcement decisions are not automated and will be taken by the Offender Manager.

3.4 Criteria for crime mapping

Crime mapping will also take place (see section 2.4.2 of the main document). This is where location data from the GPS tag is matched against MPS crime records. Crime mapping will only be applied to offenders who are assessed to pose a risk of reoffending of 50% or more over two years, meaning that according to this assessment individuals with their characteristics are more likely than not to reoffend during this period. This assessment is made using the Ministry of Justice approved Offender Group Reconviction Scale (OGRS) and is a recognised and validated evidence-based assessment commonly used through the criminal justice system.

4. THE PURPOSE OF PROCESSING

Primarily all data set out in Annex B is to support the case management of individuals subject to a GPS licence condition following release from prison. Alongside case management the pilot aims to test GPS as a tool for reducing the likelihood of offenders further offences.

² Pilot boroughs - Lambeth, Lewisham, Southwark, Croydon, Westminster, Newham, Tower Hamlets, Hackney, Waltham Forest, Camden, Islington, Haringey, Enfield, Barking & Dagenham, Redbridge, Greenwich, Ealing, Wandsworth, Hammersmith & Fulham, Barnet, Brent, Bromley and Hounslow.

Specifically, the aims of this pilot include:

- That GPS data is used to improve the management of the risk posed to known adults (including past, current and future partners), children and the public.
- That GPS improves the enforcement of licence conditions and increases deterrence from further offending.
- That location data is used to challenge offender's thinking, lifestyle and behaviour and improves rehabilitation.
- That GPS location data is shared appropriately for enhanced crime detection.

The processing of the data will also be used to evaluate the pilot including the outcome for each specific case. All data collected is required for the aforementioned purposes.

5. LAWFUL BASIS

Under GDPR article 6(3) public task: "the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law" MOPAC has the lawful basis to deliver GPS tagging.

The legal framework for electronic monitoring on licence comes under the powers conferred by sections 62(2B) and 76(3) of the Criminal Justice and Court Services Act 2000. The specific statutory instrument to enable this pilot is entitled The Electronic Monitoring (Responsible Persons) (Amendment) Order 2018 and was made by the Secretary of State on 26th November 2018.

The processing of the data referred to in Annex A is necessary for several of the conditions set out in paragraphs 5 and 6 of Schedule 2 and paragraph 7 of Schedule 3 of the DPA. Specifically:

Schedule 2 - paragraph 5(a) the administration of justice; paragraph 5(c) for the exercise of any function of the Crown, a Minister of the Crown or a government department; paragraph 5(d) for the exercise of any other functions of a public nature exercised in the public interest by any person; paragraph 6 where the processing is necessary for the purposes of legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason or prejudice to the rights and freedoms of legitimate interests of the data subject.

Schedule 3 – paragraph 7(1)(a) administration of justice; paragraph 7(1)(b) the exercise of any functions conferred on any person by or under an enactment, or paragraph 7(1)(c) for the exercise of any function of the Crown, a Minister of the Crown or a government department.

In addition, information may be shared with relevant Criminal Justice and Civil Law bodies in accordance with section 35 of the DPA and paragraph 6(a) of Schedule 3 (i.e. for the purpose of, or in connection with, any legal proceedings including prospective legal proceedings). Whether section 35 applies will be considered on a case by case basis.

Furthermore, section 29 of the DPA, provides an exemption from a sub set of the DPA requirements in processing of personal data, if it is for prevention or detection of crime purposes. This is not a blanket exemption and so whether this exemption applies or not, will be considered on a case by case basis. In any event, a Schedule 2 condition and for sensitive personal data, a Schedule 3 condition, will still need to be satisfied.

In addition, information may need to be shared with relevant Criminal Justice and Civil law bodies in accordance with paragraph 6(a) of Schedule 3 i.e. for the purpose of, or in connection with, any legal proceedings including prospective legal proceedings.

It is also recognised that the processing of personal and personal sensitive information engages Article 8 of the European Convention of Human Rights i.e. the right to respect for private and family life. The Ministry of Justice considers that it is both lawful and proportionate to process the data referred to in Annex B, location data and photographic identification, in order to comply with relevant electronic monitoring orders and, where justified, to assist the Police with criminal enquiries.

We are satisfied that the data collected will be only that which is necessary to meet the requirements set out above. Data will only be processed for the purposes for which it was obtained and for other purposes which are not incompatible, such as (and only where justified) the prevention or detection of crime.

6. ROLES AND RESPONSIBILITIES

All of the same stakeholders will be involved in this pilot as described in the main document, with the exception of HMCTS, who will not play any part in this pilot.

As part of the MOPAC GPS on licence pilots the Metropolitan Police Service have been given information about the eligibility criteria of the pilots and encouraged to communicate with Probation (NPS and CRC) to nominate cases that they are aware of who may be suitable. This process of information sharing is only a more focused version of the intelligence exchange on cases at the pre-release stage that would normally happen between these agencies. This pilot does not direct that any additional information is shared or that it is shared with any other new agency and the basis for this information sharing is covered in the protocols already in place between these agencies.

The only additional agency involved will be Her Majesty's Prison Service (HMPS), but they will not receive any data as part of this pilot and will have no access to any additional information as a result of this involvement. Their role will only be to include GPS as a licence condition when they judge this appropriate and to allow tags to be fitted at the point of release. HMPS therefore are neither a data processor nor a data controller and any data they record is outside of this pilot and is done under their own information security processes.

7. PROPORTIONALITY

7.1 **Crime Mapping**

Because an offender is deemed to be in breach of their licence if he/she commits a further offence during the operational period, the location data on an offender's whereabouts can be matched against reported crimes, as long as this is proportionate to their risk of reoffending. Data is then used to ensure that the offender is complying with the condition not to commit further offences.

Crime mapping will only be applied to those who have an OGRS score of 50% or more. This ensures that crime mapping is only used in cases in which it is proportionate to individual's the risk of reoffending. A single point of contact within the MPS will upload offences onto the monitoring platform; restrictions will be in place to limit the time period and geographical area being matched (for a wider search, an External Agency Request would need to be made).

8. ADDITIONAL RISKS FOR THE NEW PILOT

Principles	Identified Risk	Potential impact on the monitored individual	Level of Risk (impact)	Mitigation
Data minimisation	GPS technology provider collects a greater level of data than necessary	High	Medium	<p>The level of data access for Probation Responsible Officers (ROs) is dictated by the specific licence conditions for that case. The subject will be notified prior to the tag fitting about the use of all whereabouts data.</p> <p>For cases with an inclusion or exclusion zone only, the RO will only have access to data in relation to that zone and will not have unrestricted access to the Buddi system to view the whereabouts of the subject. GPS data will be collected by the GPS provider outside these zones and there is a legal basis for the use of the data in crime mapping for offenders with an OGRS score of more than 50%.</p> <p>In all other cases, this data will not be shared with any delivery partner unless an External Agency Request (EAR) is made and meets the criteria outlined by the MoJ. A record of all EARs is kept by Buddi who have been provided with clear guidance on how to deal with these, including the escalation process to the MoJ for borderline cases. The log of EAR requests is sent to the MoJ on a regular basis.</p> <p>For cases with the 'trail monitoring' licence condition, the RO has access to any data for the case that they are responsible for the purposes of offender management.</p>

				<p>Data will be retained for a period no greater than 6 years from the expiry of the licence condition.</p> <p>Where possible, data will be stripped of personal identifiers and saved by MOPAC for evaluation purposes prior to the 6-year period. Data may be held by the Ministry of Justice for the full 6-year period in line with their data retention policy. Where data transfers take place, this will be completed via secure email.</p>
Lawfulness, fairness and transparency	GPS data collected under an enforceable licence condition for a disproportionately long period on licence	High	Medium	<p>The length of the GPS monitoring on licence is legally under the discretion of the allocated probation Responsible Officer, based on their assessment of the case. However, as part of this pilot training and written guidance is being provided to these staff on how they may interpret the use of GPS for an individual and illustrative example based on previous learning from the national licence pilots. As part of the regular management of the pilot there will be reviews of the length of monitoring and processes have been designed to prompt Buddi to issue reminders and queries about the end date of monitoring. Should subjects be monitored for a longer than average length of time (3-6 months) then challenges will be made to the Responsible Officers to ensure sufficient justification is in place to make this proportionate.</p>
Lawfulness, fairness and transparency	That GPS is applied to the licences of offenders not in scope of this pilot.	High	High	<p>Probation Responsible Officers have the discretion as to whether to propose GPS as a licence condition, but they have been provided with clear checklists to screen cases. In addition, Prison Governors have been provided with guidance on which individuals are eligible and suitable for this pilot. Prison Governors have the ultimate authority on whether a licence condition is approved as suitable for a particular case. For cases being re-released following recall then the Home Office Public Protection</p>

				<p>Casework Section (PPCS) have this responsibility and they have also been provided with clear guidance on eligibility. Finally, Buddi have been instructed to provide a final screening of these cases before GPS tags are fitted. As long as they are eligible, the discretion about whether GPS can be included as a necessary and proportionate licence condition resides initially with the Responsible Officer and finally with the prison Governor.</p>
Integrity and confidentiality	<p>The MPS view and use GPS location data without permission or obtain the data through improper channels</p>	High	High	<p>Data will only be shared by Buddi with the MPS when necessary, justified and proportionate to do so, either via the crime mapping process or the EAR process.</p> <p>The location data is stored on the secure Buddi Eagle database, which only Buddi staff have full access to. Probation Responsible Officers are provided with log in for this system, through which they can access information about their own cases only. Some ROs (only those managing cases with the 'trail monitoring' condition) have unrestricted access to the Buddi Eagle system to view whereabouts data for their own case, this does not include access to any data that they would not already have provided to Buddi. ROs can only access cases for which they have a statutory duty to supervise.</p> <p>If information is required for reasons other than those specified above, the requestor will need to submit an External Agency Request. These will be scrutinised by the monitoring team and, in some cases, by the MoJ and information will only be released in accordance with the Data Protection Act.</p> <p>All stakeholders must hold the data securely in accordance with relevant policies or detailed technical specifications within relevant contracts, which must align to the Data Protection Act.</p>

				<p>All stakeholders must ensure the integrity and confidentiality of the information they hold.</p> <p>All staff that have access to the information must be suitably trained and security cleared. Training for probation staff includes guidance on data sharing with the MPS, and reminders are sent out. The 'Offender Manager guide' to the pilot, which is given to each RO with a new case on the pilot, includes an additional reminder that data should not be shared with external agencies (including the MPS).</p> <p>Stakeholders must make themselves aware of, and adhere to, their organisation's information security policies and procedures in regard to handling data in a manner appropriate for the assigned Government Protective Marking, which will usually be Official or Official Sensitive.</p> <p>MOPAC Data Protection Officer (DPO) or a MOPAC director must be informed of all information breaches asap and within 24 hours of the occurrence. The DPO will complete an assessment of the risk to determine the next steps. If a breach is considered 'notifiable', the Senior Information Risk Owner (SIRO) must be informed asap, and will notify the Information Commissioner's Office (ICO). The ICO must be notified within 72 hours of us becoming aware of the breach.</p> <p>If the incident is considered serious, the lead manager must immediately inform the appropriate HMPPS Senior Official. All contracted providers should report the incident through the contractual line (designated contract manager). An investigation should take place into the circumstances of the loss to ensure that lessons are learned and shared where necessary.</p>
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Integrity and confidentiality	Automated emails sent from Buddi to probation staff are breached	High	Low	<p>All emails containing personally identifiable data in the body or subject of the email are sent via the Buddi CJSM email address and are only sent to other secure email addresses (all probation staff email addresses are secure).</p> <p>Automated emails sent from the Buddi 'Eagle' system to notify probation staff of breaches or to send a weekly summary of top locations visited (for those subject to trail monitoring) cannot be sent through CJSM but are still sent using encrypted emails. There is no personally identifiable data in the body or description of the email, instead all personally identifiable data are contained in a password-protected PDF attachment.</p> <p>Passwords are sent separately using the CJSM system and will be changed on a quarterly basis.</p>
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