Electronic Monitoring in Scotland

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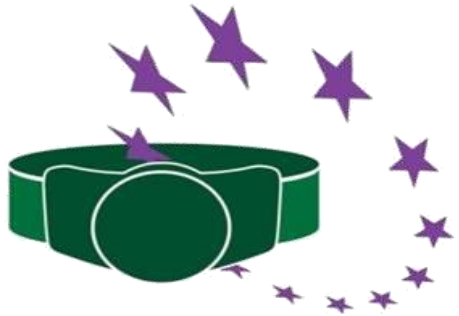
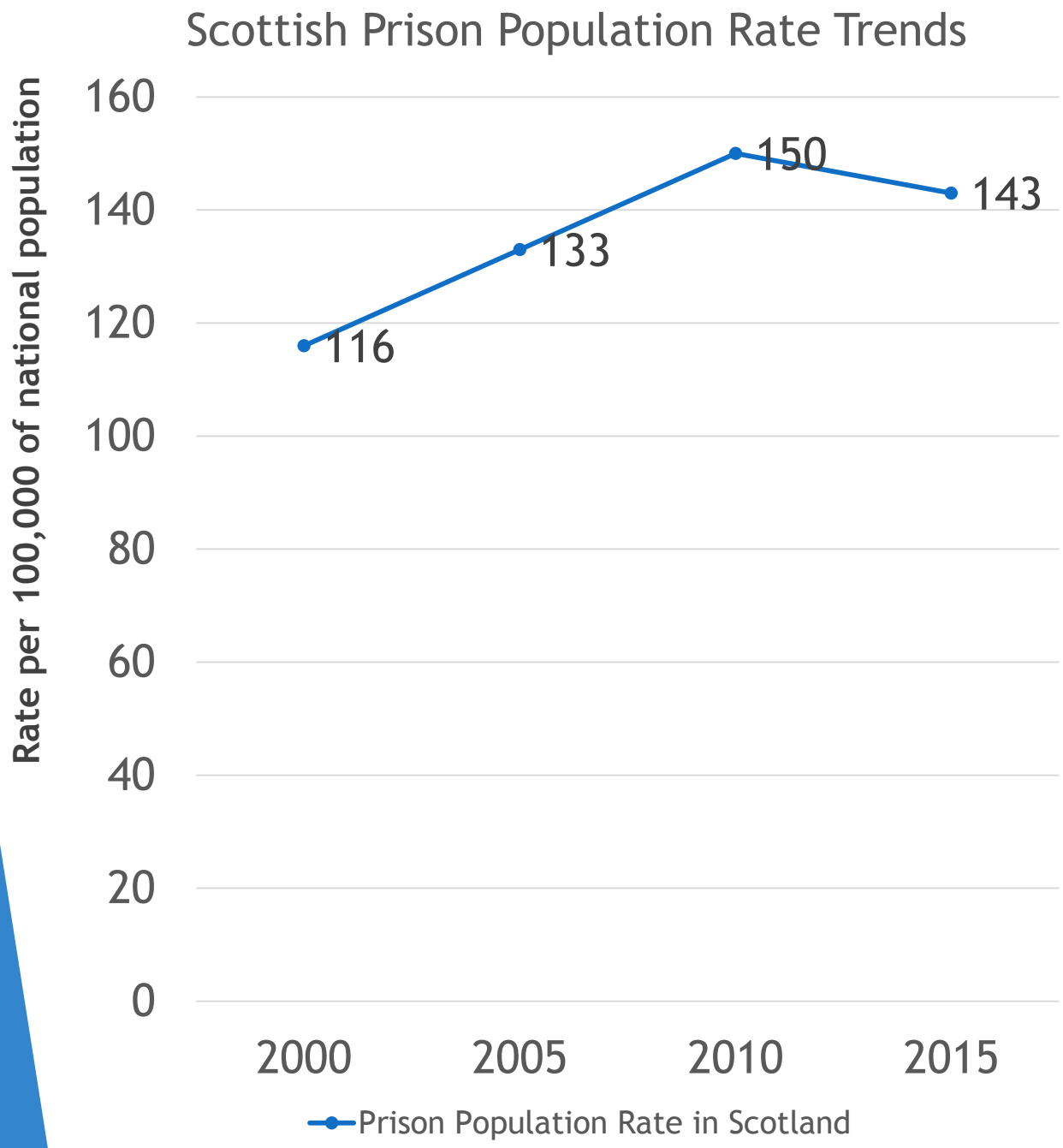
Overview

- The study: methods and the Scottish sample
- Current uses of electronic monitoring in Scotland
- Key research findings
- Effectiveness and impact of EM
- Reflections on the future of EM
- Recommendations

The Study: Scottish sample

- Literature review, process mapping, available statistics.
- Ethnographic observation: 53 hours observation with field officers and at the National Electronic Monitoring Centre.
- Interviews: 30 interviews conducted across different stakeholder organisations and geographic locations:
  - G4S Scotland
  - Criminal justice social workers
  - Members of the judiciary
  - Scottish Prison Service
  - Representative organisation (3rd sector)
  - Parole Board
  - Police Scotland
  - Scottish Government Justice





Why the increasing focus on electronic monitoring as an alternative to custody?

Scotland has one of the highest prison population rates in Western Europe.

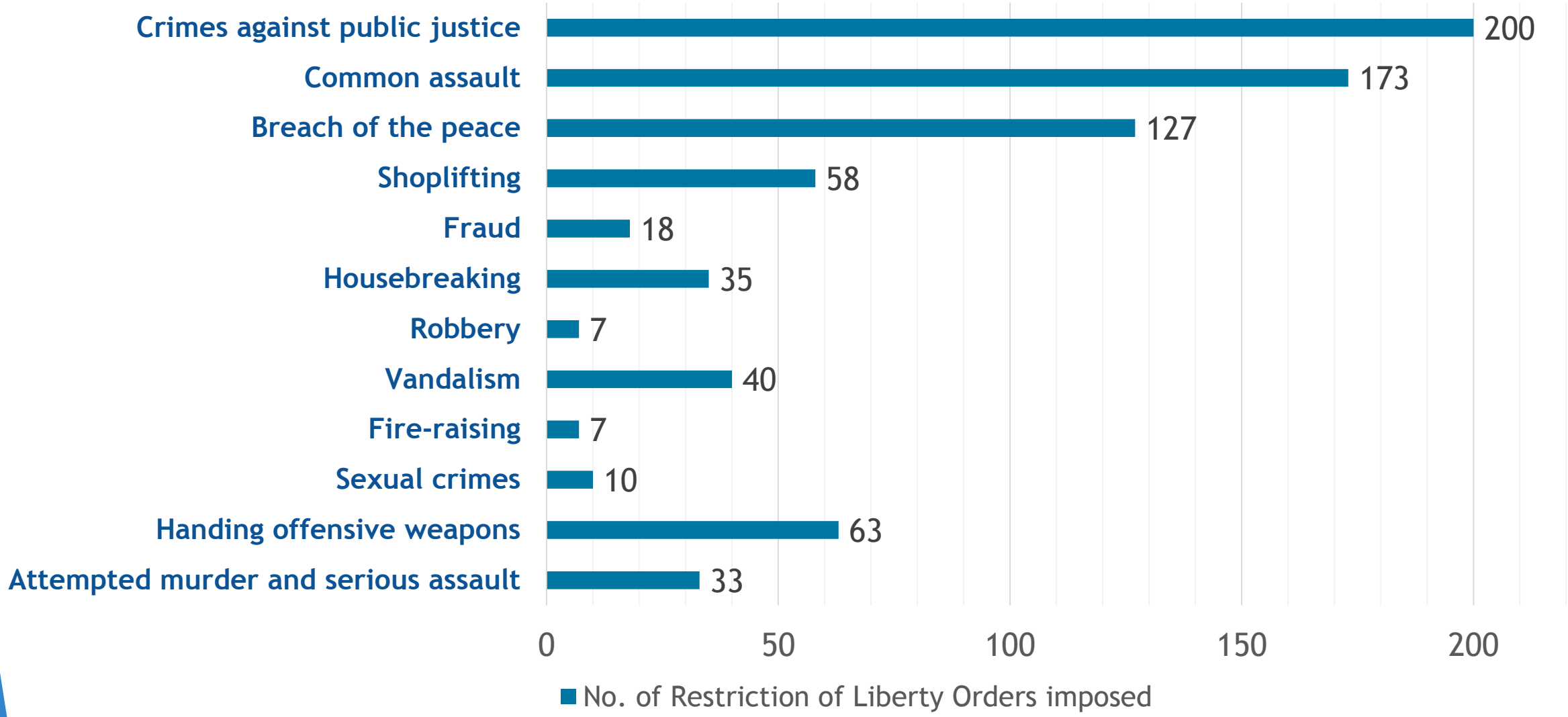
The number of women in prison has doubled in 10 years. Almost two thirds of prison receptions each year are for remand.

All of Scotland's prisons except one are maximum security facilities.

Current Uses of EM in Scotland

- A private sector provider (currently G4S) is subcontracted by Scottish Government Justice for national EM service provision.
- Technology: From 2002-2015, radio frequency (RF) tags only.
- Modalities: Electronic monitoring is available in a few forms:
  - Court order: Restriction of Liberty Order (RLO), or an EM movement restriction condition following breach of a Community Payback Order.
  - Early release from prison: Home Detention Curfew (HDC) licence.
  - Post-release: Parole licence with an EM condition.
- Currently, vast majority of EM orders are 'stand alone.'
  - No supervision; no work, study or treatment requirements.

Electronically monitored orders were imposed by Scottish courts as an alternative to custody for a diverse range of crimes in 2013-2014.



People with a Charge Proven in Scotland, 2013-2014: Number of Restriction of Liberty Orders (EM) imposed as Main Penalty by Main Type of Crime/Offence. Source: Scottish Government (2014: pg 40)

Variability in the Use of EM Court Orders

In 2015, some sheriffs and courts imposed Restriction of Liberty Orders (RLOs) extensively (*n* = no. of orders), whereas others barely made use of it:

- Courts which used RLOs a lot: Glasgow (314), Kilmarnock (196), Dundee (189), Hamilton (154), Dunfermline (147), Livingston (110).
- Courts which rarely used RLOs: Arbroath (1), Jedburgh (4), Stirling (6), Falkirk (6), Greenock (9), Inverness (17), Paisley (18), Aberdeen (19).
- In 2015, the rate of Restriction of Liberty Orders imposed by sheriffs in Glasgow was **256% higher** than that of their Edinburgh counterparts, with 314 RLOs imposed in Glasgow compared to 88 RLOs in Edinburgh.
- Some court areas had a marked rise in the use of electronically monitored orders, for example, in Kilmarnock 60 RLOs were imposed in 2014, and 196 RLOs in 2015, which signals **a 226% increase in one year**.

Source: G4S (2015, 2016)

Key Research Findings

Current uses of EM in Scotland are simple and straightforward:

- Mostly standardised regimes: e.g., 7:00pm – 7:00am, 7 days week.
- Examples of flexibility and creativity are currently not widespread.

Private sector EM service monitoring mostly ‘stand alone’ orders = limited integration and multi-agency collaborative work to date.

- Consensus about need to integrate EM with options for individualised supervision (statutory) and/or support (third sector, peer supports).

Being responsive to issues of diversity and vulnerability matters to Scottish practitioners and policymakers.

- Interviewees spoke of importance of tailoring EM to diverse needs of offenders and victims. A social justice ethos was evident.

Several different participants (but not all) express moderate confidence in current inter-agency mechanisms to assess and manage risk:

- Risk assessment: conducted by criminal justice social workers;
- Decision-making and oversight of criminogenic risk management and public protection: current responsibility of authorising agencies (courts, prisons, parole board, MAPPA);
- Operational risk management: G4S field officers (usually lone workers on evening shifts, e.g. 3pm - 1am) and management:
  - National Electronic Monitoring Centre offers 24 hour/7 days service.
  - Nearly all G4S EM staff interviewed asked for more proactive and preventative approach to inform of potential risk to field officers.
  - They spoke of good relationships/responses if they report concerns about risk (e.g., threatening behaviour) to authorising agencies.

Breach and Non-Compliance

With breach decision-making, reporting timeframes and responses, differences of opinion are mirrored in differences in practice:

- Breach policy and violations are set out by the Scottish Government at a national level and in contractual arrangements with the private EM services provider, which is currently G4S.
- Some (but not all) of the judiciary want stricter and swifter reporting of non-compliance to them, not through criminal justice social workers and not allowing violations to accrue.
- ‘Special Sheriffs’ set up personalised reporting requirements and time thresholds with G4S which are usually more strict than ‘standard’ national thresholds.

Breach and Non-Compliance

“I wasn't satisfied or I was quite shocked when I started imposing [Restriction of Liberty Orders] to realise the level of non-compliance that was acceptable before reporting to sheriffs in the standard report… Their [the Scottish Government’s] criteria I think are completely unrealistic and presumably they’re cost driven. I don't understand them and there doesn't seem to be any logic in them.” (Interview 16, Sheriff).

“In terms of breach, they do have **a surprising amount of leeway**, for example, people accrue small absences, like being late for a few minutes. In [place and name of court in Scotland], **we tightened up the national guidelines of breach**. We made it stricter, so that if a sheriff said to the person, “If you do this, I will know”, it was reported to us so that we would know. We don’t return all of them to court, but we can if we wish. Breach reports are sent to us very quickly in this system.” (Interview 19, Sheriff).

“They do actually have **a surprising amount of leeway**… So they can go through an order constantly being five, six, seven minutes late getting back into the house. In [place and name of sheriff’s court in Scotland] **we actually tightened up the national guidelines**… because we thought there was **just too much leeway**, they were too slack really.” (Interview 20, Sheriff).

Breach and Non-Compliance

“Many, many conversations [have been had] with sheriffs where the view is that if they’re in court they’re telling that person “and if you are absent I will know about it.” They then get a report at the end when the person’s completed, and that report states that they’ve had five absences and a warning letter, and the sheriff then complains that “well why wasn't I aware of that? Because I told them when I made the order I would...” Now if the judiciary fully understood the criteria… then they would recognise that that is what they are making -- unless they make a special arrangement with ourselves just to, you know, so they have to intimate to us that they want this special reporting. We will offer that as a service to them because, as we know all sheriffs are very different, but they need to be satisfied that the disposal they make meets the needs of the court. Because of some sheriffs receiving a completion report where there were absences within it that they weren't previously notified about, they took the decision that electronic monitoring wasn't for them. So [we] had a piece of work to do to try and actually get them back on board to say “well that is just a guideline”” (Interview 13, G4S).

Breach and Non-Compliance

"I think that there needs to be more education on [breach] thresholds. **I think there should be a wee bit of consistency**… that is also a reflection on our judicial system in that a lot of it absolutely depends on what day it is, what sheriff you've got, what they had for their breakfast, who was there in front of you, how good is your lawyer, you know, how straight are you [laughs] a whole range of factors. It's not necessarily a formula that if you do this and this then this happens to you, it's a whole range of things and I wouldn't necessarily want to lose that, but I think we probably need to have a wee bit more consistency in relation to people's understanding of what it is" (Interview 3, Criminal Justice Social Worker).

What might inhibit flexibility and creativity in the uses of electronic monitoring?

"It's not dissimilar to any organisation, but **the fear of being blamed for something is incredibly powerful** in [the prison service] because if you sign a piece of paper to say this person should get something that allows him access to the community and something goes wrong, then there is a fear that people will say "well that's going to come back to me, I'm going to be in trouble and my job is at risk if this person does something wrong or commits another offence"… If the risk assessment, if all the information is brought to the attention of the person who makes that decision at the time and the decision is sound - then fine. But getting that across to someone who has perhaps worked in an environment where they feel that there is a blame culture then it's really hard to get across, you know, "you'll be OK, don't worry you've made that decision on a sound basis", but it's still a big factor." (Interview 15, Scottish Prison Service).

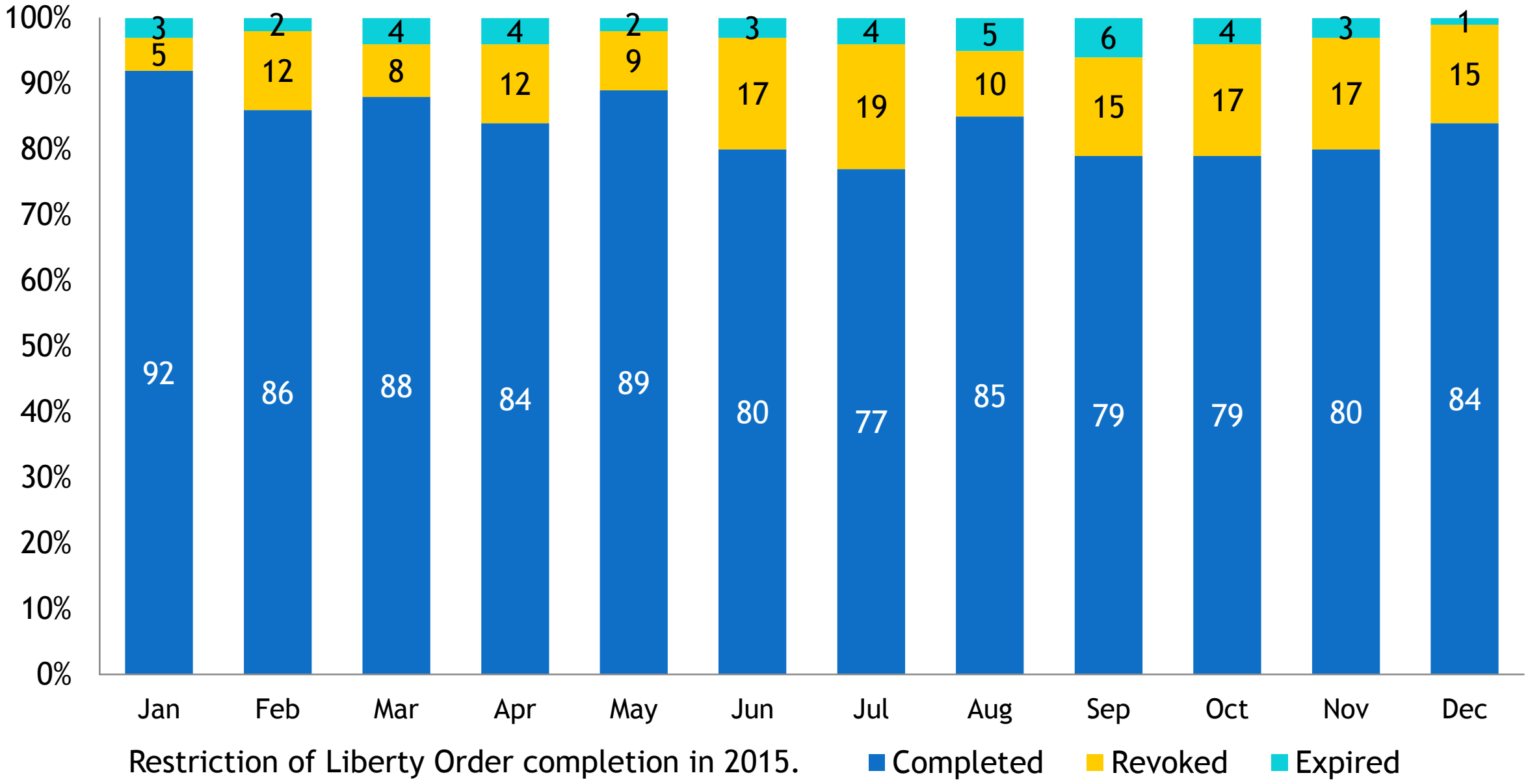
"**We tend not to take risks**, we tend to do what the Criminal Justice Social Worker recommends." (Interview 26, Scottish Prison Service).

"**Sometimes it is too risk-averse**. There is no leeway or discretion" (Interview 30, Representative organisation).

Effectiveness and Impact of Current Uses of EM in Scotland

Electronically monitored order completion:

- Order completion is not necessarily the same as compliance because people can complete their order having had instances of non-compliance/violations.
- However, there are moderately high order completion rates across the different EM modalities in Scotland.



In 2015, 8 out of 10 EM orders were completed.

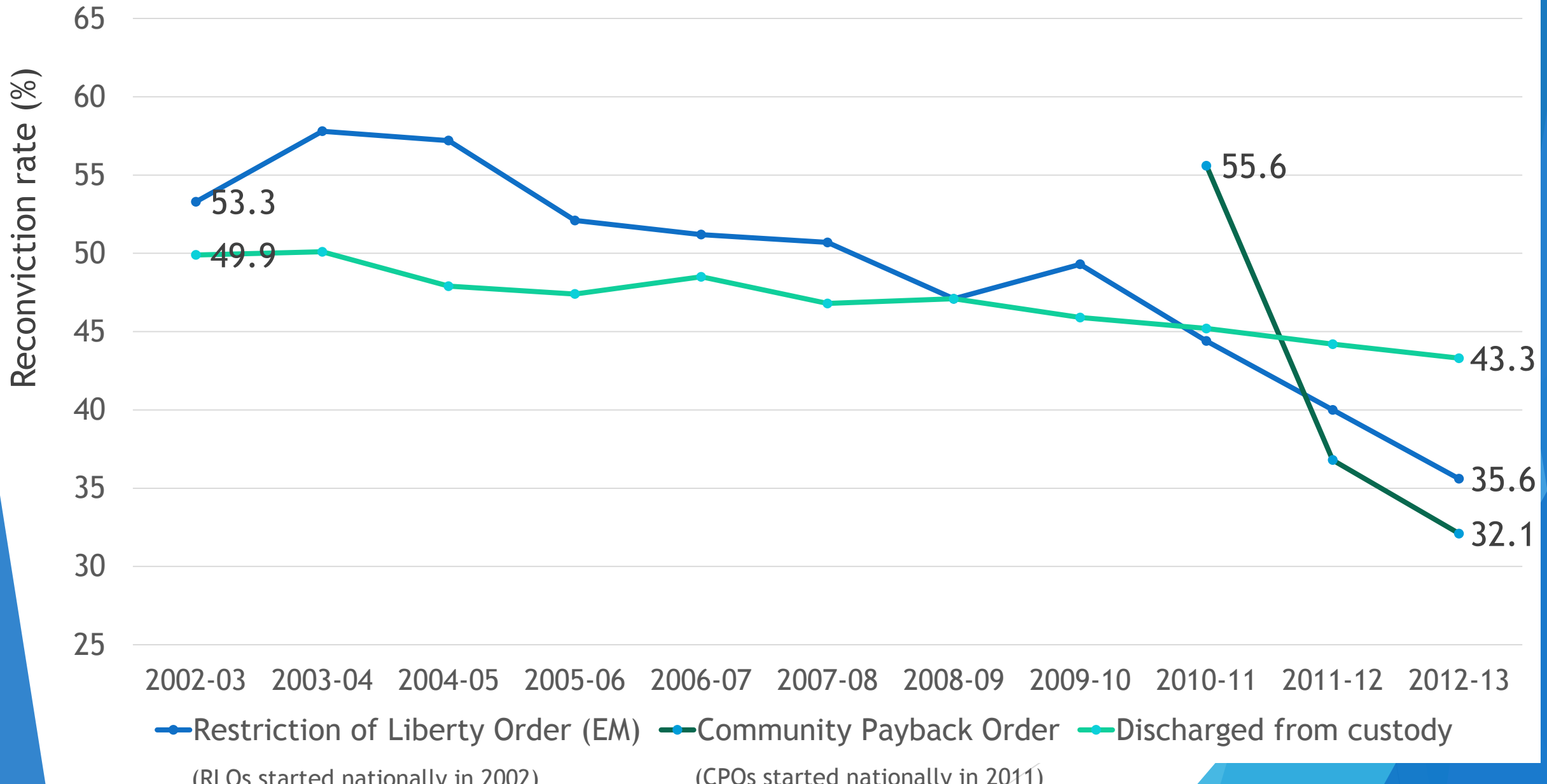
Source: G4S (2016)

Effectiveness and Impact

Reconviction rates:

- In 2012-2013, people sentenced to a Restriction of Liberty Order (EM court order) had lower reconviction rates (35.6%) in a 1 year follow-up period, compared to people released from custody (43.3%) over the same period of time (Scottish Government, 2015: 30).
- Reconviction rates are similar between Restriction of Liberty Orders (35.6%) and Community Payback Orders (32.1%) (the equivalent of a probation order).

Trends in Reconviction Rates (%) (1 year follow-up period) by Index Disposal in Scotland, 2002-03 to 2012-13



Source: adapted from Scottish Government (2015: pg 30)

Effectiveness and Impact

Costs of EM and Comparisons to Custody:

- The *average unit cost* for electronic monitoring in 2013-2014 was £743 (€1,043) (which is a significant reduction from £1,940 (€2,725) in 2012-2012).
- In 2013, the *average cost per EM order per day* in Scotland was estimated at £10.17 (€14.29).
- In 2013-2014, the *average cost per prisoner place* was £37,059 (€52,058). Per diem costs for custody are difficult to calculate.

Source: Scottish Government (2015, 2013). Currency conversion: August 2015.

Adherence to the Council of Europe Recommendations on EM

Areas of moderate adherence within current uses:

- Ethical issues (rec. 26-28): ethical consideration of diversity of monitored people is a strength among Scottish practitioners.
- Data protection (rec. 29-32): moderately strong data protection, fairly strict accountability mechanisms to Scottish Government.
- Staff (rec. 33-38): unable to offer a view about private EM staff training and skills (not the focus of this study). Field observations + field officer average length of EM work experience *suggest* adherence to these recommendations.

Adherence to the Council of Europe Recommendations on EM

Areas of basic adherence within current uses, which have the potential to be developed more strategically:

Conditions of execution of EM at different stages of the criminal process (recommendations 15-25):

- ✓ A person must be given information and give their consent to be tagged.
- ✓ Consideration given to proportionality; maximum duration of EM limited.
- ? Variable extent to which victims give *prior* informed consent to involvement.
- ✓ Decarceration: EM as a form of early release from prison is used (e.g. HDC).
- ? But what about EM as an alternative execution of a custodial sentence? Or to enable greater use of short-term prison leave to promote reintegration?

Adherence to the Council of Europe Recommendations on EM

Areas of basic or mixed adherence within current uses, with the potential to be developed more strategically:

Basic principles (recommendations 1-14):

✓ Current uses of EM in criminal justice regulated by law, data protection policies.	? Consideration of impact on the rights and interests of families and third parties in the place to which a person is curfewed and confined.
✓ Regular government inspection and avenues for independent monitoring of the agencies responsible, consistent with national law.	× In order to seek longer term desistance from crime, EM should be combined with other professional interventions and supportive measures aimed at the social reintegration of offenders.
✓ Non-discriminatory decision-making and practice on grounds of diversity (gender, religion, ethnicity, disability, sexuality).	? duration and intrusiveness proportionate to the seriousness of the offence, takes into account the individual circumstances, and regularly reviewed.

Reflections on the Future

Moderate support among interview participants for:

- Introduction of GPS tagging and tracking of *some* offenders.
- Introduction of option of a supervision requirement, with Criminal Justice Social Workers as the 'supervising officer' of an EM order.
- More creative, tailored uses of EM in response to different people and offence types (e.g., women, domestic abuse and sex offenders).

Limited support among interview participants for:

- Introduction of remote alcohol monitoring tags.
- *Increases* in data access and involvement of Police in EM. Participants were not critical of Police Scotland, just hesitant about emulating developments in England & Wales with Police-led EM.

Main Recommendations

- Introduce option of a supervision requirement within EM modalities, or enable EM as a condition of other orders.
- Clarify national breach criteria, and consolidate non-compliance reporting timeframes and processes to foster more consistency.
- Introduce and encourage wider use of mechanisms which motivate and reward monitored people for compliance.
- Abolish the statutory exclusion for Home Detention Curfews (HDC) which permanently excludes prisoners who have breached a HDC in past. It is inequitable and unjust.

Main Recommendations

- Authorising agencies should consistently instruct the private EM services provider about the number and gender of field officers needed to visit each person/household.
- Consider more creative and flexible uses of EM with people given a custodial sentence to realise greater diversion and decarceration.
- Consult and conduct more research with monitored people, families, and victims about uses and impact of EM.
- Need more awareness-raising among media, public, professionals about the purposes of electronic monitoring, as well as what the technologies can and cannot do.

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- For the Scottish and European research resources, see http://emeu.leeds.ac.uk/