

scottish justice matters

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SPECIAL ISSUE ON DESISTANCE

Edited by
Fergus McNeill

ALSO

Mike Nellis on
Electronic Monitoring

Andrew Coyle on
early prison reform in Scotland

Bernadette Monaghan on
Children's Hearings

Interview with
HMIP David Strang



DESISTANCE

MOVING ON: DESISTANCE AND REHABILITATION

Scottish Justice Matters is a publication of the Scottish Consortium of Crime and Criminal Justice (SCCCJ). The Consortium is an alliance of organisations and individuals committed to better criminal justice policies. It works to stimulate well informed debate and to promote discussion and analysis of new ideas: it seeks a rational, humane, constructive and rights-based approach to questions of justice and crime in Scotland.

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The Scottish Electronic Monitoring Consultation: Asking the Right Questions

Mike Nellis

ELECTRONIC MONITORING (EM) in Scotland was originally a pre-devolution measure, and its initial legal frameworks and service delivery arrangements mirrored those that had already been set in place in England and Wales. Three Scottish pilot sites were established in 1998, trialling radio frequency (rf) EM as a means of enforcing a stand-alone Restriction of Liberty Order. After an academic evaluation was published, Scotland, unlike England and Wales, undertook a public consultation on EM in 2000, the response to which was more supportive than expected, lending tentative legitimacy, if never great enthusiasm, to the eventual, post-devolution introduction of a nationwide EM scheme in 2002.

The opportunity for deliberation on EM now arises again. The Scottish Government published A Consultation on The Future Direction of the Electronic Monitoring Service in September 2013. It reviews developments in EM in Scotland so far, reopens debate on the use of EM as a bail condition and canvasses opinion on the possible introduction of various GPS satellite tracking schemes, as well as remote alcohol monitoring. It describes the technical aspects of different EM technologies, admitting that GPS still has some limitations. It sets out estimates of costs and likely cost savings, the legal changes needed to introduce new uses of EM, and poses 21 questions about the legal, policy and practice issues that require attention and assent.

The consultation has emerged alongside the award of a new five year EM contract to G4S in April 2013, and the opportunity this created to explore the potential of GPS tracking. Similar schemes were already in small-scale use in several mainland European countries and were being extensively piloted in England and Wales.



Although the Violence Reduction Unit in Glasgow had been seeking authorisation to press on with remote alcohol monitoring, there was no great clamour from Scotland's courts or criminal justice agencies for a debate on EM, or an eagerness to use it more or better. This, it might be said, is precisely the problem in Scotland, where a mix of public and professional complacency, indifference and hostility towards EM has stifled debate on its creative uses, and treated it as a thing apart from broader debates on desistance, the reorganisation of criminal justice social work and the reduction in the use of short custodial sentences. It has a part to play in all such debates.

The potential of GPS

Four uses of GPS tracking are canvassed: with high risk sex offenders released from prison; in domestic violence cases to keep perpetrators away from victims; to monitor persistent offenders on a voluntary basis; to facilitate better enforcement of exclusion zones with bailed defendants.

There has been periodic Scottish judicial interest in tracking high risk sex offenders, and the Netherlands, France and Austria have all begun doing this. Even Germany, which, uniquely in western Europe, eschewed the use of rf EM curfews in all but one of its regions, began GPS tracking of sex offenders after an ECHR ruling against its use of preventive detention for them.

Although existing rf EM can be used to restrict a domestic abuser away from a victim's home (but isn't often), GPS tracking can go further and keep them away from victims wherever they are, because the victim agrees to carry a receiver which warns her, and simultaneously alerts the police, if the offender is in her vicinity. Schemes of this kind exist in Spain, Portugal and France. As with the GPS tracking of sex offenders, there is sufficient research evidence from the US to warrant consideration of its use in Scotland with domestic abusers, even if facts alone are not enough to settle the ethical question of whether it should be done.

The use of GPS with persistent offenders voluntarily, some on bail, most of whom have been released on licence, is currently unique to England and Wales, where half of the police forces have piloted a scheme, sometimes in conjunction with the local probation service. Offenders are asked to wear GPS trackers to provide visual, mappable evidence of their intention to desist from crime; their locations are electronically tallied with new crime scenes and they are as easily exonerated as incriminated. Some offenders welcome this opportunity. There are as yet no public evaluations, although the police are clear that they save time and money. There is certainly a case for a 'voluntary' pilot in Scotland, but it should be noted that Police and Crime Commissioners are already campaigning for the use of GPS with persistent offenders to be made compulsory and the Westminster government is making plans to scale up these schemes to unprecedentedly high daily numbers.

Unlike rf EM, it has always been taken for granted by governments that GPS tracking should not be 'standalone', independent of other forms of support, help and control. This is welcome, but begs the question of the viability of traditional standalone curfew monitoring. This was designed into the Scottish system from the start, a straightforward emulation of the English approach, but was not the approach taken by other European countries who adopted EM in the 1990s and in the early years of the 21st century. Sweden, the Netherlands, Belgium all ensured that EM was integrated into broader intensive supervision programmes, and to that end (quite apart from the philosophical objections to privatisation) saw no point in tasking a separate commercial organisation to deliver the service. They incorporated EM into their probation and prison services, and shaped it to fit rehabilitative purposes.

The integration issue

The first question in the new EM consultation is: "how can electronic monitoring be better integrated with other services ... in order to support a holistic approach to offender's needs?". This is a truly vital question, but the consultation is not sufficiently mindful



Before you ask ... yes you can wear your EM tracker in the shower.

of the serious obstacles to practical co-operation between probation services and commercial EM providers that have been highlighted in England and Wales, to the point where the "privatisation model" ought to have been questioned, but was not. In the coming five years of the Scottish G4S EM contract, every effort should be made to use EM in more integrated ways with social work (the staff there are up for this), but the larger question, "why, in five years time, should EM not be brought into the statutory sector, and managed from within criminal justice social work?" remains to be asked.

While it is ultimately a question for the virtual, 'what if', historians, it is possible that if EM had been initiated in Scotland after devolution it would not have copied the legal and organisational forms used in England and Wales so slavishly. As its own aspirations to become more like Scandinavian social democracies grew, Scotland might instead have adopted the more integrated, intensive supervision models of EM that prevail in Sweden (from 1994), Denmark (from 2005) and Norway (from 2008), and which have been used incrementally to make significant reductions in the use of short, under six month, custodial sentences: something which liberal Scotland desires, but still only dreams of. Even allowing for differences of judicial organisation and legal culture, Scotland should try to do something similar.

Scandinavia has not made significant use of GPS tracking; Sweden makes tiny use of it with young offenders on temporary leave from residential care, and this year, added it as a condition to restraining orders, for domestic abusers who breach the existing non-electronic version. This may change, and there is nothing wrong with developing niche uses of GPS tracking as France, the Netherlands, Austria and Germany have done, targeted on the highest risk offenders in the community. Despite pockets of good practice, England and Wales's anticipated model of extensive GPS use is more problematic, coming as it is alongside plans to 'privatise' the majority of the probation service, fulfilling the fears of many that in certain political contexts surveillance technologies can and will displace, or at least subordinate, the kind of skilled personal services on which the community supervision of offenders has traditionally relied.

Not the least of the differences between us and 'down south' is that they are introducing GPS on a 'policy by stealth' basis, seeking to segue from the existing multiplicity of police pilots to what Capita, the key new EM contractor in England and Wales, anticipates becoming "the biggest EM programme in the world". Scotland, as on a previous occasion, has an honest, open public consultation on EM. This time we should make ourselves better informed about all its practical and organisational possibilities, answer in full all that is asked, and then raise the more awkward policy questions, that still aren't.

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 Scottish Government (2013) *Development of Electronic Monitoring in Scotland: A Consultation on The Future Direction of the Electronic Monitoring Service*.

Mike Nellis is Emeritus Professor at the Law School, University of Strathclyde and has written extensively about monitoring and surveillance.

He was recently GPS tracked for two weeks and was impressed by the technical accuracy of the equipment but found wearing the tracker "more psychologically, if not physically, discomfiting than I had expected, and the knowledge that others could know my location 24/7, unnerving".