

Electronically Monitoring Offenders in Scotland, 1998-2006

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Introduction

The electronic monitoring (EM) of offenders originated in the USA and grew steadily across Europe and rest of the world during the 1990s (Ball, Huff and Lilly 1988; Mayer, Haverkamp and Levy 2003). Electronically monitored Restriction of Liberty Orders (RLOs) were introduced in Scotland by the Crime and Punishment (Scotland) Act 1997 in the last days of a Conservative administration (Scottish Office 1996). They were part of a general strategy intended to strengthen existing forms of community supervision, to increase public and judicial confidence in such supervision and thereby to improve public protection. However, as McAra (1999) notes, there was still significant deference in the Conservative strategy to the humanistic, “penal welfare” values so staunchly upheld by Scottish crime policy networks since the 1960s, which had both survived the encroaching “culture of control” (Garland 2001), and bestowed a distinctive “tartan” slant on several indigenous criminal justice institutions. Until recently, the congruence or otherwise of EM with the enduring Scottish inflection on penal welfare values has been at the heart of all arguments about it in Scotland, although, tentatively, it might now be suggested that the questions are changing.

RLOs were partly modelled on the EM-curfew orders already being used in England and Wales. They enabled the restriction of an offender *to a place* (usually his or her home) for a period of up to 12 hours per day, up to a maximum of 12 months (double the length of the English order). Uniquely in Europe, an adaptation of the same technology meant that offenders could also be restricted *from a place* (originally envisaged as the home of a domestic violence victim) for 24 hours a day for up to 12 months. The new orders were made available to all Sheriff, High and Stipendary Magistrates courts. Their introduction coincided with penal reformers’ concerns about Scotland’s rising *adult* prison population - from an average daily population of 4,470 in 1993 to 5,018 in 1997 - and although the initial Conservative legislation did not specify that RLOs should only be used instead of prison, an early

New Labour circular (Scottish Office 1998) spoke of “tough alternatives to custody like electronic tagging”.

Piloting Electronic Monitoring in Scotland

Under the 1997 Act three pilot schemes ran between 1998 and 2001 in Hamilton (operated by General Security Services Corporation of Europe Ltd (GSSC)), Aberdeen and Peterhead (both run by Geographix , later called Premier-Geografix). The first 14 months of the schemes were evaluated by Professor David Smith of the University of Lancaster on behalf of the Scottish Executive (Lobley and Smith 2000; Smith 2001). 152 orders - all restrictions *to a place* - were made on 142 offenders (only 9 of whom were women): 94 in Hamilton, 53 in Aberdeen and only 5 in Peterhead. As in the England and Wales EM pilots, this was far fewer than anticipated. 54% were made on 16-20 year olds, “despite the reservations voiced by some sheriffs about the ability of younger offenders to show the self-discipline required to complete an order without breach” (Smith 2001:205). Most orders were indeed made on serious and persistent offenders, but after studying sentencing decisions Lobley and Smith (2000) estimated that only 40% would in fact have received a custodial sentence. Extrapolating from this, they concluded that RLOs were unlikely to reduce the prison population in any significant way, and that with the unit costs of each order unlikely to decrease by much in a national scheme, there would be no net savings in penal costs. In addition they were concerned about the manageability of the orders. The technology proved reliable, the private sector staff performed well and social workers (who wrote assessments for RLOs) grew more supportive of tagging as the pilots progressed. But even in the 103 (72%) RLOs deemed to have been successfully completed, there were many technical breaches, and short spells of police or prison custody for at least half of the offenders. Two thirds of the 152 orders were run simultaneously with other community penalties, usually probation, but this did not correlate with improved completion rates. These difficulties led Lobley and Smith to conclude that Scotland did not need EM to help manage its prison population - increased use of its existing alternatives to prison would do. Although this was not what the Executive had anticipated, their consultation document *Tagging Offenders* (Scottish Executive, 2000) asked genuinely searching questions of EM, and led Smith (2001:209) to believe that EM’s expansion in Scotland was not a “foregone conclusion”.

Smith misjudged the moment. In June 2001 the Scottish Executive (2001) announced that the evaluation had been successful (ultimately the pilots dealt with 418 offenders, 90% of whom were deemed to have completed

their orders) and that RLOs would be rolled out nationally, as stand alone orders, as conditions in probation and as conditions of post-release licences. The internal Executive politics which brought about this decision are unclear, although, in fairness, the results of the consultation were more positive about EM than Smith might have anticipated. Smith (2003) speculates that, as in England, New Labour politicians came to see EM as a self-evidently tough measure that would strengthen the electoral appeal of their penal policies. This may be true in part, but Scottish New Labour has never pressed “populist punitivism” to the same extent as their English counterparts - the consultation document does not emphasise EM as “punishment”. The Labour-Liberal Democratic coalition partners who gained power in the Scottish Parliament in May 1999 inflected their EM-talk differently - Labour emphasising the control and regulation it entailed, Liberal Democrats (and the Scottish National Party opposition) welcoming the prospects of reduced prison use. Even the Conservative Party was not at this point hostile to it. There was thus no serious political opposition to the principle of introducing EM for adult offenders. The potentially divisive issue of tagging juveniles was not raised at this stage. Although the consultation had countenanced the possibility of EM being delivered by the state rather than the private sector, it was at the time more convenient for all concerned to continue using commercial providers - the Executive retained central control over the single service provider, while local authorities kept EM at a comfortable distance from themselves. A national contract was awarded to Reliance Monitoring Services¹ in January 2002, headed up by Iain Johnston, the former criminal justice social worker who had headed the Hamilton pilot scheme.

This paper reviews the evaluation and picks up where Smith (2001) left off, covering the period during which Reliance Monitoring Services provided EM in Scotland - in effect, up to March 2006, when a new private contractor, Serco, took over from Reliance. Noting Castells’ (1996) account of “network societies” - societies permeated and integrated by digital and communication technologies - I am more inclined (than Smith) to believe that contemporary politicians, bent on modernising governance, will at least *try* to incorporate remote location monitoring into the community supervision of offenders, although the precise forms it takes, and its reach and impact, will depend on local structural and cultural factors. New technologies of interconnectivity and the emergence of “automated socio-technical systems” (Lianos and Douglas, 2000) have created a surveillance option that crime controllers have not had before, which (potentially) weakens or subordinates traditional “humanistic” forms of supervision. Parallel to this, there is widespread recognition, even among liberals, that established

forms of community supervision must change if, in the 21st century, public safety is to be enhanced and excessive incarceration avoided (Roberts, 2004; Rex, 2005; Hough, 2006). Simplistically high hopes were once placed in EM to help achieve this, but while experience suggests that EM is not in fact the self-evidently tough measure that some champions claimed (and some opponents feared), a modest moral and empirical case can be made for imposing reasonable spatial and temporal restrictions on offenders, both as punishment and to restrict offending opportunities, preferably in the context of rehabilitative and socially integrative strategies which give offenders an incentive to comply with the controls placed on them. The aim of this paper is not primarily to engage in normative debate, however, but to chart the development of EM in Scotland, based, as yet, on somewhat incomplete data. The opinions expressed in the paper are my own but it draws on discussions with civil servants, former Reliance managers, journalists, politicians and fellow academics, for whose time and help – especially David Denny’s with statistical data – I am very grateful.

Tagging Offenders: Consultation and Response

The Executive’s consultation document clearly and cogently raised issues pertaining to the implementation of EM, drawing in particular on the experience of England and Wales and Sweden (whose probation service had run a nation-wide EM-programme since 1996). Arguably, it portrayed Smith’s evaluation too positively, (whilst emphasizing tortuous breach procedures, a problem he underplayed) and it exaggerated the extent to which “sheriffs *generally* welcomed the availability of an additional sentencing option” (Scottish Executive 2000:9 emphasis added). EM was portrayed as having potential to meet criminal justice objectives in five ways; increasing the range of sentencing options, reducing the use and cost of custody, tackling offending behaviour and reducing offending, protecting the public from dangerous offenders, and protecting victims from specific offenders. It explored the options that were already available in England and Wales, notably EM-bail and EM-early release from prison (the Home Detention Curfew (HDC) Scheme), the latter having been hastily implemented in 1999 as a matter of urgency by the incoming New Labour government, to assist in the management of a daily rising prison population. The Executive conceded that only an equivalent of the HDC scheme would create cost savings, but noted that it could not be introduced as easily as in England, because Scotland lacked a pre-existing system of release on licence for short-term prisoners onto which it could be grafted. The consultation document picked up the Maclean Committee’s (2000) interest in using EM (including satellite tracking) to monitor dangerous offenders released from prison, while noting

that this latter technology “is not yet a foolproof proposition” (idem:16). The document posed thirteen questions to potential respondents.

Replies came from 19 local authorities, 6 voluntary organisations, 3 police organisations, The Association of Directors of Social Work (ADSW), the Convention of Scottish Local Authorities (COSLA), the Parole Board, the Law Society of Scotland and the Scottish Association of Health Councils and one individual expert on EM, Dick Whitfield². Few made reference to the research, although both HM Chief Inspector of Constabulary and Victim Support (Scotland) felt it was too small in scope to justify the expansion of tagging on its own. None of the broadly supportive submissions were without caveats but all accepted, to a greater or lesser degree, the cost-effectiveness and increased control and public safety arguments that had prompted Scottish interest in tagging in the first place, and were prepared to look ahead positively towards new uses of it. There was scepticism about the value of *stand-alone* RLOs and a noticeable preference for embedding them in social work interventions - even the Law Society favoured this. Fife Council noted that “social workers are more accepting of the development of electronic monitoring than previously”, suggesting that it was not seen to threaten a broadly rehabilitative approach. West Lothian Council doubted if it was onerous: “if offenders are free to roam for the other 12 hours, then this disposal is only suitable for low risk of harm cases”. West Dunbartonshire Council particularly welcomed “the option of excluding a person from a place”. Remote rural authorities had divergent views: Orkney Islands Council, where custody was rare, doubted whether RLOs were needed, while Shetland Islands Council welcomed stand-alone RLOs precisely because human forms of oversight and support were difficult to implement in geographically remote places.

COSLA saw RLOs as a “useful addition to the range of community disposals” and made clear that “the public sector should retain control of strategic development of this disposal”, whilst fudging the issue of who should actually run it. Others were more direct, West Lothian Council noting that “the present arrangements for private tendering appear to be working” and agreeing with Glasgow City Council that delivering EM is “not a professional social work task”. Fife Council acknowledged that “the prospect of privatised services would not be a block to the development of electronic monitoring”. The ADSW accepted that local authority experience of the EM-pilots had been positive, felt that RLOs should be backed up with social work, and agreed in principle to extending EM to early release from prison and to bail. Various police organisations - The Association of Scottish Police Superintendents,

The Association of Chief Police Officers (Scotland) were supportive. The idea of RLOs protecting individual victims met with scepticism, especially from Victim Support (Scotland). Safeguarding Communities Reducing Offending (SACRO), was also sceptical, while reluctantly conceding that with high risk offenders EM did offer “a higher level of surveillance than would otherwise be possible”. The Scottish Association for the Study of Delinquency (SASD), took a different view, envisaging RLOs as an early intervention, useful “where someone is beginning to go ‘off the rails’”.

Lord Maclean’s committee on the supervision of serious and violent offenders had reported before the Executive consultation took place. His comments on EM, derived from his committee’s visit to the USA to study a range of initiatives for such offenders, mixed confidence and caution, but added significant judicial weight to the idea of *at least exploring* EM in Scotland:

The indiscriminate use of electronic monitoring rightly causes concern. However, as was noted by one respondent to our consultation, “the civil liberties implications will always be less grim than the alternative of indefinite imprisonment”. Our experience in the USA was that many offenders also take this view, and are quite prepared to accept the inconvenience of electronic monitoring, including devices which are much more cumbersome than the more simple tags used in the UK, if this allows them to remain in the community and to lead a comparatively normal life. We recognize that the technology used to monitor offenders is developing at a fast rate, but public confidence in the methods used is of course paramount. (Maclean Committee, 2000: para 9.16)

The response to the consultation gave the Executive legitimate grounds to proceed incrementally with a range of EM programmes - although it did so without conceding that RLOs should be linked to social work. The response demonstrated a widespread (if not universal), willingness to support the Executive in modernising criminal justice by *augmenting rather than transforming* existing services, and a belief (shallow rather than deep) that EM was worth trying in attempts to manage the prison population. Three Executive priorities emerged from the consultation. Firstly, to organise a tendering process to find an EM service provider. Secondly, to refine existing legislation - the Criminal Justice (Scotland) Act 2003 made RLOs a “direct alternative” to custody (comparable to community service), and

made them transferable between jurisdictions in Scotland. It also enabled EM-restrictions of liberty to be included as conditions in both probation orders and the new drug treatment and testing orders, for implementation at a future date. Thirdly, to initiate new legislation for EM-bail and EM-early release from prison, but also, in parallel, to arrange for further deliberation and consultation on these more difficult-to-implement programmes. These latter issues were also considered by the Sentencing Commission, which was established in May 2003 to cumulatively review - and modernise - sentencing in Scotland more generally.

Delivering the Electronic Monitoring Service

Reliance Monitoring Services (RMS) had a four month lead in time between winning the contract and launching a nation-wide service on 1st May 2002. A control centre, using ElmoTech³ equipment, was set up in East Kilbride, making the population of the central belt easily accessible. All the pilot staff moved there with Iain Johnson, who then appointed Norman Brown, another social worker, as business development manager, creating a team that was credible with social workers and savvy about Scottish sentencing practice. Working to a tightly-regulated contract, he deliberately distanced RMS from the military/policing ethos often cultivated by security companies, envisioning EM as something distinct and new, but supportive of social work. He never doubted the difficulties of promoting EM in Scotland, where (unlike England) the institutional power of social work still commanded respect, and he knew that only a high quality and efficient service (orders starting promptly, breaches dealt with speedily) would impress sheriffs. To this end, senior Reliance staff devoted considerable personal time - 300 meetings in the first year, 200 in subsequent years - to educating relevant constituencies about EM, and equally importantly, recruited as monitoring officers people who had sound social skills and a commitment to “customer service”. Promoting EM entailed repetitive meetings with different local authorities and groups of social workers within them, assuaging anxieties and hostilities (about both tagging and contracting-out) which were perhaps greater among basic grade staff than among the senior local authority managers who had responded to *Tagging Offenders*. Promotion also entailed presentations to sheriffs and judges, penal reform organisations and, (under Executive oversight), liaison with the media. Johnston’s approach did win significant profits for RMS’s parent company, but it is debatable whether his English managers fully appreciated his belief that tagging in Scotland needed a “tartan” inflection, and more investment in the active promotion of it. Johnston left Reliance in October 2004, following a dispute with the parent company over these things, and Norman Brown took over.

Reliance had to create “an infrastructure that will cover the remote glens of Ardnamurchan and Torridon as well as the housing schemes of Dundee and Glasgow” (Johnston 2002:54) There was some initial difficulty about anticipating and predicting where orders were likely to come from, and where staff needed to be deployed. Dundee was correctly identified as a high user, on the basis of its past requests for SERs and the pattern of its use of non-custodial disposals. Four full-time monitoring staff were appointed initially, increasing incrementally to 68 - 37 full-time, 29 part-time, 2 “retained”) by March 2006 – the latter in the Highlands and Islands where estimating need was more difficult, and orders rare - Skye has had none. Retained staff have included crofters and coast guards, and one of the losses when orders are made in the islands is staff and offender anonymity - “the tagging man” is usually known to all in the community. Recruiting women was difficult in some parts of Scotland - the hours can be antisocial, in isolated places far from home - and where women (and later juvenile) offenders have needed to be tagged the few female monitoring officers around travel long distances.

Reliance’s East Kilbride control centre operated on a 24/7 basis, requiring a complex shift system. Fewer staff are required in the daytime (although some RLOs place daytime constraints on offenders). Work increases after 4pm when new orders are faxed in from the courts, and monitoring officers all over Scotland, instructed from the centre, begin fitting new tags, or retrieving equipment where orders have ended, often working late into the night. In the centre itself, work intensifies around 7pm when the majority of “curfews” begin, necessitating phone checks on those whom the automated monitoring system shows are not yet indoors. The nightshift deals over the phone with such crises as erupt in the lives of tagged offenders and their families. The dayshift mostly liaises with police, social workers, fiscals and courts. Monitoring staff - who (in the central belt) work both in the field and in the control centre in order to maintain individual contact with their tagged clients - constitute a new occupational sub-group in Scottish criminal justice, about whom little is known. There are always large numbers of applicants, from diverse employment backgrounds, whenever posts are advertised. Induction courses last three weeks. Monitoring officers see the job as being socially useful, and satisfaction and retention rates have always been high.

Restriction of Liberty: The Flagship Order

The Restriction of Liberty Order was the Executive’s - and Reliance’s - flagship EM order and it had to be made to work, and seen to work, if subsequent EM programmes were to be introduced. Whilst interpreting the punitive element of RLOs as nothing more dramatic than a partial constraint

on locations and schedules, the Executive nonetheless wanted them to have a certain symbolic distance from social work. Sometimes, as in the pilots, RLOs were made on offenders who were already on probation for previous offences, or who were subsequently put on probation for new offences; offenders on RLOs then experienced more substantial supervision. Via these overlapping orders social workers and Reliance staff learned to cooperate: the latter, for example, granting “authorised absences” so that tagged probationers could attend scheduled groupwork programmes. Details of all RLO violations, graded in severity, were passed to sheriffs within 24 hours. Some, withdrawal of consent to being monitored, for example, warrant breach in themselves - others, minor time infringements, for example, accumulate before constituting a breach. The householder’s withdrawal of consent - refusing for whatever reason to have the tagged person in the house - has been the commonest cause of breach action. The breach process, undertaken by the Procurator Fiscal, can, as with other community sentences, become a protracted legal process. The Executive has given the costs of a six month RLO as £4860, compared to £1250 for an equivalent probation order, £1325 for community service, £5000 - £6000 for a DTTO and £14,000 for a six month prison sentence (Justice 1 Committee:2003: 5).

In the 2004-05 period, 1335 RLOs were made, a 65% increase in the 807 in 2003-04 (Scottish Executive Statistical Bulletin 2006), but it is their variable use within and across sheriffdoms which is striking. A handful of courts make regular use of it, the vast majority only occasional use of it, and some none at all. While some sheriffs are clearly supportive of it, Smith’s (2002:206) finding that “the orders had not become part of the routine thought processes of all sheriffs” seems as true in 2006 as it was in 2000. The sheriffdom of South Strathclyde remains by far the highest user, with Hamilton still the dominant court. It had made 517 orders up to March 2006. Within the same sheriffdom, Dumfries made 228, Lanark 206 and Stranraer 112. Given the relative sparsity of its population, one might not expect large numbers of orders in the Sheriffdom of Grampian, Highlands and Islands, but Aberdeen is a busy court, dealing with lots of drug-related offending, yet had only made 43 orders. Peterhead had made 63. Some of the smaller and more remote courts made no orders at all, but Lerwick, in the Shetlands, having made only 4 orders since 2002 made 16 (including one on a woman) in the first half of 2005 alone, and a further 14 in the next nine months (reflecting the arrival of a new sheriff). Glasgow made 225. Edinburgh, which has a long tradition of using probation had not been particularly enamoured of EM: having made only 97 RLOs since 2002 - 63 of these after January 2005. The High Court imposed 4 RLOs in the first year of operation, three in

Edinburgh and one in Glasgow, and by March 2006 had imposed 14 orders, suggesting a very wary approach to EM in the senior judiciary.

Most RLOs (91%) have been made on men, although at one point, in one area, 40% of the local tagged population were women, the result of a sheriff's attempts to reduce daytime shoplifting. Most orders (above 75%) have been made on people between 16 and 30, with fairly equal proportions of orders been given to 16-17 year olds, 18-20 year olds, 21-25 year olds and 26 to 30 year olds. 14% of orders stipulate the 12 month maximum, the average length is approximately 5 months. Most restriction times are 12 hour, "overnight" blocks but over time, sentencers have grown more sophisticated, varying times to take account of offenders' work and travel commitments, specifying different restriction times on weekdays and weekends, creating narrow "windows" in which offenders can leave home to collect methadone prescriptions, and in one instance specifying a two hour at home, two hour away arrangement, to limit the interval (and distance) the offender could travel from home. From the outset sentencers imposed RLOs on a wide variety of imprisonable offences - theft and assault being the most common, followed by breaches of the peace and a range of road traffic offences. It has also been used for - the list is not exhaustive - possession of drugs, malicious damage, housebreaking, fraud, embezzlement, attempted theft (from both buildings and cars), public indecency and wasting police time.

Restrictions *from* a place have been little used – 26 solely from a place, 19 to *and* from a place by March 2006 - compared to restrictions to a place, for reasons which are unclear. These require crime victims (typically, but not always domestic violence victims) to consent to having equipment installed in their house which would warn the Reliance control centre if the tagged offender comes within a 150 metres of them. Restrictions from a place have also been used by some sheriff's to exclude offenders from public rather than private places - shopping centres and harboursides where thefts had taken place being examples so far. These arrangements require a number of strategically placed receivers which can pick up the tagged offender as s/she approaches or crosses the perimeter of a prohibited zone.

Integrating Electronic Monitoring with Other Measures

Probation with a condition of EM. The formal inclusion of an EM requirement in a probation order became available to courts on 27th June 2003. It enabled the blending of "punishment" and treatment in community supervision which Johnston and Brown had always favoured. Close liaison with criminal justice social workers - providing monthly (sometimes weekly) reports and/

or attending monthly reviews - makes operating the orders more complex than basic RLO's. Despite the Justice 1 Committee's (2003:para 45) view, drawing on ADSW evidence to their inquiry, that "probation orders with a requirement of electronic monitoring are more effective in obtaining positive results than electronic monitoring alone", the vast majority of courts did not use them: only 271 orders had been made up to March 2006. Hamilton dominated with 109, followed by Glasgow (65) and Dundee (40). Wick made 20. Social workers rather than Reliance have the responsibility to report violations to the Fiscal, and sometimes use their discretion more flexibly than the Reliance staff, looking at violations in the context of the offender's overall performance on a probation order, rather than in isolation.

Drug Treatment and Testing Orders with EM requirements. The EM options in DTTOs became available at the same time as EM in probation. Very few have been made. The first five were all breached very quickly, usually within the week, one in a matter of hours. This has not helped their credibility. In anticipation of an *initial*, intractable instability in the lives of drug using offenders, legislation allowed for the inclusion of an EM requirement three months into the DTTO, but no courts have yet used this facility. Reliance have liaised actively with the specialised drug teams in Glasgow, Kirkcaldy and Dundee, with the voluntary organisations involved in DTTOs, and with the Sheriff's in the drug courts, but the precise advantage of an EM requirement in a DTTO has yet to be proven. It seems highly unlikely that the availability of EM in such an order will in itself increase the likelihood of an order being made. Tomb's (2004) view, that some sheriffs' dislike making community sentences so onerous that offenders are bound to fail, possibly applies here.

Parole with EM. This was introduced in 2004 as a means of making parole supervision more robust: the maximum daily restriction period is at the discretion of the Parole Board and tagging can last (potentially) for as long as the parole licence lasts. Lengthy debate with the Executive about the development of guidelines for using EM with parolees - and the establishment of protocols with local police forces - meant that no one was given parole with EM until 2005. Reliance was involved in some pre-release conferences, but was not automatically invited to them. Six persons had been placed on EM-parole by March 2006.

EM Bail. Pilot sites were set up in Glasgow, Kilmarnock and Stirling sheriff's courts and Glasgow High Court in April 2005. The EM-bail regime is much tighter than with basic RLOs, The equipment must be installed within 4 hours

of the bail condition being imposed (as opposed to 24 hours for other orders). There are no authorised absences and if a tagged bailee leaves the house the police have to be notified within 15 minutes. EM-bail brought Reliance into more regular contact with the police officers, and it remains to be seen if the strong early support for EM by police professional associations is sustained: the Scottish Police Federation (2005), for example, anticipates an “increased workload in relation to breaches”. The Sentencing Commission (2005:37) endorsed the principle of EM-bail, but supported its extension only if the University of Stirling evaluation yields positive results.

EM with asylum seekers. This UK-wide initiative - immigration is a “reserved matter”, controlled by Westminster, not the Executive - has been the least publicised EM scheme (and is not concerned with offenders). The Immigration and Nationality Service ran a pilot programme between autumn 2004 and autumn 2005 during which 130 asylum seekers, 35 in Glasgow, were subject to either conventional tagging, voice verification or (in England and Wales only) satellite tracking. The scheme aimed to keep the immigration officers in touch with asylum seekers without the latter having to attend a reporting centre, or (in Scotland), reside in Glasgow’s Dungavel detention centre. No evaluation was published, and in Scotland asylum seekers have not been tagged since the pilot ended, although it may resume. Pressure groups representing asylum seekers disapproved of the measure, whilst conceding it was preferable to detention.

Home Detention Curfew. Mooted in the consultation as the EM programme most likely to save on costs, early release from prison was not operational in Scotland’s during the period of Reliance’s contract. The Executive introduced it into the Management of Offenders Act 2005, intending that using EM with low risk prisoners serving between 3 months and 4 years will structure the release process and improve the transition from prison to community. Prison governors will authorise release, based on an assessment within the prison and home suitability assessments by community-based social workers. Breach will likely result in return to prison. The Executive’s initial estimates were that HDC “could reduce the [daily] prison population by around 250-350, which would have a significant impact on overcrowding and allow more constructive work with those who remain in custody” (Scottish Executive 2004:50). The HDC programme will begin in July 2006.

GPS satellite tracking. This is not on the Executive’s immediate agenda, although the Irving Report (2005: para 4:11) notes that “compulsory electronic monitoring of sex offenders has been remitted to the Sentencing Commission

for review and recommendation”. The Executive’s consultation document noted both its availability, and Lord Maclean’s (2000) cautious interest in using it to strengthen the supervision of dangerous offenders. In its response to the consultation, The Law Society espied a paradox: tracking would only be “proportional” with very high risk/dangerous offenders but at the same time would not ensure complete public protection from them - therefore, they reasoned, such offenders should stay in custody. West Dunbartonshire Council, on the other hand, thought it “beneficial” if offenders’ whereabouts were known, and if Supervised Release Orders were used as well. Dick Whitfield, an international authority on EM, told the Executive that “GPS systems currently on the market are insufficiently reliable to be used with confidence at present”, but, anticipating that it would “be viable sooner or later”, recommended “enabling legislation”. England and Wales ran a three-site satellite tracking pilot between September 2004 and June 2006, and the Home Office evaluation of this may inform future Executive thinking on the subject.

Electronic Monitoring and Juvenile Offenders

The use of EM with under 16 year olds – juvenile offenders and youngsters in need of care and protection was predictably controversial in Scotland (far more so than in England). The Executive’s view of EM as punishment meant that it jarred massively with the essentially still welfarist orientation of the children’s hearing system. It was not mooted in the original consultation on tagging in 2000, and entered policy as part of the Executive’s “anti-social behaviour agenda” (borrowed from New Labour’s more strident equivalent in England), which included anti-social behaviour orders (ASBOs) dispersal orders and parenting orders (Scottish Executive 2003). Embedding EM in this agenda - which was seen as a further twist in the ongoing critique of the hearings’ welfare ethos (McAra, 2006) - probably hardened resistance to it. Communities Minister Margaret Curran’s suggestion in June 2003 that the age limit for EM be lowered to match the age of criminal responsibility, (currently eight) (see Hughes 2003), was not well received. Her view that using EM as an alternative to secure accommodation (where children’s own homes were safe and secure) would be consistent with prioritising the welfare of the child, as well as providing an element of punishment and opportunities to address offending was more compelling, but still not palatable to some representatives of children’s interests. Many professional responses to the consultation on the anti-social behaviour White Paper were hostile (Flint, Atkinson and Scott 2005; Croall 2005), and debates on the Anti-Social Behaviour etc (Scotland) Bill were heated, but eventually a framework for using EM with under 16 year olds was created.

The Intensive Support and Monitoring Service (ISMS) (modelled on an English initiative) was a key part of this. It was envisaged as a multi-modal package comprising an offending behaviour programme, education and/or vocational training, alcohol, drug and health services, family support, residential and non-residential respite services, reparation, counselling and mentoring, and round-the-clock crisis intervention, as well as a “movement restriction condition” monitored by EM (Scottish Executive Education Department 2004). ISMSs were established in seven areas - Glasgow, Edinburgh, the two Dunbartonshires, Morayshire, Dundee and Highlands, not as pilots which might, after evaluation, be discontinued, but as the first phase of an eventual national service. Five are run by Includem, a voluntary organisation supporting serious and persistent young offenders, formed in 2002, which, unlike the older voluntary child care organisations, more willingly embraced EM. Administrative problems beset several of the projects, and not all were ready to start in April 2005. Reliance recruited new staff to cope with an expected increased workload, and its managers made many presentations to children’s panels about EM, recognizing themselves that EM was not the most important component of ISMSs. Productive discussions took place, even in respect of care and protection cases - eg restricting a girl to a halfway house as part of a strategy to keep her from prostitution. Nonetheless, only 30 movement restriction conditions (and 2 RLOs) were imposed by March 2006, although many more ISMS packages were ordered without them, suggesting that specific scepticism towards EM remains. The practice of not using EM in ISMSs has caused the Executive to threaten loss of funding to local authorities if it continues (Adams, 2006). In principle, ISMSs could be used on eight year olds, in reality the lower limit has been twelve. The official evaluation of ISMSs is being undertaken by DTZ Piedad Consulting, not a university.

Public Expectations, the Press and Electronic Monitoring

EM lends itself to coverage in the visual media because, compared to most other forms of community supervision, it is novel, distinctive and tangible - in the press and on TV it can be represented (a photo of a tag on an ankle, a graphic of the way the technology works, a cartoon) far more simply than, say, the “talking treatment” of probation. A 30-minute BBC Scotland television documentary, “Tagged”, broadcast on 22nd March 2005 took a broadly positive view of it. The intermittent but sustained press coverage has been mixed, latterly (if not initially) erring more towards the negative and the neutral than the openly positive. Nonetheless, and perhaps fortunately, press reporting on EM has been dominated by one journalist, Lucy Adams, *The Herald’s* Home Affairs correspondent, who wrote 43 fair, balanced but

not uncritical articles on it between 2002 and 2006. The negative/neutral tone of the press in general is in part set by the “voices” which the press report. The Conservative Party, for example, tend to be hostile to EM because they see the Executive’s increasing commitment to it as part of a deeply misguided attempt to manage (stabilise or reduce) the prison population. In the press Conservative spokespersons usually make the case against tagging more combatively, and with more panache than the Executive defends it, questioning its adequacy as a means of control. Some newspapers back them on this. Occasionally, more welfare-oriented organisations say publicly that excessive faith is being placed in tagging. Further elements of negativity seep into the press coverage of EM in Scotland when newspapers “taint” Reliance Monitoring Services with the occasional failings of its sister company Reliance Custodial Services, whose court-to-prison escort service has received persistently derisive coverage in the press. Although the two companies shared premises in East Kilbride, they always were operationally separate⁴.

Press hostility to EM may be increasing, possibly as a result of “tabloidisation” in the press itself, possibly as a result of public anger about a number of cases in which offenders already known to the authorities (on bail, parole and probation) have committed very serious crimes. Callum Evans fell into this category and brought tagging into serious disrepute. Evans was an 18 year old Glasgow man, tagged to his flat on the first floor of a tower block who, in October 2005, savagely murdered another young man outside at the foot of the tower, whilst wearing his tag and still being within the range of his receiving unit (which had inadvertently been set too wide). At Evan’s trial, the High Court judge criticised his ability to leave his flat undetected, and triggered a frenzy of press comment on 27th April 2006. “The Killer Who Was Tagged: scandal as axe murderer beats his curfew” (*The Daily Record*). “Tagged But Free to Kill: teen butchers man during 12hr curfew” (*The Sun*). “Judge attacks tracker devices after youth tagged by Reliance is convicted of murder” (*The Scotsman*). Paradoxically, given its hitherto neutral-to-positive stance on EM, it was *The Herald* (28th April 2006) which pressed the argument to the limit, noting the record number of 1335 RLOs had been made in the 2004/5 period, implying that the 770 recorded violations (which are NOT reoffending as such) were evidence of failure, rather than proof that the system kept tabs effectively, and concluding in an editorial that “the jury is still out on tagging”.

There is now a tendency in the contemporary Scottish national press, (Lucy Adams’ reporting excepted), to judge community supervision in general

and tagging in particular, by impossibly high standards. This creates an unrealistic expectation of continuous and immediate control (and rapid response to violations) way in excess of any impression the Executive has given. Cumulatively, this jeopardises the credibility of all community supervision, implying by default that imprisonment is the only tenable punishment. Tagging was rightly championed as something more formally controlling than other community penalties but it is not incapacitative, not the electronic equivalent of a ball and chain. It can foster prudent behaviour on the part of the tagged offender, but offers no guarantee that s/he will not leave designated premises with nefarious intent. Tagging seeks to contribute to the “responsibilisation” of offenders, and while it is indeed more constraining (“surveillant”) than probation or community service it ultimately has more affinity with them than it has with imprisonment (Nellis 2004, 2006). It is uncertain how well this is publicly understood, but the “public confidence” in EM, identified as a “paramount” consideration by Lord Maclean, may well have been dented by the reporting of cases which spectacularly identify EM’s limitations. Informed public opinion on crime policy does not simply take its cues from press - or indeed any media - comment (Stead 2002), but the constant iteration of negative stories and associations, and the relative absence of mundane success stories in the media, creates a climate in which modest, honest and balanced accounts of community supervision are both hard to convey, and easily eclipsed.

Conclusion

Given the internal dynamics and cultures of the Scottish criminal justice scene, the establishment and implementation of EM in Scotland has to be judged a genuine but – because it is still underused – limited success. Good supervisory practice has occurred, but is largely undocumented, outwith the public domain. Such success as it has achieved has been significantly due to shrewd judgments within the Executive and to the manner in which the two successive Reliance managers promoted it. Whilst accepting that the Executive saw RLOs as a punitive restriction on movement Johnston and Brown promoted them as constructive interventions, as “control” in the context of “care”. The Justice 1 Committee (2003: 4, emphasis added) called RLOs one of the “five *principal* community sentences” in Scotland. The Executive, for its part, trading on support for EM in the *Tagging Offenders* consultation and in the Justice 1 Committee’s Inquiry into Alternatives to Custody, has remained strongly committed to it, nowhere more so than in the case they made for it in respect of juveniles - although that initiative brought out the “quiet resistance” to tagging that still remained among many social workers.

It can reasonably be argued that Reliance optimised the use of EM within the prevailing structures, and won some support from social workers and sentencers who might otherwise have been completely hostile to it, but the marked geographical variation in the use of RLOs - which, plausibly, can only be attributable to the attitude of sheriffs (or, maybe, social work assessments) - suggests that either there has been resistance to this novel measure from the outset and/or that, as tagging is perhaps perceived to have fallen short of the high expectations that were had of it, that disillusion has set in even before the novelty has worn off. In a judicial structure which cherishes individual sentencer discretion as much as the Scottish Sheriffs Courts' (Hutton 1999), the take-up of EM was perhaps always going to be slower than the Executive anticipated, dependent on one-by-one acceptance of its utility. Sheriffs influence one another, but are not of one mind about what is right for their particular sheriffdom. In addition, there is evidence that sheriffs perceive advice from the Executive to use certain penalties and to sentence according to a predetermined policy, however weakly framed, as an infringement of their independence (Tombs, 2004:63) - and some may have cast the Executive's endorsement of EM in this light. But there are paradoxes here. Tombs (2004:72) research (in late 2003/early 2004) on sentencer decision-making also showed that sheriffs seemingly welcomed rational debate about how best to use sentencing options, and were sympathetic to modified penal welfare values. Even sheriffs who at that point had not yet used RLOs saw them as "tough" and supported their expansion" (idem). Both sheriffs and judges recognised that media sensationalising and misreporting of criminal justice issues was having an adverse effect on public opinion, fuelling fears of unmerited leniency and endemic incompetence, but they claimed, when passing sentence in individual cases, to reflect the "reasonable" rather than the "hysterical" aspects of the public mood.

The fact remains that many sheriffs have not used EM, and there is nothing the Executive can do to change this situation in the short term. The change of contractor will make no difference. The Executive had strong commercial reasons for transferring business from Reliance to Serco⁵, but it wants and anticipates continuity - the same level of professionalism but at lower cost - in the delivery of EM. It is not looking for a more overtly commercial, more entrepreneurial, approach to promoting EM from Serco, which, given the latent animus towards privatisation, could undoubtedly be counter-productive in many key constituencies. In any case, contractors have no ability to "sell" EM direct to the public, and it is difficult to know what might be said or offered to the sheriffs that Reliance has not already tried. Sheriffs are under no obligation to engage in a dialogue. The Scottish Prison Service is responsive

to policy, but the advent of the Home Detention Curfew scheme in July 2003 will undoubtedly pose problems for it, because it will occur in a climate in which “early release” has already been branded by the Conservative party and some media as inherently misguided and endangering to the public. It will be scrutinised intently and any failures will be amplified to discredit the scheme as a whole - and, by implication, the Executive, for persisting with it. Prison governors may become risk averse in the face of such scrutiny, and HDC may not fulfill its potential or achieve the cost savings that have so effectively entrenched its equivalent in England and Wales (National Audit Office 2006).

The future of EM in Scotland is thus still dependent on principled argument about its merits and evidence of its practical value becoming more widely known, appreciated *and acted upon* by sentencers and professionals, so much so that its occasional, inevitable (and even high-profile) failures are seen - with due humility - in the context of the general good that it can accomplish. There is, however, little point in promoting EM as something novel, distinctive and superior (or inferior) to other community penalties - especially if the press continue to use its very distinctiveness and ease of representation negatively. Alongside closer attention among practitioners to the ways in which it can be integrated *within* social work approaches, it needs instead to be “talked-up” only in the context of a broader vision about the use and scale of imprisonment, about the changing nature of community supervision, and about the means by which Scottish communities can be made safer. Presentationally, the Executive already does this, and to an extent further debate on the issues is already underway, even if not quite on the terms that the bodies who have so cogently promoted it - the Justice 1 Committee, the Howard League Scotland (2003) and the Scottish Consortium for Crime and Criminal Justice (Tombs, 2004, 2005) - might wish. Given the Executive’s limited room for manoeuvre - with a formally independent judiciary it cannot realistically be pressed to *decree* a policy of prison reduction (or stabilisation) - a debate can still usefully take place within civil society. This should involve the business community, faith groups, academia, the voluntary sector, the many professional bodies within the criminal justice system and, crucially, the more responsible media, and aim to create a moral consensus about community supervision and prison use from which sentencers might eventually feel able to take some cues. Within this debate social work and penal reform organisations who still quietly resist EM because they perceive it to be too controlling and too punitive should note that the fortunes of EM in Scotland are currently caught up not in the Orwellian spectre of overcontrol, but in a press-augmented scandal of

undercontrol - and worry that the spotlight (as it has in England) may turn on them. Although “populist punitivism” may yet push some politicians, newspapers and perhaps some victim advocates to canvas the scrapping of “costly and ineffective” tagging schemes in order to signal “getting tough on crime”, international experience suggests that EM is becoming integral to the community supervision of offenders. It may be that in Scotland social work will not overcome its reservations about EM, and acquire the confidence to shape its development, unless it is taken out of private sector hands, and for that reason the Swedish, probation-based model of EM service delivery (Wenneberg, 2004) - flagged by the Executive in its original EM consultation - would be worth revisiting.

Endnotes

1. English company Reliance Secure Task Management was originally subcontracted by GSSC of Europe Ltd (a subsidiary the American company GSSC Inc, and the EM contract holders in the south of England and the Hamilton pilot) to do EM installations and home visits. Following a legal dispute between the two companies, settled in Reliance’s favour, Reliance took over the contract in October 2001 (personal communication, James Toon, Home Office). Different subdivisions of Reliance variously provide prisoner escort services, police custody suites, vehicle tracking services and warrant enforcement services for magistrates’ courts. In England, Reliance Monitoring Services, as well as providing tagging, also provided voice verification, drug and alcohol detection services and asset tracking services. It lost the South of England EM contract to Serco in 2004.
2. All quotations from the respondents to the consultation were made in 2000, and can be found at www.Scotland.gov.uk/consultations/justice/tagging-00.asp
3. ElmoTech is an Israeli company founded in 1990 to exploit the emerging market on offender surveillance in the USA. It rapidly became, and has remained a world leader in EM technology. It provides equipment to the Swedish probation-run EM scheme, and to 18 countries overall (Nellis, 2005).
4. Contracting out criminal justice services - whether HMP Kilmarnock to Serco, or escort services and tagging to different divisions of Reliance - was encouraged by New Labour, but not popular with the Liberal Democrats or the SNP, and was tolerated by a wary public sector only to the extent that

commercial organisations were kept on the margins of established policy networks. Mistakes by Reliance Custodial Services (occasionally “losing’ prisoners it was escorting) were repetitively held up in the press as proof of the Executive’s misjudgement. Simon Marshall, Reliance UK’s operational director, challenged a particularly inflammatory press attack, pointing out that “in an average month we are responsible for some 15,000 prisoners and the few incidents that are reported account for only a tiny percentage of total prisoner movements” (letter, *Edinburgh Evening News* 9th March 2006)

5. Serco’s five year contract is for up to £30m - £16m more than Reliance’s original four year contract - in anticipation of an expanded service (Scottish Executive 2005). Serco is a British-based company with 600 operating contracts and 34,000 staff worldwide. Its publicity describes its “core products”, somewhat circumspectly, [as] “the skills and processes for organisational design and change management”. 90% of its business is with the public sector, mostly defence, corrections and education. It runs research centres and railways, maintains offices and spacecraft, manages schools, prisons, immigration detention centres and motorway systems, tests military assets (including operating firing ranges) and controls air traffic - as well as having run electronic monitoring programmes in England since 1999. It was the joint parent company of Premier Monitoring Services, Premier Geografix and Premier Custodial Services with US company Wackenhut, but has since become the sole owner of these companies. It has dropped the Premier brand and trades under its own name. In Scotland, Serco already has contacts with Scatsca airport, Network Rail, the naval bases at Clyde and Faslane, the BBC and a Westin Hotel, as well as managing the Dungavel Immigration Detention Centre, Kilmarnock Prison and Wishaw Hospital.

References

- Adams L. (2006) Tagged Teens: Scotland’s most prolific young offenders speak out. *The Herald Society* 10th January 2006
- Ball R. A., Huff C. R. and Lilly J. R. (1988) *House Arrest and Correctional Policy*. London: Sage
- Castells, M. (1996) *The Rise of the Network Society*. Oxford: Blackwell
- Croall, H. (2005) Criminal Justice. in Mooney G and Scott G (eds) *Exploring Social Policy in the ‘new’ Scotland* . Bristol: Polity Press.

Garland, D. (2001) *The Culture of Control: crime and social order in contemporary society*. Oxford: Clarendon Press

Flint J, Atkinson R, and Scott S (2005) *A Report on the Consultation Responses to "Putting Our Communities First: a strategy for tackling anti-social behavior"*. Research Findings. Edinburgh: Scottish Executive

Hough M (2006) Foreword to Whitehead P and Statham R. *The History of Probation: politics, power and cultural change 1876 - 2006*. Crayford, Kent. Shaw and Sons

Howard League Scotland (2003) *Submission to the Coulsfield Inquiry into Alternatives to Custody*. Edinburgh: Howard League Scotland.

Hughes J (2003) You're Tagged. *Law Journal* 48(11) 23-25.

Hutton, N. (1999) Sentencing in Scotland. in Duff P and Hutton N (eds) *Criminal Justice in Scotland*. Aldershot: Ashgate

Irving Report (2005) *Registering the Risk: review of the notification requirement, risk assessment and and risk management of sex offenders*. Edinburgh: Scottish Executive

Johnston I (2002) *Electronic Monitoring - maintaining the balance*. Criminal Justice Management May.

Lianos M and Douglas M (2000) *Dangerisation and the End of Deviance: the institutional environment*. in Garland D and Sparks R (eds) *Criminology and Social Theory*. Oxford: Oxford University Press

MacLean Report (2000) *Report of the Committee on Serious and Violent Offenders*. Chaired by Lord Maclean. Edinburgh: Scottish Executive.

Mayer M, Haverkamp R and Levy R (eds) (2003) *Will Electronic Monitoring have a Future in Europe?* Freiburg. Max Planck Institute

McAra L (1999) *The Politics of Penalty: an overview of the development of penal policy in Scotland*. in Duff P and Hutton N (eds) *Criminal Justice in Scotland*. Aldershot: Ashgate

McAra L (2004) The Cultural and Institutional Dynamics of Transformation: youth justice in Scotland, England and Wales . The Cambrian Law Review, 23-54

McAra L (2006) Welfare in Crisis? key developments in Scottish youth justice . in Muncie J and Goldson B (eds) Comparative Youth Justice. London: Sage

National Audit Office (2006) The Electronic Monitoring of Adult Offenders. London: National Audit Office

Nellis M (2004) Electronic Monitoring and the Community Supervision of Offenders . In Bottoms A E, Rex S and Robinson G (eds) Alternatives to Prison: options in an insecure society . Cullompton: Willan

Nellis M (2005) Electronic Monitoring: exploring the commercial dimension. Criminal Justice Matters 58: 12-13

Nellis M (2006) The Limitations of Electronic Monitoring: reflections on the tagging of Peter Williams. Prison Service Journal. Issue 164. 3-12

Rex S (2005) Reforming Community Penalties. Cullompton: Willan

Roberts J V (2004) The Virtual Prison: community custody and the evolution of imprisonment. Cambridge: Cambridge University Press

Scottish Executive (2000) Tagging Offenders: the role of electronic monitoring in the Scottish criminal justice system . Edinburgh: Scottish Executive

Scottish Executive (2001) Press release - Executive gives green light to electronic monitoring. 27th June 2001

Scottish Executive (2004) Supporting Safer, Stronger Communities: Scotland's Criminal Justice Plan Edinburgh: Scottish Executive

Scottish Executive (2003) Putting Our Communities First; a strategy for tackling anti-social behaviour. Edinburgh: Stationary Office.

Scottish Executive (2005) News Release - New Electronic Monitoring Contract Awarded. 21st October 2005

Scottish Executive Education Department (2004) Letter to Local Authorities: Intensive Support and Monitoring Services within the Children's Hearing System.

Scottish Executive Statistical Bulletin (2006) CrJ 2006/01. Edinburgh: Scottish Executive

Scottish Office (1996) Crime and Punishment. Edinburgh HMSO Cmnd 3302

Scottish Office (1998) Press Release 24th August 1998. Edinburgh: Scottish Office

Scottish Police Federation (2005) Chairman's Address to Annual Conference. www.spf.org.uk

Sentencing Commission for Scotland (2005) Report on the use of Bail and Remand. Edinburgh: Sentencing Commission for Scotland

Sentencing Commission for Scotland (2005) Early Release from Prison and Supervision of Prisoners on their Release: Consultation Document. Edinburgh: Sentencing Commission for Scotland

Smith D (2001) Electronic Monitoring of Offenders: the Scottish experience. *Criminal Justice*, 1(2) 201-214.

Smith D (2003) Comparative Criminal Justice: North and South of the Border. *Vista* 8(1) 2-8

Stead M (2002) What do the Public Really Feel about Non-Custodial Penalties. A Rethinking Crime and Punishment briefing. London: Esme Fairbairn Foundation

Tombs J (2004) A Unique Punishment: sentencing and the prison population in Scotland. Edinburgh: Scottish Consortium on Crime and Criminal Justice

Tombs J (2005) Reducing the Prison Population: penal policy and social choices. Edinburgh: Scottish Consortium on Crime and Criminal Justice

Wenneberg I (2004) Electronic Monitoring in Sweden. Stockholm: Brottsforebyggande radet (BRA)