

Electronic monitoring of asylum seekers

Pilots to electronically monitor asylum seekers are due to start this month. JCWI's Communications Officer Rhian Beynon looks at the repercussions.

What are the new powers

Section 36, (removal and detention: electronic monitoring) of the Asylum and Immigration Act 2004, introduces a new power enabling electronic monitoring of those liable to immigration detention.

Under this power a person over 18, subject to immigration control may be required to wear or operate a device; and cooperate with electronic monitoring where a residence restriction is imposed and where s/he could be subject to a reporting restriction; and where immigration bail is granted.

The Home Office has indicated that in, the long term, electronic **monitoring** could make use of the still developing GPS (global positioning satellite) technology; and in practice, in the short-term, could include the use of electronic tags or the use of voice verification via telephone.

What does electronic monitoring mean?

The GPS **electronic tracking** technology would allow continuous tracking of a subject while **electronic tagging** requires wearing a bracelet which emits a signal to a receiver at the subject's home address. The subject could be required to be at home at a particular time or times of the week. **Voice verification** or **voice tracking** enables reporting and will use biometric voice recognition technology over a telephone, from a fixed landline and from a fixed address, at a notified time.

Who could be subject to monitoring?

When he introduced the proposals in November 2003 the Home Secretary said that electronic monitoring of asylum seekers would be an alternative to their detention. He added that people who would be tagged would be unsuccessful asylum seekers and those who have "no justifiable claim at all" who the immigration service are waiting to remove.

Later this year the Home Office said it envisaged monitoring would allow the release on bail, or temporary admission to the UK, of those at “the lower end of the risk spectrum” of absconding who would otherwise have been detained.

The Home Office’s recently published factsheet (July 2004) has now elaborated the groups of people who could be subject to electronic monitoring to include: “asylum seekers with appeal rights exhausted, illegal entrants, those subject to administrative removal (workers in breach and overstayers), those served with notice of intention to deport or a deportation order; arriving passengers subject to further examination; and those refused leave to enter pending removal.”

Why does the Government want to introduce electronic monitoring?

The Home Office detains around 3,000 asylum seekers and claims detention is essential to the efficient removal of asylum seekers. As it plans to step up removal of failed asylum seekers, its detention strategy means it faces a capacity problem. Therefore it views electronic monitoring as an integral part of its strategy to increase removal of asylum seekers

The Home Office factsheet on the use of monitoring says that voice recognition technology will facilitate better contact with those who need to report to a police authority or immigration reporting centre and may negate the need for in-person reporting. Tagging and electronic monitoring will specifically be used as alternatives to detention.

As of August 2004, the Scottish press reported that a six-month pilot electronic monitoring scheme involving some 70 asylum seekers was due to be set up in Scotland from September, with other projects going ahead in England and Wales. There were reports that Reliance Monitoring Services, part of the Reliance Security Group, from East Kilbride was to provide the service and that some monitoring could be carried out using voice tracking by telephone, possibly from landlines, possibly from mobile phones.

The Home Office has subsequently confirmed that electronic monitoring pilots are due for Scotland, England and Wales with Scotland due for the autumn. A spokesperson confirmed that voice verification would be

included within the Scottish pilot but was unable to specify whether land lines or mobile phones would be used.

JCWI's position:

The electronic monitoring of asylum seekers is a "first" in the UK. It is difficult to predict all the issues that may arise in practice during the six-month pilot. However JCWI is opposed in principle to the electronic tagging or GPS satellite tracking of asylum seekers.

Many asylum seekers and their lawyers will find electronic tagging or satellite tracking preferable to detention, and will accept it as an alternative. The reports of Her Majesty's Inspector of Prisons on Harmondsworth and Dungavel detention centres highlights the unsatisfactory nature of the regimes and conditions experienced by detainees in such places. The tragic events which took place in the summer of 2004 at both detention centres may convince many others that electronic monitoring is a necessary alternative.

However JCWI believes electronic monitoring is wrong. Firstly, this is because to offer monitoring as an alternative to detention reflects, and endorses, an underlying and fundamentally flawed premise that asylum seekers are not trustworthy and would otherwise require detention. Secondly, like detention, electronic monitoring is in effect a criminal penalty imposed on individuals who have committed no crime.

In fact the majority of asylum seekers remain at liberty and comply with reporting restrictions. Arguably they have no choice but to comply as they are not permitted to seek work and complying with immigration control is a concomitant of accessing NASS or hard cases support. In any case asylum seekers have not injured society: they have exercised their right under the Geneva Convention to claim asylum based on a well-founded fear of persecution. Just because they are in detention does not necessarily mean they have failed in that claim – they may still be pursuing the appeals process. Their detention then is a matter of administrative convenience, not a necessary and exemplary punishment for a crime, or a means of preventing a further crime being committed.

Electronic monitoring, in the form of tagging, is currently used as a punishment and as a preventative measure for criminal offenders either as an alternative to imprisonment and in conjunction with community sentencing, or as a condition of parole of offenders on licence. Electronic monitoring, particularly if it involves tagging, will be therefore be

experienced as stigmatising by asylum seekers. It will also be felt as an intrusion of privacy.

Equipment fallibility –could this be an issue?

To some extent any legal argument about intrusion of privacy under Article Eight may be academic, given that detention prior to deportation is explicitly permitted by Article Five of the European Convention on Human Rights and that, presented with the choice of detention or electronic monitoring, many asylum seekers and their lawyers will opt for monitoring. However there is also the issue of the potential fallibility of the equipment involved which could conceivably lead to restrictions of liberty under Article Five.

In reply to his question about the rate of failure of electronic tagging devices, Member of the Scottish Parliament Donald Gorrie was told by the Scottish Executive that 1,617 offenders had been electronically monitored since 1 May 2002. Of those, there had been a total of 237 incidences where the central computer system had identified a malfunction, or potential malfunction, of part of the electronic monitoring equipment: 48 in 2002, 111 in 2003 and 78 in 2004.

These incidents involved 137 separate tags – which is slightly less than ten per cent of all tags used. While this is by no means substantial, neither is it so insignificant as to be of no concern to asylum seekers and their representatives.

The Scottish Executive reassured Mr Gorrie that the central computer system detects all incidences of malfunction, however minor. This includes such incidences as low battery life. In every case where the central computer system detects a malfunction, the contractor replaces the faulty or damaged equipment to ensure continued monitoring of the offender's compliance with their order. All faulty and damaged equipment is returned to the manufacturer.

Notwithstanding the Scottish Executive's assurance, JCWI would have questions about how a bailed asylum seeker's right to liberty would be safeguarded if the tag malfunctions through no fault of theirs. Will the

individual be detained until it is confirmed that malfunction has taken place - given that a failure to co-operate with using the device is a breach of a reporting restriction? If they are wrongly detained, however briefly, because the equipment has malfunctioned rather than because they have failed to co-operate, this could amount to a breach of their Article Five rights. And could such an incident potentially affect a perception of their credibility in any appeal on a case for leave to remain they are pursuing?

Voice tracking for persons with reporting requirements will not involve wearing a stigmatising tag; and could ease the burden of traveling to an immigration reporting centre or police station to report. But as industry experts have pointed out, if tags malfunction, voice tracking technology is not perfect either. It may be possible for an individual to fall out of the range of coverage at their reporting time if, as the Scottish press claims, mobile phones are used. And what happens if an asylum-seeker's mobile phone is stolen, lost or mislaid; or, through no fault of their own, the landline does not function or cannot be accessed? Will that open him or her up to a charge of breaching the reporting restriction, and how will that be ascertained? And again, could it expose him or her to wrongful loss of Article Five rights, or affect their credibility in any appeal?

Similar coverage issues could surround GPS continuous satellite tracking when it is eventually introduced .

Conclusions

The detention and electronic tagging and tracking of asylum seekers, failed or not, are wrong in principle because they criminalise people who have committed no crime and have implications for the credibility of those applicants who have not exhausted the appeals process. They are measures which are out of proportion to the scale of any reporting issues because the vast majority of asylum seekers are at liberty and do comply with reporting restrictions, particularly as, given they are not permitted to work, it is a concomitant of accessing financial support. Electronic monitoring of asylum seekers, like their detention, represents a potentially serious step change in the relationship between the state and law-abiding individuals looking to the UK for protection under international law.

Those lawyers and asylum seekers who accept electronic tagging and tracking as an alternative to detention will have good reasons for doing so. Loss of personal liberty is distressing, even more so in the case of asylum seekers who, unlike offenders, are not experiencing it as a just

punishment. However they will want to balance this consideration against concerns about the potential fallibility of the monitoring equipment used and what this might entail.

Some may reflect that if all asylum seekers refuse electronic monitoring as an alternative to detention the Government cannot progress either a strategy of electronic monitoring or detention infinitely. However individuals cannot be expected to take part in a wider campaign against UK Government strategy when they have their own set of distressing circumstances to contend with.

JCWI believes that instead of using punitive mechanisms to ensure compliance with immigration control the UK Government should consider positive tools for incentivising asylum seekers to co-operate. Instead of preventing asylum seekers from undertaking paid work, the Home Office should consider permitting them to do so. Even for those who are deemed to have no case and face eventual deportation, the potential to access jobs, build up savings, and acquire training and skills, could be a far greater encouragement to co-operate with immigration control.