



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 1 September 2021

Session 6



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Wednesday 1 September 2021

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
CRIMINAL JUSTICE (SCOTTISH GOVERNMENT PRIORITIES).....	2
POLICE, CRIME, SENTENCING AND COURTS BILL	38
SUBORDINATE LEGISLATION.....	43
Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2021 (SS1 2021/220)	43
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2021 (SS1 2021/225)	43

CRIMINAL JUSTICE COMMITTEE

2nd Meeting 2021, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Cabinet Secretary for Justice and Veterans)

Ash Denham (Minister for Community Safety)

Neil Rennick (Scottish Government)

Graham Thomson (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 1 September 2021

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the second meeting in session 6 of the Criminal Justice Committee. No apologies have been received.

Under agenda item 1, does the committee agree to take in private item 6, which is consideration of today's evidence, and item 7, which is consideration of our approach to pre-budget scrutiny?

Members *indicated agreement.*

Criminal Justice (Scottish Government Priorities)

10:02

The Convener: Under agenda item 2, we will take evidence from the justice ministers on their priorities for session 6 in the area of criminal justice. I welcome Keith Brown, Cabinet Secretary for Justice and Veterans; Ash Denham, Minister for Community Safety; and, from the Scottish Government, Neil Rennick, director of justice, and Donald McGillivray, director of safer communities.

I refer members to papers 1 and 2, and I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice and Veterans (Keith Brown): Thank you very much, convener, and congratulations on your appointment. I also congratulate members on being appointed to the committee. I look forward to working with the committee in future months, and I am grateful for the opportunity to meet today.

As public health restrictions are further eased and Scotland continues to open up, the criminal justice system is responding to the significant challenges that have resulted from Covid and the necessary public health measures that the Scottish Government has taken. For the important roles that they have played during the pandemic, I thank our justice partners including prison officers, criminal justice social workers, police officers, fire and rescue staff, prosecutors, the courts service and judiciary, our legal profession, the third sector and others. In the short time that I have been in post, I have been impressed by everyone's hard work and their willingness to come together to mitigate as best we can the pandemic's consequences and find sometimes creative solutions to the problems that the system has faced. Innovations such as the use of remote jury centres in cinemas—which I have visited—with remote balloting of jurors and the use of online hearings for some court hearings are good examples of the collaborative and innovative approach that has been taken by justice partners.

The Scottish Government has committed to investing £50 million this year to help to drive forward the recover, renew and transform programme. For 2021-22, we have also increased the policing budget by £75.5 million to over £1.3 billion, including one-off funding of £15 million specifically to mitigate the impact of Covid-19 on police finances. That is in line with our commitment to protect the police resource budget in real terms throughout the new session of Parliament, just as we did throughout the previous one. We are beginning to see some optimistic

signs as the necessary Covid restrictions are eased with, for example, the announcement by the Scottish Courts and Tribunals Service that the number of sheriff solemn cases that were concluded in June exceeded pre-Covid levels.

That said, I recognise that the task that is ahead of us remains significant and I do not underestimate the distress that is caused to the victims of crime by unavoidable delays in cases being resolved. In that respect, this jurisdiction is no different from most others. Continued co-operation across the justice system as a whole will be required for some time to come in order for us to resolve fully the pandemic's impact, but that task is not only about returning to the way that things were. It is also about thinking how we can do things better, which will mean doing them differently.

Before the recess, I outlined in the chamber how we might do that. The Scottish National Party manifesto set out our vision of where we see Scotland's criminal justice system being in 2026, and the Scottish Government has already begun the work to deliver those transformational changes across the five years of this session of Parliament. As the committee will understand, there are limitations on what I can say about timescales and the detail of the legislative programme ahead of the First Minister's statement on the programme for government next week. We will be able to provide further details after next week's statement and I will get back to the committee in due course with any information that I am unable to pass on directly to members today.

Members will recognise that many of the commitments in the Government's manifesto—such as the commitments to strengthen the rights and protection of victims, improve public protection and modernise the justice system—will require both primary and secondary legislation. We are also committed to the on-going process of law reform, including through bills proposed by the Scottish Law Commission. As always in justice, we can expect a range of legislation to be considered by this and other committees throughout the Parliament. Of course, committees and members might propose their own bills, too.

A number of the commitments that we have set out for reforming our justice system are shared broadly by other parties in the Parliament. For example, a legal right to anonymity for complainers in sexual offence cases was included in a number of the parties' manifestos. There is, I believe, quite a lot that we can agree on. There is strong evidence of collaborative working across our justice system and I welcome the opportunity to have collaborative engagement with the committee and other parties in Parliament.

I have already met a number of opposition spokespersons, some of whom are here today. If we can work together, we can bring about the changes that are necessary to transform Scotland's criminal justice system. I have said before and I am happy to repeat now that I will try to find consensus wherever possible. Although I am sure that there are areas of the Government's programme that the committee will want to probe and scrutinise, I ask members, where they can, to work constructively with justice ministers over the coming weeks, months and years.

I know that that view is shared by the Minister for Community Safety, Ash Denham, who has been asked by the First Minister to take on a particular role in the portfolio. It might help if the minister was to make some remarks on that. With that, I conclude my opening remarks.

The Convener: Minister, would you like to make some remarks?

The Minister for Community Safety (Ash Denham): Thank you, convener, and good morning. I will be very brief. I agree with the cabinet secretary's comments about the desire and potential for collaborative working in those aspects of the portfolio for which I am responsible. Anyone who knew me in the previous session will know that I always try to build consensus where possible.

I endorse what the cabinet secretary said about the important contribution of the legal profession as well as that of the third sector, including organisations that work with the victims of crime in our justice system. The engagement and involvement of the legal profession and the third sector, along with other justice agencies, will be vital as the system recovers and renews following the pandemic's impact.

Returning as the Minister for Community Safety, I am pleased to be taking forward a number of initiatives from the previous session such as those to modernise and strengthen the contribution of our fire and rescue service, reform legal aid and regulate the legal profession. In addition, as the cabinet secretary mentioned, I have been asked by the First Minister to take on the specific role of looking to improve the experience of women in our justice system. Many elements of the justice system including community justice, prisons and courts are designed around the needs of men or the system itself but, as we know, women and children are often disproportionately affected as victims of sexual offending or by the impact of imprisonment.

In taking forward the role, I want to draw on all the relevant evidence and expertise from a wide range of sources and individuals. I look forward to engaging with the committee as I work on that

agenda and the rest of our programme for the current session of Parliament.

The Convener: Thank you. We move on to questions. We have an informal running order, but there is quite a lot that we would like to get through this morning.

Jamie Greene (West Scotland) (Con): I have several areas that I would like to cover, but I am happy to come back in later. The first area of natural interest is what happens next in our criminal justice system. We can all identify that there is a tremendous backlog of cases, which has a knock-on effect both on those on remand—I am sure that we will discuss that later—and on the victims who are involved. The backlog is huge, as is the challenge. We know that all the stops are being pulled out, but it is not just about increasing the size of the judicial estate; it is also about how we get through the backlog.

Which of the temporary measures to deal with the health emergency are likely to become permanent measures in the justice system? I am thinking specifically of virtual trials and the submission of written evidence rather than verbal evidence, which can be cross-examined and properly interrogated, for example. What concerns have been raised by the legal profession that some of the temporary measures should not become permanent?

Keith Brown: That is a very good question and there is a lot to it. First, on the question as to what elements have given cause for concern among the legal profession, what springs to mind is the concern of the Faculty of Advocates about the continuing use of remote juries. The faculty has been very supportive of the use of remote juries and has seen real benefits from it, but I acknowledge that there are some concerns in the faculty about that being carried too far into the future if it is not required given the Covid situation.

On the issue of what innovations will remain, remote juries are something that we will consider, and we will also consider the Lord Advocate's views on that. The remote balloting of juries has been of great benefit. It has been necessary because of the Covid pandemic, but it might be useful in future, too. We might want to keep in mind the potential use of remote juries in exceptional cases—for example, in serious organised crime cases where there might be an issue of jury tampering.

Mr Greene is right to say that we cannot just expand everything to try to deal with the issue. The committee heard from the Lord President, who said exactly that: we cannot just increase the scale of the system and there are other things that need to be done. An example might be the pre-recording of evidence, which has been beneficial

for many reasons and not just in relation to Covid. The ability for people who might be vulnerable for different reasons to give evidence in much more relaxed surroundings started very recently and I think that it will be a long-term innovation.

Beyond that, it is clear that we cannot say that what we have done in response to the pandemic with the £50 million that we have put into the system this year is sufficient. We understand that it is not the end of the story and more investment has to happen. Members will know that the publicly acknowledged times for getting trials back up to where they were before are 2024 for summary trials and 2025 for solemn cases. If there is anything that we can do to advance that, we will try to do it.

Apart from with some of the innovations that we have made, we are in no different a position from the other jurisdictions that have had to wrestle with the problems that the pandemic has created. Neil Rennick might have something to add on that.

10:15

Neil Rennick (Scottish Government): As members will be aware, the Scottish Government is consulting on a wide range of measures that were introduced by the emergency legislation. The Government is specifically asking for views on which measures there would be benefit in continuing for an extended period. As both the president of the Law Society of Scotland and the Lord President have said, we have learned lessons over the past 18 months of using those measures and it is sensible to draw on those lessons and consider which of the measures we should continue with and which were specific to the period of Covid.

Keith Brown: I do not know whether this came up in the committee's discussion with the Lord President, but he is keen on us continuing some of the innovations, such as individual legal professionals consulting or taking evidence virtually, which is a huge boon in many circumstances. I am pleased that the Lord President is taking a progressive attitude to that.

Having said all of that, those issues relate mainly to the criminal side. The civil side has progressed normally. The minister might want to comment on that.

Jamie Greene: Perhaps I can move on, as I am not convinced that civil justice is currently part of the committee's remit and we have a lot to cover.

You have raised some valid issues that are linked to the by-products of a two or three-year delay in a case for both the victim and the accused, especially if they are being held on remand. During our visit to HMP Edinburgh, I met

a gentleman who is on remand awaiting his trial, which has been postponed twice. He has no real prospect of the trial taking place in the next six months. One could say that that person is languishing in prison having, as of yet, not been found guilty of a crime. There are clear human rights aspects to the matter and we cannot lock people up indefinitely.

What happened to the rule of thumb of maximum detention? We are talking about young lives possibly being ruined because people have been stuck in prison cells awaiting their trial for two or maybe even three years. That does not seem to be an intrinsic part of the society that we purport to have or to want.

Part of the issue is the problem of people. During our visit with the Lord President, we were told that, even with the best will in the world and all the Government money in the world, there would simply not be enough people in the system to clear the backlog. We know that the average age of those in the criminal legal profession is such that most of them will retire before the backlog is cleared. What are we doing about that?

Keith Brown: The legal professional organisations will be taking the lead in future recruitment for their professions. I think that I am right in saying that we are seeing record numbers of people going to universities to seek qualifications. However, part of it is down to how the legal professions can increase the numbers given the demographic that you mentioned.

The points about remand are well made. We have made no secret of the fact that we do not want to see as many people on remand. We understand that remand can be detrimental, especially if, at the end of it, the person is found not guilty. However, none of those things is by design. The pandemic is real and we cannot wish it away. It has implications for the justice system and, unfortunately, it has given rise to the higher number of people on remand.

I go back to what I said in my opening remarks about the fact that I cannot be too specific in advance of the publication of the programme for government, but we are looking to take early action in relation to remand, not least for some of the reasons that Mr Greene mentioned. We are very conscious of both the human rights of those who are involved and also, particularly for those who have never experienced a justice system before, the impact that it can have on the person, their family, their employment and all sorts of other things. We are very seized of that. However, the situation arises from the pandemic. Like many other jurisdictions, we want to do the best that we can to mitigate the effects of that.

Jamie Greene: I am sure that remand will also be raised by other members. I have a final, separate question. Why are so many calls to 101 going unanswered or being abandoned? What is being done about that?

Keith Brown: The Scottish Police Authority will hold the police to account for its performance in relation to that. As you would expect, however, I have had conversations with the police about the issue.

There is a public concern and the situation requires further attention. It is vastly better than it was in the past, with the legacy forces, when people would call the numbers—I am talking not about 999, but about the equivalents to 101—and they would ring out, with no record being kept of the unanswered calls. Nobody knew the extent to which that was happening. I am told that that is very much the case now in other parts of the United Kingdom, and it cannot be satisfactory.

It is right that 101 is a triage service that directs people to the right place, because people sometimes call for reasons that are nothing to do with the police, and it is right that the police have a way of clearing those calls. However, it must be improved. I spoke this week to the chair of the SPA and senior officers, and they are seized of the need to improve on the figures.

The Convener: Ms Clark, would you like to pick up the questions from there?

Katy Clark (West Scotland) (Lab): Thank you, convener.

As you said, cabinet secretary, we cannot expand everything. There are genuine reasons why, sometimes, the staff who could perform certain functions simply do not exist. What are the budgetary constraints over the coming period that could prevent your taking steps to reduce the huge backlog in cases? Have you quantified that, or do you have the funds that you need to get through the backlog as quickly as possible?

Keith Brown: In my 14 years in the Parliament, I do not think that I have ever heard a minister say that they have all the funds that they need, so, no, I would not say that. It must be pointed out that we are now in the 10th or 11th year of a programme of austerity from the UK Government, which has real implications. We mention it from time to time, but the implications for capital and revenue over that period are huge—huge chunks have been taken out of the Scottish budget. I must also say that the fiscal framework is now creaking at the seams. Therefore, there are overall pressures, but, within that, the £50 million that we have allocated has been very helpful. There are also specific areas, such as taking on new sheriffs, for example, which we are able to proceed with fairly quickly. Budgets will always be a consideration.

For that reason, the £50 million that we have managed to get for the recover, renew and transform programme of work this year cannot be the end of the story. Therefore, like every other minister, I will be putting my bid in for that process. We have taken on new staff in some areas, and Neil Rennick might want to say something about that.

Neil Rennick: I give huge credit to the justice organisations, which, from the beginning of the pandemic, have worked collaboratively on the criminal justice side through a new criminal justice board. They have worked together and taken a system-wide approach to the challenges of Covid. That resulted in the request, as part of the previous funding round, that resulted in the £50 million. That has been used well to employ additional fiscals and court staff and part-time judiciary but, also, importantly, for expanding community justice provision, which is the main issue that I would emphasise in answer to your question. It is not purely about the level of resources; it is about how those are allocated across the whole system, and we need to take a system-wide approach. If more cases are feeding through, we need to ensure that there are effective arrangements to manage those disposals.

We continue to look at the next stage of the work on the recover, renew and transform programme. As the cabinet secretary said, that will be reflected in the next funding round, but, so far, the resources have been well used. The indications from the justice organisations are that, at the moment, that is the capacity of the system to deal with the cases.

Katy Clark: I think that we will come on to the matter of community justice later.

When the Covid restrictions were introduced, politicians across the UK and the political spectrum said that they were the most draconian restrictions that had ever been known. How will you guard against some people in the system trying to keep some of the practices that were brought in during Covid, given that there were good reasons for the way that we did things before Covid?

Keith Brown: That is a good point. It is almost the obverse of Jamie Greene's question about what has been done during Covid that we could continue to do. There are things that we have had to do that we should not continue to do, which is a good thing for ministers to keep in the back of their minds. It might be tempting to say that, because a restriction makes things easier in some regard, we should keep doing it. We must guard against that. However, the Parliament and its committees are a pretty good watchdog in that regard. I am thinking about the recent discussion that we had about the extension and elimination of many of the

measures, and there is provision for further and regular reporting on those things, so there are democratic checks and balances.

However, if your point is that the Government should also be looking to and checking itself—with Jamie Greene's caveat—we want to see whether any change that has been forced by circumstances might be of benefit in future. If that is the case, we should get parliamentary approval.

Katy Clark: Of course, sometimes there are cash pressures on people to keep new ways of working.

On vaccination, both the Prison Officers Association Scotland and the Scottish Police Federation have expressed concerns that their members have not been given priority as key workers. That may be an issue both when it comes to the booster and for seasonal flu. Have you made a decision on that, and will you give those workers priority status? To do so could assist massively in the sector.

Keith Brown: We have not given a priority status that is different from what the Joint Committee on Vaccination and Immunisation has recommended. That recommendation is what we have followed. Members will have seen that the same demographic step change is happening in prisons for prisoners who are willing to take the vaccine and for prison officers. Those views have been expressed by police officers, too, but we have followed the JCVI advice.

More recently, we have agreed that we should bundle together prisoners and prison officers in a particular setting, and the health boards are aligning with that to ensure that we drive up those figures.

As I said in my opening remarks, when it comes to what prisons have had to do to respond to the situation, we have had a fantastic response in compliance from inmates and from prison officers. That has been evidenced. I do not deny that we have had outbreaks in prisons. However, it is in the nature of prisons that they are much more vulnerable, and the way that the situation has been dealt with by the prison authorities has been tremendous. We will continue to follow the JCVI advice.

Katy Clark: I may come back to that issue, because we are talking about a young population, which will tend to be vaccinated later.

On sexual offences, the number of reported recent rapes has increased by more than a third, to 631 between April and June, compared with the same period last year; and a total of 3,720 sexual crimes, both recent and non-recent, were recorded in the first quarter, which is an increase of nearly 25 per cent. I know that you have indicated a

planned spend of £100 million on prevention of violence against women and girls, but what are you doing further to address that crisis, and what will the timetable be when it comes to the Lord Justice Clerk's recommendations on how we deal with offences such as rape?

Keith Brown: In response to your final point, I revert to what I said earlier: the programme for government will shortly be issued, which will give some timescales for those things. Members will expect there to be a degree of urgency about the way that the Government deals with Lady Dorrian's suggestions.

The response is multifaceted. Such issues were discussed during the passage of the Hate Crime and Public Order (Scotland) Bill, and are in the continuing remit of the working group on misogyny, led by Baroness Helena Kennedy, which will report during the coming year. We are committed to taking action on that issue very quickly if we get a recommendation from the group to do so.

In addition, I hope that you have seen the work that has been taken forward on forensic medical evidence. I visited a place in Larbert that was much more than a spare room in a police station, as was often the case in the past. We are starting to have dedicated facilities to which people who have been subject to sexual assault and rape can go. Examination is a traumatic experience, whatever the circumstances, but it can be done better. The provision is to be rolled out across the country. There is no obligation on the victim to go through a court process; to some extent, that is still their choice.

Lady Dorrian's recommendations cover quite a wide area. I am sure that we will come on to issues such as corroboration and the three verdicts, which we have agreed to look at. We intend a whole suite of things to try to address the real problem of violence against women and girls.

I note what Jamie Greene said about civil justice matters, but it might be helpful to hear about some of the work that the minister is considering in relation to women in prison. Before that, however, Neil Rennick might want to say something about the breadth of the work that we are doing.

10:30

Neil Rennick: I would just confirm what the cabinet secretary said. The work of the Lord Justice Clerk's group is incredibly impressive. It involved not just victims organisations but the judiciary, legal professionals, prosecutors and so on, which meant that it drew on the expertise of people from across the system. It sets out some tremendously exciting proposals for looking again at how the system operates.

On the statistics that you quoted, as you know, they are part of a much longer-term trend in terms of more sexual offences being reported to the police—the rate has doubled in the past decade. However, we know that there are still significant numbers of sexual offences cases that are not reported. Therefore, as the cabinet secretary said, we need to do more to strengthen confidence in the justice system and improve the experience that complainers have.

The Convener: Before we move on, Ms Denham might want to say a few words on this topic.

Ash Denham: I think that everyone would agree that the rape statistics that the member has quoted are concerning. Obviously, we have taken quite a bit of action around tackling sexual offending, including things such as improving our laws and encouraging more victims to come forward. The cabinet secretary and Neil Rennick have set out some things that we are doing in that regard. We have the planned spend of £100 million over three years for the prevention of violence against women and girls, which is key.

Obviously, tackling the issue is a key Government responsibility, and we are committed to taking it seriously and looking at what we can do. I see it as a piece of cross-Government work. It is not something that we in justice would be able to tackle alone; I think that we will have to work with colleagues in health, equalities and so on. That cross-portfolio work is going on at the moment.

I echo what was said about Lady Dorrian's report. It contains six recommendations and I am sure that we will be able to find consensus on some of them. We know that we have consensus across Parliament on anonymity for rape complainers, but there might not be consensus on some of the other ones.

We need to consider the situation carefully and decide how we can proceed. However, we have committed to take forward the recommendation on the anonymity of rape complainers—that was in our manifesto.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I welcome the planned spend of £100 million over three years on the prevention of violence against women and girls. I should perhaps declare an interest as I am the convener of the cross-party group on men's violence against women and girls.

Will you explain the focus on the issue and comment on the recent media coverage about some women's aid centres missing out on the funding? What are the dynamics of that?

Ash Denham: I am afraid that I do not have any information on that. One of our officials might be able to give you an update.

Keith Brown: I think that we do not have information on that because, perhaps surprisingly, the funding comes from the equalities portfolio. I think that the £5 million that was to be allocated in the first 100 days has been allocated. Obviously, justice has an interest in the issue, but the allocation was handled by equalities ministers.

Rona Mackay: Right—apologies. Thank you.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I want to pick up on the point that Jamie Greene made about remand. I was impressed with your candid response, cabinet secretary, and I look forward to what is said about remand in the programme for government, because it strikes me that we cannot have people on remand for longer than they need to be. That is particularly the case for people who are, in the end, deemed to be innocent. Being on remand in such a situation can be a traumatic experience, and that might raise further questions.

I know that you cannot comment on the programme for government, but I wonder whether it might contain something about other ways of dealing with remand. For example, if the individual is on remand because they are deemed to present a danger, will consideration be given to other ways of dealing with that, perhaps through the use of criminal justice resources in the community?

Keith Brown: Thanks for the question. I probably cannot answer it fully, but you are absolutely right to say that the protection of the public is the bottom line. We keep people on remand for that reason, and, obviously, there is a risk calculation. The decisions on who to keep on remand are for the courts, not the Government, to make. However, you are right that it would seem to be perfectly legitimate to look at the risks of, say, holding someone on remand because of the fear of non-appearance or other such aspects. It is right to look at the balance of risks. Some of that might require legislation, but some of it could possibly be dealt with just through changes being made to the system. We are very open-minded about that.

The bottom line is that we must see a reduction in the numbers on remand, for the reasons that Jamie Greene mentioned—the harms that are done. I am quite frank about the fact that it is perfectly possible that someone could spend longer on remand—even if they are then found not guilty—than they would have spent in prison had they been found guilty and sentenced. There are different pressures on the system, and we must protect the public—that is the bottom line—but, yes, we should look at these areas.

We will have something to say on that. The Government is looking at the matter with a degree of urgency. Beyond that, I cannot be more specific in advance of the programme for government. Neil Rennick has worked on this for many more years than I have, so he might want to say more about the remand element.

Neil Rennick: Thanks, cabinet secretary. I can confirm that, when representatives of the judiciary and other witnesses spoke to the predecessor committee as part of its inquiry into the use of remand, one of the issues that they emphasised was the fact that the legislation in that area is a driver of decisions. Obviously, the ultimate decision on whether to remand someone is taken by the judiciary, but, as the cabinet secretary says, one area that we need to look at is the legislation around bail and remand.

Another area that ministers have already confirmed progress on and legislated on, and which we are taking forward with stakeholders, is around the use of electronic monitoring for bail. That will provide an additional option for sentencers and the judiciary in making decisions. Electronic tagging will be an alternative to remand, and work on that is progressing with stakeholders to ensure that we have the necessary support in place in communities when it is introduced.

Fulton MacGregor: That is excellent, thank you. My main question in this area, cabinet secretary, is about some of the stuff that has been postponed or delayed because of Covid-19. That is a natural thing, and it has happened across the world. You will have received a letter—I will not give my constituent's details just now—about a difficult case that I am dealing with. It relates to a historical sexual abuse case that has been delayed several times. I know from my experience of working in criminal justice and in child protection in social work that, even pre-pandemic, such delay was not uncommon. However, the case has gone on for a significantly long time. Are you able to comment more generally on such cases? Will the Government prioritise them? Some of the information—which I accept might not be fully accurate—that the family and their legal representatives are getting is that the delays are not just about the details of the case, which would be more acceptable, but are Covid related. That is causing great distress to my constituents, as you can imagine.

Without commenting on anything specific—if you have already read the letter—can you comment more on such historical child abuse cases, in which the individual is now an adult? Are those cases being prioritised in the Covid recovery?

Keith Brown: Again, I might rely on Neil Rennick to give you more detail about the priority

that is being given to such cases. I am trying to think back to the letter. I have received a substantial number of letters, including from most members of the committee, over the past few months. Because of its unique nature, I think that I recall some elements of the letter. In any event, the first warning that you get in this job is to not comment on specific cases, so I will not do that.

With regard to justice generally, and certainly with regard to Covid and recovery, we are asked often in different fora to prioritise this, that or the other. The act of prioritising one thing means that you deprioritise something else, so we must have regard to that. All I would say is that the criteria for prioritising must, first and foremost, take into account public safety. However, we must have regard—I take it that this relates to your constituent's situation—to victims and the accused and, as Jamie Greene mentioned, how the matter impacts on them.

Beyond the general comment that we were trying to prioritise public safety first, huge priority has been attached over the period of the pandemic to domestic violence. For example, almost a third, I think, of all cases that are going through the courts relate to domestic violence. On the one hand, that level is worrying, but, on the other, it shows the priority that the system is giving to those cases, and the Parliament deserves congratulation on its ground-breaking legislation in that regard.

We are looking to prioritise in various ways, but we are very conscious of what is deprioritised as a result. If that is not done—if everything is prioritised—in essence, nothing is prioritised. Neil Rennick may want to say more.

Neil Rennick: I have two brief points to make. First, the decision on which cases go to court, and the prioritisation of those, is taken by the courts and the Crown Office. At the very outset of the pandemic, the Scottish Courts and Tribunals Service set out very clearly which cases they would seek to prioritise. Those involve domestic abuse—as the cabinet secretary has said—and child victims and witnesses, and they include cases for which people are held in custody. As far as was possible with the capacity that there was during the pandemic, those cases were prioritised.

Secondly, the question raises the important wider point that the nature of crime and of cases that are coming into the justice system has changed hugely over the past 10 years—as has their complexity. There are more sexual offence cases, serious organised crime cases and historical cases. That has changed the challenge for our justice organisations when it comes to the complexity of the issues that they are having to deal with in preparing cases before they go to court and in how likely cases are to need to go to

trial before they are resolved. From all the trends that we see, that changing nature of crime is likely to be a continuing challenge.

Fulton MacGregor: Apologies, cabinet secretary—I will reframe the question. I felt that it was quite a helpful question, but I probably did not articulate it very well to you.

That particular case—again, I will not go into it—meets the priority criteria that were originally set out by the Government and the courts, because, as well as being historical, it has a current element. The family and others who are involved have been quite surprised to hear the impact of Covid being cited as a reason for the continuing delay, because there were assurances at the start that that would not be the case. To put my question in another way, therefore, I seek any assurance that you can give—it does not need to be an answer just now—that you will look into whether priority has, indeed, been given to such cases during Covid. For example, is that case a one-off, or might what has been said about it not even be fully accurate? Has priority been given to the cases that, as you have both rightly outlined, were going to be given priority? I suppose that that is a more helpful way of asking that question.

Keith Brown: The first and usual caveat has to be, as Neil Rennick has said, that the courts and prosecution authorities decide on that; we do not. People get very nervous when politicians try to tell the courts what to do—other than through legislation, as we are entitled to do.

I am happy to look at that particular case and come back to Fulton MacGregor.

One problem during the pandemic—I do not know whether it relates to that case—was that cases that involved more than one person were substantially delayed because of the Covid implications of getting numbers of accused into one room. Even if the court system gave priority to certain types of case, that was sometimes limited. The situation is better now than it was, because we have more capacity. However, it may account for what has happened. In any event, I am happy to come back to Fulton MacGregor on that individual case if I have not already done so or if there is anything that I can add in the light of his questions.

Fulton MacGregor: Thanks, cabinet secretary. Convener, I have two other questions but they are not related to this area, so I do not know how you want to take them.

The Convener: I can bring you back in.

Fulton MacGregor: Perfect. Thank you.

10:45

Collette Stevenson (East Kilbride) (SNP): I will focus on the amount of time that a prisoner spends in the prison estate, particularly on rehabilitation programmes. You have mentioned transformational change. Obviously, that will be part of the programme for government that is still to be announced, but key to that is the reduction of offending and accessibility to such programmes within prisons, particularly in the light of how we are tackling Covid and the impact that that has on the reduction in offending.

How effective are those programmes? It seems to be a lottery when it comes to who gets on to them. The question taps not only into prisons but into community safety. It is about the accessibility and effectiveness of those programmes.

Keith Brown: Thank you for the question. At the start of it, you mentioned the extent to which access to such courses or activities has been undermined by Covid, and there is no doubt that that has been the case.

Having said that, I had a very good discussion with the Prison Officers Association Scotland, whose representatives said that they felt that, during the pandemic, partly because of its general impact on prisons and activities in them, they had been able to spend more time with prisoners. They felt that that was a useful period of learning for them—there were more one-to-one discussions.

You will know about some other things that we have done—for example, with phones in cells, which have helped during an extraordinary situation. Gyms and other facilities are now open. Although they are still restricted in some ways, they were not open at the time, so there was a big reduction in on-going activities. That was necessary and will continue to happen. For example, we have had recent outbreaks at HMP Perth and HMP Dumfries, which will mean restrictions on communal activities that may include some that you have mentioned.

In general, you are absolutely right. For me, in coming to this, we have to make use of the time that is spent in prison and see how much more effectively it can be used. Prison is an expensive option. It costs £40,000 a year to house a prisoner, and I think that society wants to have a return on that investment. One such return is taking somebody out of society who is a danger to it—I understand that—and there is also the element of punishment, which is reflected in the sentence. However, beyond that, rehabilitation has to be in everyone's interests, because, in turn, that will lead to lower levels of recidivism and of crime. I think that I am right in saying that we are now seeing those at record low levels. Society wants to see more and more of that.

Around 11.9 per cent of people in Scotland have experienced crime of some description, compared with around 13.5 per cent across the rest of the UK, but that figure is still too high: that is 11 people in 100 experiencing crime. The object of rehabilitation in prison—albeit that sometimes prison is not the best setting in which to achieve it—has to be a serious one. At the start of my term as cabinet secretary, I want to look very profoundly at how we can make sure that that happens.

I know that there are constraints—for example on cash, although we are replacing HMP Barlinnie and HMP Highland and we are doing stuff in the women's estate. There are physical and monetary constraints on what we can do. However, within those constraints, I want to see how we can make sure of that rehabilitation.

In a previous job, in education, 11 or 12 years ago, I was quite concerned about the number of prisoners whose learning issues—even dyslexia—were undiagnosed when they were at school. It may be that a young person, having had undiagnosed dyslexia, has fallen behind at school, and all sorts of other things might come after that. We might be able to go back to somebody in prison and do the required work, explaining that they had dyslexia as a child, that it gave them problems with reading or writing and that we might now be able to look at how we can remedy that. I think that there is more to be done on the availability of rehabilitative and educational opportunities and on the willingness of prisoners to take up those opportunities, and I concede that those areas have been impacted by the changes that we have had to make due to Covid.

Again, Neil Rennick may have something to add.

Neil Rennick: That has covered it well. Exactly as the cabinet secretary has said, Covid has obviously impacted on access, although we have now seen, for example, Fife College and its education services coming back into prisons.

The Prison Service will try to link prioritisation to an individual's progression, such as when their parole dates are and when they are approaching key dates in their sentence. In particular areas, especially with sexual offending—we have seen a growth in the number of people in prison with a sexual offending background—that has created extra pressures. The Prison Service is looking at that specifically with regard to people with a sexual offending background.

Collette Stevenson: On that issue, we visited HMP Edinburgh last week, and one of the conversations stood out for me. It is more of an observation than a question, but I hope that you will take it on board. In HMP Shotts, in particular,

because of Covid, visiting has been restricted, so contact has been facilitated online. Something that stood out for me was that one prisoner said that they had never seen their house before. That was taken on board. They were blown away by it, and it was great for them to see where their kids and their wife stayed. That is a positive thing, which we could look at going forward, because, for some, that might be the trigger to their saying, "I'm going to make sure that I get on my programme and get out of here," which is part of their not offending again. Most of the people there were high-tariff prisoners, so they had been there for a long time.

Keith Brown: That is exactly right. The other side to that is the people on the other side of the video camera—the families who can make contact online who would find it difficult otherwise, either because of the need to travel or because Covid is a barrier. It is not just about the prisoner. The response that you will sometimes get is that it is soft justice for a prisoner to give them a phone or to have these televisual conversations, but there is the other side of it as well. Going back to the point that was made previously about remand, it is about the effect on not just the individual who is on remand but their family, so your point is correct. You are right that that is, in part, a response to Covid, but we should look at these things.

Prison officers will tell you that there are benefits to that. There are also dangers around phones and other information technology equipment, with regard to maintaining the proper regime in prisons. Being aware of the dangers is important, but we should look at how we can do that. Thinking on the hoof, why should we not look at educational incentives being delivered in that way as well? That could be done more safely than might otherwise be the case and, I imagine, it would be possible to get more specialist educational opportunities for prisoners if they could do such things remotely. We should look at some of these innovations for the longer term.

The Convener: Mr Findlay, would you like to come in on that?

Russell Findlay (West Scotland) (Con): My question is not necessarily on that area. It is on a more general point, so perhaps Pauline McNeill should come in before me.

The Convener: We will leave that just now, then, if that is okay. I am sorry—I misunderstood. I thought that you wanted to come in on that particular topic. Ms McNeill is next.

Pauline McNeill (Glasgow) (Lab): Thank you, convener. Good morning, cabinet secretary and minister. I particularly welcome the minister's comments about the work that is being done relating to women and girls.

My first question is a continuation of Jamie Greene's line of questioning and what the cabinet secretary had to say about the "Scandal of Remand in Scotland", as the Howard League Scotland described it in the title of its report. According to the Howard League, remand affects women as well as men in prison, and the majority are not being convicted, so it is right that that will be a priority. It was helpful that Neil Rennick gave us an indication of what the issue is, because I was going to ask why sheriffs are remanding so many people, many of whom are not convicted. It is useful to know that it seems to be a legislation issue. I have read the Howard League's briefing on that. I am clear that the sheriff is required to establish whether there is substantial risk and that, if there is, they must refuse bail. I take it that that is the area that the Government will look at for reform.

Neil Rennick: I would not want to say that that is the sole area for reform or the sole solution to the situation, but it is certainly part of what ministers are looking at.

Other things can be done. For example, over the past few years we have put extra money into expanding access to supervised bail, which has seen an upswing in supervised bail, even without legislative changes. Therefore, there are clearly other things that we can do and are doing.

Keith Brown: On what we are doing, the committee did an investigation into that in 2018. Since then, we have put another £117 million into community justice services each year, plus a further £550,000 to incentivise bail supervision services—bail obviously being the flip side of remand. We have also put in another £1.5 million for bail support for women each year.

I reiterate the important point that this is not just about legislation. I think—I imagine that the committee will know this better than I do—that there is also cultural adaptation, as well the legislation, that we have to consider.

Pauline McNeill: I very much welcome that.

I want to ask about the conditions of remand prisoners—in fact, probably, when I think about it, the conditions of all prisoners. Does the cabinet secretary agree that spending 23 hours in a cell is completely unacceptable? I know that you will say that there are lots of reasons for that, but I hope that you agree that it is unacceptable that prisoners—in particular, remand prisoners—are not getting access to fresh air. I have also heard about many cases—as have others—of prisoners not getting proper national health service or mental health support, because when they are detained it is not easy to complain.

Does the cabinet secretary think that radical reform is needed to make sure that we are

heading in the right direction to ensure basic human rights in the conditions of remand prisoners and prisoners generally? I represent Glasgow and have always wondered why we did not go for a remand prison as one of the new prisons, because we could probably have had a real go at reform. However, that never happened.

My central question is this: does the cabinet secretary agree that we need to radically overhaul, over time, conditions for prisoners?

Keith Brown: First of all, it is worth saying that our prisons are subject to pretty stern testing through the inspection regime. The committee might have the prisons inspector come before it. You will very much get the impression that she is her own person, and she will tell the committee what she thinks about prisons. I think that she would generally be fairly complimentary—as others have been—about how the prison system is run. A recent inspection report on HMP Greenock was quite critical of the facilities there, but she was very complimentary about the relationships between prisoners and prison officers.

To answer Pauline McNeill's question directly, I say that I do not think that we should be afraid to look at radical solutions. The question—which Pauline McNeill mentioned—why there is not a remand prison occurred to me within five minutes of taking on my job. However, we see that there are very good reasons why, when we start to think about it. For example, everybody who is on remand—from Shetland and Orkney down to Dumfries—would have to go to one prison. That would create pressures. However, maybe the question is really about why there is not more specialised provision for remand prisoners. There is in some cases, but sometimes they are part of the general population.

I agree that we should try consistently to improve. The point about lack of fresh air and of other opportunities is, at least in part, due to the response to Covid. It is about prisoners' safety—their human right to life trumps other rights. However, I say again, to answer the question directly, that we should not be afraid to look at radical solutions. As I said, I have thought about the idea of a remand prison, but it might be more relevant to consider making every prison more adaptable to different populations.

The committee went to Saughton prison and heard evidence about how difficult it is for the prison system to look after prisoners from organised serious crime groups in the same prison. We have also looked very seriously at the situation of women—in Cornton Vale, Dundee and elsewhere—in terms of providing bespoke facilities.

As Pauline McNeill rightly said, there are people to whom we need to have particular regard in terms of mental health provision. Over and above that, there are people with addiction problems. The Scottish Prison Service has to be trauma informed, to quote a phrase, so we should be willing to be radical in how we can achieve that. Perhaps Neil Rennick wants to add to that.

Neil Rennick: I confirm that there are separate remand halls within prisons in order to keep remand prisoners separate from sentenced prisoners. Obviously, the remand population is not a single group. As others have said, a large number of people are in for very short periods of remand and others are in for longer periods. Part of the work that the SPS is doing—which we are also looking at—is about how to target different support at different remand populations. Clearly, there are limits to what can be done with people in the short term, but when people are in for longer periods, that might provide more opportunities. We are certainly looking at the matter; support for remand prisoners has been highlighted before.

11:00

Pauline McNeill: This will be my last question. I know that others are interested in this matter: the malicious prosecution of individuals connected with Rangers Football Club. I am aware that you are restricted in what you can say to the committee.

I hope that you agree—I see no reason why you would not—that it is of serious concern to Scotland's criminal justice system that the Lord Advocate had to apologise for something so fundamental. The matter is obviously the subject of legal action, so I appreciate that you are restricted in what you can say, but has there been any investigation of how the decision came about? Who made the decision? At what level was it made? Was it made by, for example, the Lord Advocate's team in the Crown Office? Everyone knows that the Lord Advocate signs off everything, but she does not make every decision. Someone else obviously made the decision, and whoever that was has brought into question the Scottish criminal justice system, so it is a very serious matter. With the caveat that I have given, what can you say about how that happened? It would be good to get a response at some point.

The Convener: We are aware that there is on-going legal action, so we should not discuss the specifics of the case, but I am comfortable with members asking questions on wider issues that arise from it.

Keith Brown: You anticipated my response, convener. As Ms McNeill said, there are on-going legal proceedings. The more general point that

was raised starts to get us back on to that, too, so those questions are best put to the Lord Advocate, because she has responsibility for the Crown Office and what it has done. I was not in my current role when those things occurred. I am afraid that those questions would best be put directly to the Lord Advocate to see whether she is able to answer them. I do not want to comment beyond that, for the reasons that I have given.

Pauline McNeill: I totally acknowledge that, but I would like to think that ministers are very concerned about the issue—I am sure that you are. It is not simply a matter for the Lord Advocate. If our criminal justice system is called into question because our prosecution service has had to put its hands up, I would like to think that ministers would think that they have a role in ensuring that that can never happen again.

Keith Brown: The only thing that I will say beyond what I have already said is that, as you know, a commitment has been given that there will be a full inquiry, which will look at the actions of all those involved. I do not want to go beyond that.

The Convener: This question might be for Ms Denham, too. Cabinet secretary, in your statement last month, you spoke about the new community justice strategy and, in particular, about legislative options to divert people from prosecution and prison. Police Scotland is reporting that it has a growing population of people to deal with and that the balance is shifting, with 60 per cent of them being vulnerable people for whom Police Scotland has a safeguarding role and the other 40 per cent being individuals who find their way into the criminal justice system. Given that landscape, will you expand on the priorities that you think should be taken forward through the community justice approach, which the committee will be looking at, down the line?

Keith Brown: You will know that the current community justice infrastructure was set up in 2016. At that time, we committed to a review of it, which we are starting now, as we said we would. You might also be aware that an element of the national care service proposals might have an impact on community justice. Those two matters are on-going, and all members can contribute to them. We are in discussions with Community Justice Scotland and our local authority partners on that.

However, there are some areas in which alternative disposals will never be appropriate. With organised serious crime, in which I know Mr Findlay has a particular interest, such disposals are never going to be a suitable solution—for example, as I mentioned earlier, for people in Saughton who are looking to visit violence on each other.

The bottom line, as I think Ms Stevenson highlighted, is to do the right thing for a particular person but also to do what will give us the right outcome for society, because we have to bear in mind the rights of victims and the right of society to be protected from crime. If the best solution for a person is a disposal that takes them away from the path that they would go down if they went to prison, we should be willing to consider such a move and ensure that we have the infrastructure in place to make it possible.

That is where we are with community justice. You are right to identify it as a big area for all of us, as we move forward.

The Convener: Ms Denham, do you want to come in on that?

Ash Denham: No, convener. I think that the cabinet secretary has covered the matter.

The Convener: With regard to the proposed consultation on the health and wellbeing strategy for prisons, we had, as we have mentioned, an interesting visit last week to HMP Edinburgh, where we had discussions about the profile of the population that is cared for there. I found the discussion really interesting and extremely insightful. I am also interested to hear about how we care for people who are in police custody. Are there approaches that are based on human rights and are holistic, and which might use the opportunity of a person being in police custody to implement a wraparound rapid crisis response in order to turn a negative experience into a positive one? Do you have any plans to extend health and wellbeing strategies in prisons to police custody settings?

Keith Brown: I would be grateful if we could get Neil Rennick's input on this. I think—you will know this better than I do, convener—that the police are now being asked to do much more than they were in the past. For example, we ask them to log whether a person who is admitted to custody is an armed forces veteran, and we ask them to be much more aware of addiction issues and mental health issues, which are not always obvious to people who are not trained in such things. We ask a lot of our prison officers and police officers. As we would all acknowledge, we have to do more in this respect. The same is true across society.

There are interventions such as the navigator programme, which members might not be aware of. Essentially, navigators go into custody cells in police stations and can talk to the person in question, provide support and look into their issues without prejudicing on-going legal proceedings or their custody situation.

I cannot remember its name, but there is a group that I recently met that works with the police in Edinburgh that includes police officers and

people who have served time in prison and have had issues with addiction, for example. They do a lot of diversionary work, but they talk to people in the custody system, too. Generally, we realise that there is more that we can do, but we should acknowledge how much more police and prison officers are already doing.

Underlying all that—this brings us back to Pauline McNeill's question about the fundamental change that is needed—is that at the start of the process there is what might be called triaging. First of all, as I keep emphasising, we need a solution that keeps society safe. There might well be an element of punishment in sentencing, but beyond that, the question is this: what is the best solution for society? When someone has addiction issues, do we deal with their addiction to ensure that criminal activity does not continue afterwards? What is the best way of dealing with someone who has mental health issues? It will be no revelation to the committee if I say that we recognise that there is much more to do on the matter. Perhaps Neil Rennick has something to add.

Neil Rennick: I absolutely agree that there is more that we can do. I point out that in one of the legislative changes that have been passed by Parliament, police were provided with additional powers to release people on undertaking in order to ensure that fewer people were being held in custody.

One of the other developments that we have been working on with our health colleagues is expansion of access to mental health services and mental health experts in prisons and custody settings. As the cabinet secretary said, there is still more to do.

The Convener: It is great to hear that, and I acknowledge what is being done. It is important that we recognise that. I have a final question on the role of the third sector in that big piece of work. We should make sure that we support the third sector, as we all know about the amazing and vital contribution that it makes. Will consideration be given to making sufficient funding and support available for the third sector, particularly as we come out of Covid?

Keith Brown: Yes, we will do that, convener, although we have to recognise the huge constraints on the Scottish Government's budget, which Ms Clark raised earlier, and the austerity budgets that we have to live under just now. That sometimes means that we have to be quite innovative about how we get additional funding. Cashback for communities was one of the ways in which the programme in Lothian that I mentioned before is funded.

We have to continue to consider that and other streams of funding, too. There is no question but

that we do not have the human resources to deal with everything in the public sector, and the third sector is an extremely important ally in relation to that as well.

Russell Findlay: I am not entirely sure if I need to declare an interest, but I will do so to err on the side caution: I am married to a serving police officer.

There are so many questions but not nearly enough time, so I will try to focus my questions. The first issue is the effects of Covid on the courts and justice system. Some very creative work is being done to ease the backlog, which we saw first hand last week. What has perhaps been overlooked is the decision to write off large numbers of hours of community service that had been imposed by the courts. Last week, 262,000 hours was discovered to have been in effect written off. To put that in context, if my calculations are correct, that is more hours than 129 MSPs working full-time for a year would work. It should be noted that those are often serious violent offenders and that such sentences are being used increasingly due to the presumption against shorter sentences of 12 months or less. Is there not a risk that politicians taking such big decisions on sentencing risks undermining the independence of the judicial process and sentencing?

Keith Brown: I will make a couple of points. I am not sure of the word that you used—"revealed" or "discovered"—but the figures were in the legislation when it was passed and were agreed in Parliament. I know that Russell Findlay was not in Parliament at the time, but they were agreed, so the idea that it is a revelation or was unanticipated is not right.

It is the case that there are risks attached to these things, but if we had, because of the backlog, not enough provision left for disposals, that would be a risk for more serious cases. My understanding is that the reduction did not apply to cases involving violence or sexual offences. We were very careful about that, although I was not doing this job at the time. The bottom line is that Covid has meant that we have to balance all sorts of different risks and in this case we got the balance right. I know that Neil Rennick was involved.

Neil Rennick: It was on our side, yes. I confirm that domestic violence, sexual offending and stalking were excluded. As the cabinet secretary says, in the explanatory notes to the legislation, because the adjustment was made on a proportionate basis—35 per cent of each order—we were able to estimate the impact, and that was reflected in what Parliament approved in February. That was understood at the time.

Russell Findlay: So violent offences were not excluded but domestic violence was excluded.

Neil Rennick: Domestic violence was excluded.

Russell Findlay: Right—okay.

My second question is about the victims who saw perpetrators—their attackers or whatever it may be—sentenced to community service and who, I presume, felt some sense of relief and justice about that. Was notification given to any victims about the decision in respect of their cases?

11:15

Keith Brown: I will let Neil Rennick answer that, but it is worth pointing out first that, to have carried on with some of the disposals would have been a Covid threat. I reiterate the point that the decisions that were made—not solely by me, although I imagine that I voted for them, as perhaps we all did—were made in the knowledge that we were trying to balance the different risks.

I do not know whether Neil Rennick wants to answer the specific question, although I imagine that the answer is no.

Neil Rennick: There is no specific victim notification scheme for community payback orders, but we were very open about the reasons for and the fact of the adjustments. Ministers specifically set the level at which the adjustment was made at 35 per cent so that those sentenced would have served the majority of the sentence before the adjustment was applied.

Russell Findlay: But individual victims do not know. Given that we are talking about extraordinary powers under the coronavirus legislation, is it not important that those powers are no longer in the hands of politicians and are given back to the courts, so that, when people see a sentence being given, they can have confidence that that is what will happen?

Keith Brown: What is important is that there was a decision for Parliament to take—it has taken it not once but twice—and Parliament is continually notified by the Government on the situation. That is the democratic check that we have. The decisions have tended to be on the basis of a consensus among the parties in the Parliament, at least up until now.

Russell Findlay: In response to Pauline McNeill, you talked about organised crime and the problems that it presents for the Scottish Prison Service. When we visited Saughton, we heard some first-hand accounts of that. It was explained to me that, such is the extent of the organised crime population in prisons—it numbers around 600 people—the risk of extreme violence, which is

often gratuitous, is significantly higher than it used to be, and the Prison Service has extreme difficulty in managing that. One senior officer told me that two prisons have in effect become home to groups of prisoners associated with two sides of a fairly prominent and long-running dispute. One of those prisons, Addiewell, has been subject to significant media interest in the past week or two in relation to the power that prisoners appear to have in their relationships with prison staff, and issues of contraband goods in the prison. From a whistleblower talking to the media, there is a sense that Addiewell has serious problems because of the control of organised crime within the prison. Do you recognise that picture of the prison? What, if anything, have you done in response to those media reports?

Keith Brown: Apart from the responsibility for ministers, the responsibility lies with the Scottish Prison Service and Teresa Medhurst, who is the chief executive. She has been very open with me about the challenges of dealing with individuals who are involved in serious organised crime—I agree with the member about those challenges. There may well be gratuitous violence, but it is often violence with a purpose, which is seeking to intimidate or do other things. That is a challenge and, incidentally, it is one reason why I would say that the UK Government's idea of making prisoner officers serve until they are 68 is a nonsense that should be opposed by everybody.

Organised crime is a challenge. We of course look seriously at any reports such as the one that the member mentions. Of course, HMP Addiewell is a private prison, which will revert to the public sector. We will look at the issues, but we will do so in consultation with the people who are most directly affected. The remit of Teresa Medhurst and the Prison Service does not extend to Addiewell while it is a private prison, but we are seized of the issues.

I acknowledge the certainly increasing, and probably unprecedented, level of demand that is put on the Prison Service through accommodating individuals who are involved in serious organised crime. We must acknowledge that that is partly due to the success of the police and others in prosecuting serious organised crime, which means that we are seeing an increasing prison population in that respect.

Russell Findlay: Are you aware, or was your predecessor aware, of the decision to effectively use prisons as stand-alone places to put particular groups?

Keith Brown: I cannot speak for my predecessors. Is that a question for Neil Rennick or Don McGillivray?

Neil Rennick: It is for me, although Don McGillivray can speak about the excellent work that the police, prosecutors and other justice agencies have done to increase the number of people with a background in serious and organised crime who are being prosecuted and convicted. That has implications for the Prison Service. The previous cabinet secretary and I both had presentations from the Prison Service that explained the significant work that it does to ensure that that population is managed safely. Part of that is about keeping certain groups of prisoners apart and having controls. That applies to both public and private prisons.

How prisoners are allocated across the service is an operational matter for the SPS. As the cabinet secretary said, the chief executive can explain more about that.

Russell Findlay: I will touch quickly on one more subject. Statistics show that take-up of the voluntary victim notification scheme has gone down year on year. Why is that the case? I declare an interest in that I have joined up to the scheme, so I am familiar with its work.

Keith Brown: It is very good that we have the scheme, which, for those who might not be aware, gives victims of crime and, in certain circumstances, their close relatives greater rights to information about the status of an offender. We have legislated to make more victims eligible. In 2014, we extended the criteria to include victims of those serving more than 18 months' imprisonment instead of only victims of those with prison sentences of four years or more. In 2015, we extended the criteria further to allow certain information to be given to victims of offenders who are sentenced to less than 18 months in prison.

In relation to the numbers, we have agreed that we will bring together all the relevant partners to review the victim notification scheme and to determine whether further improvements can be made. That move—alongside the previous measures that were taken to introduce and expand the scheme, our commitment to establishing a victims commissioner and some of the other comments that I have made—shows that we very much have the interests of victims at heart. Of course, it is always for the victims and their relatives to decide whether they participate in the scheme.

The Convener: I am conscious of the time, so we will move on.

Rona Mackay: I have one question for the minister and one for the cabinet secretary.

At various points throughout the meeting, we have touched on the shocking number of women in prison who are victims of domestic abuse. Many are brain damaged and have mental health and

addiction problems. Does the minister agree that prison is not the place for such women? Is the Government looking to expand any form of holistic care to deal with the issue?

Ash Denham: I read that, I think, four out of five women in prison have had a serious head injury, particularly from domestic abuse, which is quite a shocking statistic. Last week, I visited the part of Polmont that holds the women prisoners. I also visited Cornton Vale. I looked at the old prison and met some of the staff and some women who were in custody, and then I went to have a look at the new Cornton Vale that is being built.

We all accept that there are some very complex cases involving women in custody who have very challenging needs. The Prison Service, in particular, accepts that, and it works very hard to keep those women safe and to ensure that they get the facilities and treatment that they need.

The Scottish Government's investment in the new style of prison estate for female prisoners will make a huge difference. The new Cornton Vale estate has been designed specifically to assist people with their mental health and their other challenges. There is a lot of light. It is airy. There is a lot more space. We have talked about activities and education for prisoners. Obviously, that has been impacted by Covid and the fact that there is not a lot of space in some of the traditional prison areas, so the new facilities will make a huge difference.

I am not sure whether the committee is aware of the community custody units. I visited one in Glasgow and one specifically for women prisoners in Dundee a couple of weeks ago. Again, it is about signposting the move towards adapting the experience of being in custody but, more specifically, responding to the challenges of female prisoners and the way they present and the things that they might need in order to treat them. Then, we hope to progress them and enable them to transition and build skills in order to go back into the community and, we hope, not back into prison again.

Rona Mackay: Thank you, minister. It is encouraging to hear that. I knew about that and I am optimistic that it will make a difference.

On young offenders, can the cabinet secretary comment on the timescale and implementation plan for the commitment that no-one under the age of 18 should be going to Polmont young offenders institution and that they should be moved to secure care settings, which take a trauma-informed approach and are far more holistic? Last week, I had a meeting in my constituency with the director of a care home. He spoke of his despair that sheriffs were sending children and young people to prison. He said that

his home and other secure care homes throughout Scotland have capacity for those young people, where they could be dealt with in a trauma-informed way, and that they should not be sent to prison. That has been a subject of interest for some time, so do you have any idea about the timescale for making that a reality?

Keith Brown: Thank you for the question, which I think Neil Rennick would like to comment on, because he has been involved in that for a long time. As you say, the issue has been going on for a long time. We have made substantial progress on it. I think that the number of young people who are in prison is down to the low teens, but that is still too many, as you say. Most recently, I spoke with Community Justice Scotland and Sacro on that issue to see what further can be done. We are looking to take very early action. However, again, it is probably a bit premature to be too specific.

Neil Rennick has been involved in that for far longer than I have, so he might want to say something. It is about taking a whole-system approach. We have done that for a number of years now, but it is about following that right the way through. We have all been aware of particular tragic cases of people in those circumstances, and we are desperately keen to avoid those. To go back to a previous question, the whole-system approach relies on ensuring that the mental health and other support is there as necessary.

Neil Rennick: The whole-system approach is a hugely impressive piece of work. It is something that we must keep focusing on and working on. I am looking at the figures. The number of people coming into the justice system on offence grounds is down 70 per cent. The number of people under 21 coming into the prison system is also down 70 per cent. That is entirely to do with the issues that you mentioned earlier, convener, about diversion—interventions that direct people away from the justice system. We can absolutely see the lessons that we can learn from that. Obviously, now, as the cabinet secretary said, there are very small numbers of 16 and 17-year-olds in young offenders institutions, and the aim is to move to the position where there are no 16 and 17-year-olds in those institutions. That will require changes through primary legislation, so the timescale for that will have to be factored into it, but I can confirm that that will be reflected in specific timescales in the programme for government next week. We have been doing work on that prior to the election and it is a priority for this parliamentary session.

Rona Mackay: I will just flag up that the director of that care home also had great concern about the funding of secure care homes and the process for that. He said that that is hindering a lot of the

good work that could be done. I hope that that will be explored more widely as well.

Keith Brown: I would be happy to hear from that individual about those issues. It would be useful to get that information.

Rona Mackay: He has many years of experience in social work and in care settings, so I am sure that he would be delighted to do that. Thank you.

Keith Brown: The youth justice improvement board is looking at that issue and will report back on 15 September. To be clear about the numbers—this perhaps goes back to the concern raised by Mr Greene earlier about remand—just now, there are 11 remanded males and one remanded female, three sentenced males and one male awaiting sentencing. There has been a huge amount of work to get down to those numbers, but we still have further to go.

11:30

The Convener: As we still have a wee bit of time, I will call Mr MacGregor for a couple of supplementary questions, to be followed by Mr Greene.

Fulton MacGregor: First, I should declare an interest as a registered social worker, as I want to ask about community justice, which we have already touched on.

From my experience of working in that field—and from my contact with many people who are still in it—I know that, under the Scottish Government, there has been significant funding for community justice, which is only right if we are going to meet the aims of reducing prison sentences and rehabilitating those who are involved in the justice system. Given the Covid situation, is there likely to be any further increase in investment in community justice services? I accept that you might not be able to talk about that if it is going to be mentioned in the programme for government, cabinet secretary, but given all the different aspects that have been discussed today—youth justice, the possible return of unpaid work, the rehabilitation of offenders and perhaps some work on remand and the bail supervision that Neil Rennick mentioned—I was just wondering whether there will be a further increase in funding. Indeed, I ask the question as a former criminal justice social worker who saw his team grow rapidly under a Scottish National Party Government.

Keith Brown: As I have said, we are in a period of relative austerity with regard to budgets, but that is an area where we can potentially unlock other savings and better outcomes. I definitely agree with Mr MacGregor on that. However, I should

make it clear that, unlike some other people, we are not looking to have yellow-jacketed chain gangs—that is not what we are about. The question is whether the kinds of disposals that we are talking about are likely to produce better outcomes.

You mentioned finance, and quite rightly so. After all, the disposals need to be expanded, and you have to give the courts that make them the confidence that the provisions are there for them. That requires finance. Of course, if you do it in the right way, the costs will be less than, say, the £40,000 a year and the associated social and other costs of keeping someone in custody. I hope that there will be an expansion in that respect, and I suppose that it is my job in the Cabinet to argue the case for those moneys.

Fulton MacGregor: Thank you for that assurance, cabinet secretary.

I want to go back to Russell Findlay's point about the unpaid work component of community payback orders. This is more of a comment than a question, but I think that it is relevant to the discussion. The cabinet secretary has already touched on this, but I think that, regardless of what we do with the legislation and regardless of whether it is still required—and I accept that it might not be—I am concerned about that particular service completely returning to normal. I do not know about other areas, but the rate of Covid is extremely high in Lanarkshire just now, and that kind of unpaid work, by its very nature, requires the use of small buses and vans for it to work. There is a real risk of Covid in that respect.

I do not expect you to comment on that, cabinet secretary, because you have already touched on it briefly, but I just wanted to point out that that is a consideration with regard to that disposal.

Jamie Greene: I want to note, for the benefit of the *Official Report*, that the Scottish Conservatives voted against the proposed cuts to the community payback order disposals—and, I think, rightly so.

I want to address an elephant in the room that has been present in previous committee meetings with previous cabinet secretaries and which will no doubt be the source of endless conversation as we move forward: the endemic problem of drugs in our prisons. The statistics speak for themselves. In 2007, around 200 prisoners were identified as having a drug problem in our prison service; last year, the figure was 2,200. I know that to be true, because on our visit last week to HMP Edinburgh, two prisoners spoke frankly to me about the matter. I hope that we can be just as frank today about the problem. One of the prisoners said that it was easier to get drugs inside prison than outside of it—and I believe that to be true, too, as he had no reason to lie—and the other told me

that if I wanted drugs he could get them to me in five minutes. Is that an area of concern? Is this a rising problem, or have things stabilised? Indeed, is the figure going down? What is being done to address the issue?

Keith Brown: First, I do think that it is an area of concern—I would say that immediately. The extent to which it might be rising or otherwise is of course hard to tell, because the nature of it is secretive: people try to keep it hidden. The fact that we and the Prison Service recognise it as a problem is accepted, I think. Also—and there is a point to saying this—that is no different from other jurisdictions, as I am sure you will know and accept.

The UK Government has undertaken, or authorised, some new equipment in relation to that, but only for certain bodies. Again, it would be useful to get some more background information from the officials—if we could get the name of the particular device. We are looking to get authorisation from the—*[Interruption.]* No, I do not think it was that one; I think we currently have those. I think it is a new one.

Jamie Greene: Okay.

Keith Brown: Rapiscan is not very good for psychoactive substances, as you will know, and prescription drugs are also an issue. I think that the new machine that is being talked about—that is all I can call it until I get the name of it—is more extensive than that, but it requires a specific licence from the Home Office, so we are seeking that. I think that the Scottish Prison Service is involved in that, and it is not an inexpensive piece of kit.

We do recognise that point but, to go back to one part of your question, if people are presenting with drug addiction issues when they come into the system, that can sometimes be through acquisitive crime to service that drug habit. Somebody has an addiction, and that causes criminal activity. It goes back to Pauline McNeill's point: we have to try to be radical about how we deal with that if we are to make an impact. To underline the concern that you have expressed, Mr Greene, if somebody comes into the prison and does not have an addiction issue but they go out with one, that is nothing that we want to see.

It is a matter of concern. It is hard to tell what the exact prevalence is, for pretty obvious reasons, I would have thought, but the issue is giving concern to the Prison Service—specifically, from my discussions with the Prison Service and prison officers, when it comes to psychoactive substances. These are not exactly their words, but they will say that, for more traditional drugs, they have a much more straightforward ability to deal with a prisoner. If prisoners take certain drugs,

they become drowsy or inactive, sometimes to the detriment of their health in a serious way, whereas psychoactive substances present a whole different set of challenges, and officers are very concerned about that. We are indeed very concerned, and we are looking at new ways to deal with the issue—and, as Pauline McNeill says, we should be doing that.

You have spoken about being frank and talking about the elephant in the room. Let us just see how it plays out. If we come forward with some radical ideas, what level of support will we get to pursue them if we want to seriously deal with the issue, as I certainly do?

Jamie Greene: The problem, however, is that drugs are getting into the prison. We are not talking about wider society; we are talking about high volumes of dangerous drugs getting into prisons in the first place, and they are not being stopped. Surely that is an area of policy that we can address now. We do not need legislative change to deal with that. Of course you will have support from Parliament to address the issue. There are people dying of drug overdoses in our prisons, and there are people entering the system without addictions and leaving it with them. That sounds utterly bizarre to us.

Perhaps linked to that is the issue of suicide in prisons. The suicide rate in Scottish prisons is around 125 per 100,000—or it was last time I checked. That is around 10 times the average in wider society, so there are clearly issues around mental health in prisons and the safety of prisoners, given the context of the serious organised crime activity that is taking place in our prisons and some of the issues that have rightly been raised in the media in recent weeks. How safe are prisoners in our prisons? Are they safe enough? Is there more that can be done? What are we doing to address that shocking statistic of suicide in prison, especially among the women's population, where the level is even higher?

Keith Brown: During the course of the past hour and a half, you have heard about a number of things that we intend to take forward to address that. That includes doing more on mental health support in prisons and on how entrance into the custody system is triaged, and understanding what is driving people when they come in. You heard a pretty extensive response from the minister about how we are trying to deal with some of the issues concerning women in custody. We have tried to address those issues.

On the things that you have mentioned, which I just discussed beforehand, such as the possibility of somebody going into a prison without an addiction and coming out with one, that horrifies society and it horrifies me. That is not distinctive to this jurisdiction; it happens across the board.

Prison governors in England and Wales have stated that it is not possible to have a drug-free prison. I would like to test that to see to what extent it can be achieved. If you have any ideas about how that could be achieved, I would be more than happy to listen. I extend that offer to the committee and everyone else.

In the meantime, we are seeking to deal with the issue through the new equipment that I have mentioned, training for prison officers, which, I concede, has been limited through the pandemic, and other changes to the prison system. We should not accept the presence of drugs in prison as inevitable.

On prisoner safety, the vast majority of prisoners are able to serve their time in relative safety. We already mentioned in response to Mr Findlay's questions the danger that is represented by criminals who are incarcerated because of violent crime and who are continually willing to perpetrate violent crime. That represents a risk; prison is not a risk-free environment and I am not trying to pretend that it is. It is our job to minimise that risk.

Russell Findlay: I know that we are slightly short for time, but in relation to drugs in prisons, I heard a candid account last week from a prison officer at Saughton prison. He said that most of the drugs come into the prison smuggled in paper letters or items of clothing that are then dissolved into a solution and turned into dangerous psychoactive substances. During the Covid lockdown, letters were being stopped and photocopied to prevent the spread of Covid and the prison had a dramatic reduction in the number of cases of prisoners under the influence of drugs. As soon as those restrictions ended and the letters continued on their merry way into the prison, there was a huge and immediate increase in drug use. On one day, seven ambulances were called to Saughton prison.

Keith Brown talked about radical ideas. This might sound simplistic, but if that is the case in prisons, could it not be looked at as a matter of urgency to reinstate as a matter of routine letters—other than legally privileged letters—being photocopied, rather than handing over the originals?

Keith Brown: It would be useful to have one of the officials come in on the equipment, which I am unable to name, and whether that would help the situation. I cannot give a commitment to reinstating that policy, because there may be human rights implications. I imagine that there probably would be, but in the spirit of consensus, I am willing to consider Russell Findlay's suggestion.

I know that these proceedings will be watched or, if not, the *Official Report* will be read afterwards by the Scottish Prison Service. I would imagine that that suggestion is something that has occurred to the SPS, but if it has not, should we not consider the possibilities? In the spirit of a positive suggestion being made, I am very grateful for that and we will treat it seriously. It may be that we cannot do it for the reasons that I mentioned, but we will certainly consider it.

The Convener: That brings this part of the meeting to a close.

11:43

Meeting suspended.

11:48

On resuming—

Police, Crime, Sentencing and Courts Bill

The Convener: The next item of business is consideration of a legislative consent memorandum for the UK Police, Crime, Sentencing and Courts Bill. I welcome back Keith Brown, the Cabinet Secretary for Justice and Veterans. I also welcome Graham Thomson, the head of the Scottish Government's police powers and workforce unit. I refer members to paper 3.

I invite the cabinet secretary to make a short opening statement.

Keith Brown: I am grateful to the committee for giving me the opportunity to take questions on the LCM for the Police, Crime, Sentencing and Courts Bill.

I recognise that crime has no respect for borders or boundaries and, as such, must be tackled across multiple jurisdictions. Applying the relevant provisions of the bill to Scotland will help to meet the Scottish Government's commitment to modernising and reforming the justice system, and to making Scotland a safer, fairer and more inclusive country.

The UK Government's stated policy aim of the bill is to enhance the democratic accountability of police forces, to build public confidence in policing and to improve the efficiency and effectiveness of emergency services through closer collaboration.

I make it clear that policing is, of course, a devolved matter, so significant portions of the bill do not extend to Scotland, including elements of the bill that many will see as being controversial.

However, some of the provisions impact on devolved functions. On 5 August, the Scottish Government lodged an LCM for those provisions that extend to Scotland, in which it recommended consent for amendments to the Crime (Overseas Production Orders) Act 2019; orders under the Sexual Offences Act 2003 and the Abusive Behaviour and Sexual Harm (Scotland) Act 2016; the extension of the Summary Jurisdiction (Process) Act 1881; the amendment to section 60 of the Police Act 1996; and the extension of the annual reporting duty for the police covenant to cover the British Transport Police and the National Crime Agency.

At the time of lodging the LCM, the Scottish Government was not in a position to be able to recommend consent for the power to extract information from digital devices of witnesses, victims and others, as discussions were still on-

going between the former Lord Advocate and UK ministers.

The Lord Advocate had written to UK ministers to ask them to consider the case for extending the provisions on the extraction of information from devices to allow for the extraction of information from devices used by persons other than the deceased. UK ministers have since denied that request.

Although the Lord Advocate and I find that decision disappointing, UK ministers have committed to keeping the provisions under review, once they are in force. That will allow the issue to be returned to, should operational difficulties be identified.

On 30 August, I wrote to UK ministers to recommend, in principle, that the Scottish Parliament grants an LCM in relation to the extraction of data provisions. However, I advised them that I would not be prepared to start the formal LCM process until the draft code of practice had been finalised. That will allow the Scottish Parliament the opportunity to carry out proper scrutiny of the provisions before consenting to them. Incidentally, I think that the Northern Ireland Executive has taken the same position.

I hope that my time at the committee will provide an opportunity to address any concerns, although I am sure that I will rely heavily on Graham Thomson to do that. I welcome the chance to answer any questions.

The Convener: Thank you, cabinet secretary. Does anybody have any questions?

Jamie Greene: Thank you for the opening statement. The committee papers cover the topic extensively.

My first question is perhaps not for the cabinet secretary, as it is a technical question about the draft legislative consent motion. I welcome the fact that that agrees to the relevant provisions of the UK bill. Cabinet secretary, did you say that the Scottish Government does not consent to, or does not agree with consent being given to, the provisions on the extraction of data from digital devices? How does that relate to the draft motion? The motion agrees to the provisions in the UK bill—there is nothing in it that disagrees with or does not consent to anything. What would be the legislative process by which the Scottish Government would pursue not granting consent?

Keith Brown: As you suggest, I will let Graham Thomson answer part of that. We have agreed to the thrust of what is proposed, but the bit that we have a concern about is the code of conduct that will be used in relation to the extraction of data from devices. We should see that before we agree to it. We have seen a draft version, as has the

Northern Ireland Executive, but we want to see the final version before proceeding and giving our consent. I think that that is the situation.

Graham Thomson (Scottish Government): It is. The only thing that I would add is that, today, the cabinet secretary is asking that the legislative consent motion be agreed to, with the exception of the data extraction issues. If we come back and are content with the code of practice, we would bring back a supplementary legislative consent motion for consideration by the committee in relation to those provisions.

Jamie Greene: If the Scottish Government—this is a further technical matter—was not happy with either the draft wording of the code of conduct or what UK ministers proposed, would you amend the legislative consent motion, or have it agreed to as drafted but subsequently issue another one? I am sorry—I am still a bit confused as to the process.

Graham Thomson: Today, we are asking the committee to consent to the motion as drafted, if it is content to do so, and we would bring back a supplementary motion at a later date.

Keith Brown: We are content with the draft code of practice; we just want to see the final version first.

Jamie Greene: So, it is not the case that the Scottish Government has a problem with the principle of the extraction of data, which is perhaps how it was reported.

Keith Brown: Yes, although, as I said, the former Lord Advocate expressed concerns because of the interrelationship with his functions. However, if the code of conduct is sufficient—we have had an assurance about that from the UK Government, and it will come back to us in future—and if the final version reflects what is in the draft, it should not be an issue for us.

Jamie Greene: Thank you—that is helpful.

Pauline McNeill: I will follow on from that and try to get my head around what the LCM is supposed to be doing.

I note that the provision applies where the device owner has given agreement, so that bit does not seem to be contentious. I understand that a lot of cases now involve the extraction of data from mobile devices, so it is quite a big issue, and the framework is about ensuring that the police and other agencies do that within the statutory legal framework and not just on the basis of common law. If the Scottish Government's position is just to be cautious about that, because it will be a big issue, I concur that it seems reasonable that you want to see the finalised code of practice before giving consent.

I just want to make sure that my basic understanding of the LCM is correct, which is that the provision applies when the owner has already given consent. There are other provisions, such as when the device owner is incapacitated or is a child, but, in the main, the provision applies to the device owner.

Keith Brown: I will be corrected by my official if this is not the case, but I think that I am right in saying that we already have that legal basis in Scotland. Down south, they do not have that; common law is used. It is a case of trying to make those things consistent. Previously, the point of disagreement was whether the provision could be extended to people who had died. That was the point that the Lord Advocate was interested in, and we have some assurances on that. It will not be agreed to by UK ministers at this stage, but we have some assurances around that, which we are willing to accept.

A draft code of conduct is not the same as a final code of conduct. If we know that the UK Government is saying, "This is our final version," there is nothing that will give us cause for concern. As background, the committee's predecessor went over this area quite exhaustively when it considered cyberkiosks and so on. There is a parliamentary sensitivity about that, which we are trying to be sensitive to by saying, "Let's see what the final one says." If it says what the draft one says, I think that we are okay.

Pauline McNeill: Thank you.

Graham Thomson: For clarity, the provisions extend only to England and Wales; the issue is not about Scotland, where we have our own legislative basis. The clauses are in relation to the operability in cross-jurisdictional situations.

The Convener: Thank you—that is a helpful clarification.

Cabinet secretary, am I right in saying that we are still waiting for clarification from the UK Government on the points that we have raised in relation to the proposed power?

Keith Brown: The only thing that we are still looking for is for that code of conduct to be finalised.

The Convener: Once we have that information and clarification back, do we have a broad timescale for the next stage?

Graham Thomson: Yes. During October, the House of Lords will consider it and, at that point, we expect a new version of the code of practice to be tabled. We expect to see an advance version of that at official level, at which point we will be able to provide advice to the cabinet secretary, and we can revert to the committee after that.

The Convener: Thank you. I thank the cabinet secretary and his officials for attending. We will have a short suspension to allow our witnesses to leave.

11:58

Meeting suspended.

11:58

On resuming—

The Convener: The committee will now consider the legislative consent memorandum for the Police, Crime, Sentencing and Courts Bill. I invite views from members on any issues that they wish to be included in the committee's report on the LCM.

Jamie Greene: For the avoidance of doubt, action 11 in the committee's papers invites members

"to consider whether to agree with the recommendation"

to approve the legislative consent motion, but

"also that consent should not yet be given to the power to extract information from digital devices".

However, my understanding is that, as a committee, we are voting solely on the motion as worded and not on any subsequent amendments or theoretical motions. Therefore, for the avoidance of doubt, I disagree with action 11 but agree to the motion as worded.

12:00

The Convener: Thank you for raising that issue; it is noted and we will include it in the committee's report.

Does the committee agree that the Scottish Parliament should give its consent to the relevant provisions in the Police, Crime, Sentencing and Courts Bill, as set out in the Scottish Government's draft motion?

Members indicated agreement.

The Convener: Are members content to delegate to me the publication of a short report that summarises the outcome of our deliberations on the LCM?

Members indicated agreement.

The Convener: The issue will now move to the chamber for all members to decide on the basis of our report.

Subordinate Legislation

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2021 (SSI 2021/220)

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2021 (SSI 2021/225)

12:00

The Convener: The next item on the agenda is consideration of two Scottish statutory instruments that are subject to the negative procedure. I refer members to paper 4.

Do members have any comments to make on the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2021 or the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2021?

Jamie Greene: I have a minor and brief point to make on the second instrument, which is that the fee increase is 6 per cent but no explanatory note has been offered with regard to that level or the rationale behind it.

Pauline McNeill: I was pondering the same point. It would be useful to know why the fee has gone up—maybe it is related to the pandemic. It is also backdated to 30 June. It would be helpful to know why we are being asked to agree to that.

The Convener: If members agree, I propose that we write to the cabinet secretary to ask for clarification around those two points.

Members *indicated agreement.*

The Convener: Our next meeting will be on Wednesday 8 September, when we will hold a round-table evidence session on the current impacts of Covid-19 in the justice sector and our next steps for recovery.

12:02

Meeting continued in private until 12:42.

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