



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 19 January 2022**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**2<sup>nd</sup> Meeting 2022, 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

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Criminal Justice Committee

Wednesday 19 January 2022

[The Convener opened the meeting at 10:00]

### Subordinate Legislation

#### Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021 (SSI 2021/446)

**The Convener (Audrey Nicoll):** Welcome to the second meeting in 2022 of the Criminal Justice Committee. I have received no apologies this morning. I ask members to ensure that mobile phones are switched to silent and that they wait for the sound engineer to switch on their microphone before speaking.

Our first agenda item is consideration of the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021. I refer members to paper 1. Last week, we took evidence on the regulations from the Cabinet Secretary for Justice and Veterans and from the Scottish Prison Service. I think that we all recognise the balance that needs to be struck between a desire to prevent drugs from entering our prisons and, at the same time, protecting the rights of prisoners.

Before I ask whether the committee wishes to report any conclusions to the Parliament, I invite comments from members. Any member who wishes to make a comment should either raise their hand or type an R in the chat function.

**Russell Findlay (West Scotland) (Con):** It is worth revisiting quickly what has brought us to this situation. Multiple ambulances were getting called out to prisons at a time when the national health service was under severe strain, particularly in Lanarkshire, where the health board was at level black. Prisoners who had overdosed were treated in intensive care beds in a hospital that was under severe pressure because of Covid. At that point, the Scottish Ambulance Service was subject to assistance by the military.

Many prison officers who had been talking about the drugs problem for many months and years said that the level of drugs was the highest that they had seen in decades. It is worth reiterating that there was a vital need to do something about prisoners' mail, given that that was the main source of drugs into prisons, so the move was necessary and should be welcomed.

There are issues relating to prisoners' rights, but we also need to bear in mind the rights of prison

officers, the environment in which they work and, indeed, that the majority of prisoners want to be in an environment that is not awash with drugs, so that they are not susceptible to falling victim to that culture.

The regulations are an important and positive development.

**Pauline McNeill (Glasgow) (Lab):** I largely agree with Russell Findlay's comments. We need to take proportionate action to tackle the scourge of drugs in our prisons, and I am content that the regulations are necessary.

As other members did, I asked the cabinet secretary and the chief executive of the Scottish Prison Service, Teresa Medhurst, for reassurances in relation to prisoners who might innocently get caught up in what is happening. I felt satisfied that prisoners would be present if any suspect mail went through the process. That gave me some reassurance.

I think that it is useful to put on the record that the Miscarriages of Justice Organisation has written to the committee to express concerns. It acts on behalf of convicted prisoners when it feels that there is a credible case that there has been a miscarriage of justice. It is important to note that correspondence.

I for one will be listening out and monitoring the impact of the regulations, to make sure that they are proportionate.

One of the concerns that Families Outside raises is that families of prisoners might stop writing to them because of a fear that something untoward would happen to their innocently sent correspondence, such as birthday cards.

For those reasons, I think that the committee should keep an eye on the regulations.

**The Convener:** I will bring in Jamie Greene, who will be followed by Katy Clark.

**Jamie Greene (West Scotland) (Con):** I have three brief points to make, the first of which is in relation to the evidence that we took last week. I felt that, at the end of that session, we were none the wiser as to the volume of mail that is being intercepted. A number of points that were raised, which are primarily around the process of mail interception, would merit being followed up, perhaps in writing, with the Scottish Prison Service or the Cabinet Secretary for Justice and Veterans.

I think that there might have been some miscommunication to or confusion in the wider public sphere around what mail is being stopped and not passed to prisoners, what mail is being photocopied and what mail is or is not being read. The same applies to the process, where that takes place and who does that.

Having transparency on that issue would perhaps help and offer reassurance to the families of those in prison, as well as those who might not be fully aware of what the Scottish statutory instrument means and does in real life.

I appreciate that there could be operational reasons why some information might be sensitive to share in public, which I think that the cabinet secretary hinted at last week. I am content with that if that were to be the case, and I understand the reasons for it, but perhaps that information could be shared confidentially with committee members, as is the norm with such information.

My second point is an issue that I raised last week. It is not just physical mail, including cards, that is soaked in illicit substances. We know that items are brought into prison in other ways. Now that serious organised criminal gangs can no longer rely on traditional forms of smuggling drugs into prison via paper, how else will the drugs get in? It would be naive to think that that would simply stop altogether.

We know that, for example, items of clothing or other parcels that have been sent to prisoners have been pre-soaked in drugs in the past. We also know that we are starting to see a resurgence in methods—the old-fashioned ways, if you like—of getting illicit substances over the perimeter fence. I am keen for the Government and the SPS to keep us posted on that.

My final point is an issue that I tried to raise last week but was unable to because we ran out of time. It relates to digital communication and what alternatives are being offered, such as email systems. I do not mean mobile telephony; I am talking about fixed devices or other forms of electronic communication, which allow families to privately, directly, confidentially, quickly and easily communicate with their loved ones in prisons. We did not get a chance to talk about that in great detail. I would appreciate getting an update on those issues, too.

**The Convener:** Thank you very much, Jamie—that is helpful.

**Katy Clark (West Scotland) (Lab):** [*Inaudible.*]—which is very sad. However, it is important that the measures are implemented sympathetically, particularly in relation to items of sentimental value. I think that that is a matter on which the committee would want to be kept advised, to satisfy itself that the regulations are being implemented in a way that is sympathetic to individuals who are incarcerated and cut off from their families.

The contacts from families, particularly from children, are incredibly important to that individual. The committee is very concerned about that aspect, so we would want to be kept closely

advised on how the measures are being implemented. In particular, we would like to be informed if there were problems and the measures were not working in the way that we understood that they would work.

The committee will be monitoring that issue. We had a full discussion last week. Privately, all committee members expressed concerns about whether the measures would be implemented in that way, as we would expect.

More generally, I think that the committee feels that it needs more information on the scale of drugs in prisons. I hope that, over the coming period, that will be shared with us, along with information about how the regulations will be implemented.

As has been said, mail is only one route that is being used to bring drugs into prison. The problem is a far larger one than that of mail. The committee wants to hear more on that, and expects the Scottish Government and the Scottish Prison Service to provide information to us on that in the coming period.

**The Convener:** Finally, I will hand over to Fulton McGregor, after which I will make a few comments.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I broadly agree with what others members have said. Last week's evidence session was really useful. It is good to hear that the measures have come in, and there seems to be initial evidence of early success.

We all want to ensure that drugs do not get into prisons. Russell Findlay articulated earlier the consequences of drugs getting into prison not only for the individuals in prison, but for the health service at this time. If a measure is seen to be making progress in that area, it is incumbent on us to support it.

I, too, had concerns about the regulations. I probably had more concerns before last week's evidence session, but I felt reassured listening to the cabinet secretary and Teresa Medhurst's comments about how some of the mail would be dealt with. The Scottish Prison Service gave quite a clear indication that private mail cannot be read as such and that safeguards are in place.

Nonetheless, we are early on in the process. The regulations are probably broad enough to allow for the measures to be implemented in different ways across the sector. For that reason, I would quite like to review the regulations, too.

I am very happy to support the regulations at this point, as they seem to be making a difference.

**The Convener:** I thank all members for their comments, which are balanced, measured and set

out our thoughts on the evidence that we have heard and on some of the aspects of the SSI that we would like to monitor and follow-up.

As Russell Findlay alluded to, we need to look at the measures from the perspective of prisoners and prison staff. I was fairly reassured by the evidence that we heard last week, given that the process had been introduced in relatively quick time. However, I feel that we would benefit from getting more information on the practicalities of the process of monitoring and testing mail. It all comes down to ensuring that the practice of monitoring mail that prison officers will be involved in is proportionate.

I highlight that we as a committee have written to the Scottish Prison Service and Police Scotland to seek information on how they respond when psychoactive substances are found. We have also written to the cabinet secretary with additional questions about issues that we identified at last week's session.

I completely agree with Katy Clark's comment about the sentimental value of correspondence and the need for careful consideration of how that is handled and managed.

Jamie Greene made a relevant point about other correspondence and communication options. I think that we included some questions on that in some of our follow-up letters. I am more than happy for us to publish our responses. I also note that we will monitor and review the matter going forward.

On that basis, and the basis of members' comments, are we content that we have no further recommendations to make on the SSI and the evidence that we have heard?

I see that we are agreed. Perfect.

Before we move on, I thank everyone who contributed to our evidence session with written submissions: the Scottish Centre for Crime and Justice Research, Families Outside, and, as Pauline McNeill alluded to, the Miscarriages of Justice Organisation, for their submissions. They were helpful to us so we appreciate their support in that.

## Pre-Budget Report (Scottish Government Response)

10:15

**The Convener:** Item 2 is consideration of the Scottish Government's response to the committee's pre-budget scrutiny report. I refer members to paper 2. I thank the Cabinet Secretary for Justice and Veterans for his detailed response.

I invite members to share any views they have or follow-up action that they would like the committee to take in response to the cabinet secretary. I will bring in Russell Findlay, Pauline McNeill, and I think that I saw Fulton MacGregor's hand go up.

**Russell Findlay:** There is quite a lot to go at, so I will not talk about everything that has jumped out at me. I am sure that other members will want to come in, and if anything has been missed, I could perhaps come back in at the end.

The cabinet secretary refers to the Scottish Drug Deaths Taskforce. It is not clear from the papers whether his reply to the committee predates the resignation of the task force chair and deputy chair, which happened during the Christmas and new year period. Those two individuals said that the Scottish Government's approach is counter-productive and driven by meeting targets rather than sustainable change. That is clearly of significant concern to anyone who has an interest in our record drugs death levels. It is important to pay some attention to what is being said about that and to work out what has gone wrong, because something clearly has gone wrong.

I just want to make one other point, if it is okay. It is in relation to fatal accident inquiries. The cabinet secretary's response says, "we are not complacent", but it simultaneously seems to suggest that the system works. I am looking at paragraph 177 in the papers. Again, it is clearly not working. There is a huge and growing backlog. Some of that is to do with Covid, but not all of it. Many of these cases last for years and the pain that that causes to families who have lost someone is horrific. I do not see how the comment about not being complacent sits with the apparent position of everything actually being okay.

I will leave it with those two points and let someone else come in.

**Pauline McNeill:** I will start with the point that Russell Findlay made about fatal accident inquiries. There is a lot to welcome, but I have a few points that need further investigation or amplification.

I, too, am surprised that the cabinet secretary thinks that the current system for deaths in custody represents the right model for the future, given the extraordinary length of time that families are waiting. A big piece of work by the Scottish Government is needed, along with some investment.

I do not fully understand the relationship between the response and the Scottish Government's recent statement that deaths in custody will be investigated independently. We heard that powers will be given to those who are tasked with that to ensure that they can get on with the job of getting to the bottom of deaths in custody with no barriers and with unfettered access. We have had an extraordinary number of deaths in custody, and a lot of families are really concerned about the length of time that it takes to investigate them. I share Russell Findlay's view that there seems to be a bit of complacency on the issue. I would have thought that there needs to be some investment attached to the measures.

My second point relates to the implementation of measures in the Victims and Witnesses (Scotland) Act 2014, such as victims being offered support when making a statement. It seems to be a theme for the committee to explore whether there should be more formal support for victims in the system, either through being legally represented or in other ways. We need further investigation into that.

Finally, the Government has an excellent and comprehensive programme on violence against women and girls. I would like to see investment to ensure that the action plan is sustainable and that we make achievements along the way. I have made the point in Parliament a few times that there are cross-cutting issues between the justice portfolio and, for example, the equalities portfolio in relation to attitudes to violence against women and girls. We have seen high levels of sexual harassment of girls at a very young age. In some of our private sessions, we have discussed concerns about rape culture and other social issues. I would like cross-cutting investment between the justice department and other departments that have an obvious interest in that matter.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I agree with Pauline McNeill on violence against women and girls. I would like more cross-cutting work on that between committees, because it is a huge subject that we need to keep pursuing and tackling head-on. I will not repeat all of Pauline McNeill's comments, but I agree with all of them.

On fatal accident inquiries, clearly there have been and are serious issues, and families have concerns. However, the cabinet secretary's

response was that the Government is taking note of the recent report of the deaths in custody review and that he has made an extensive statement in the chamber about the issue. Obviously, this is up to you, convener, but, to acknowledge the seriousness, perhaps we could send a letter to drill down a wee bit further on that issue. The fact that the excellent and all-encompassing report on deaths in custody is being considered is a good thing, but we probably need a bit more reassurance on that.

Russell Findlay talked about the Scottish Drug Deaths Taskforce. I completely disagree with him that there is any point in our going over again the issue of the two members who left the task force. That has all been made public, so I see no merit in our drilling back into it. Certainly, it is fine to acknowledge the work that they have been involved in, but I do not see that going over the issue again would move us forward in any way, and I am not sure that there is a great deal of public interest in that. I think that what the public want now is for us to move on and get things done.

**Collette Stevenson (East Kilbride) (SNP):** On FAIs, there have been issues with the procurement contract for pathology and toxicology. Audit Scotland raised that issue in its annual audit report. I took some comfort from the committee's meeting with the Lord Advocate, who said that a new contract has been introduced, which might reduce the length of time that some FAIs take. I also just note that, obviously, there has been a big issue during the pandemic, because of the strain on the national health service.

**Jamie Greene:** I will try to rattle through my points. To be helpful, I will identify them in relation to the committee's conclusions by number. I will start with our point 139. On the overall budget, the cabinet secretary's written response says that there will be

"a 7% increase in the portfolio resource budget",

but it is unclear from the response whether there will be any increase in the capital budget or what the increase will be. That is important, because it comes up later in some of our recommendations.

On prisons and prison reform, there is an increase of £15 million to the Scottish Prison Service resource budget. It is unclear where that money is going or what it is for. Is it for staff or other forms of people-related expenditure rather than things? The £73 million capital funding is merely an extension of existing commitments. It will enable the conclusion of the construction of the female custodial estate and other pieces of work such as those at Inverness and Barlinnie. We know that that work might already be going over budget. That does not seem to be new money.

Our point 162 was that there is no increase in the capital budgets for either Police Scotland or the Scottish Fire and Rescue Service. It seems to me that the only capital money that is mentioned is for things that we already knew about. For example, it will not cover any investment in HMP Greenock or HMP Dumfries. That might not necessarily mean complete replacements; it could just be necessary infrastructure upgrades as per the recommendations of Her Majesty's inspectorate of prisons in Scotland.

In relation to point 162 and the police capital budget, it was clear from the evidence that was given to us not just by the police but by other stakeholders, including the Scottish Police Federation, that there is an absolute necessity for increased capital for essential modernisation. It is not just about cherry picking upgrades; it is for things that are necessary to allow the police to continue to perform their duties. There seems to be nothing for digital and information and communications technology, fleet, the police estate or the police's greening or net zero targets. That is noted.

We heard from the Scottish Fire and Rescue Service—or at least from its union—that some of the fire service's estate is not fit for purpose. There is £9.5 million mentioned for modernisation, although I am not quite sure where that is going. It certainly does not seem to scratch the surface of what is needed.

Those are not necessarily criticisms; they are just observations on the responses.

Our point 173 was about the national community justice strategy. The Government simply says in response that that is “under development” and will launch this year, but it does not mention what budget will be allocated. We made a specific ask that it should be adequately funded. I note that no response was given to that.

The other major area of contention for me is on legal aid. The committee took a lot of evidence on that issue. I accept that there is disagreement between various stakeholders, but we made it clear that the profession, if nothing else, is clear that the Government has failed to address issues on fees and the negotiations on them. The one-line answer was that the Government “does not accept” that position.

10:30

The Government did not respond to point 182, nor to point 184, which included a helpful suggestion about the Public Defence Solicitors Office that I thought had come from other members as we worked through the process. No response was provided by the Government. That is just not good enough.

On the issue of tackling drugs deaths, it was disappointing that the Government did not respond to points 189 and 191. We made a specific recommendation for a modest injection of funds for recovery clinics in prisons, as the committee discussed earlier, and also for residential rehab and community day centres. We also asked for clarification of how all the budgets work together, because we know that the drugs deaths crisis crosses many portfolios. The Government provided no response to either of those points. Given the gravity of the situation, that is disappointing.

As we reflect on the budget process, we may want to look back on those issues or push the Government further.

**Russell Findlay:** I was going to raise a couple of the points that Jamie Greene talked about. First, we asked about the PDSO but did not get a response.

Secondly, I will go back to the Drug Deaths Taskforce. We all know that 1,339 people died in Scotland last year because of drugs. The task force has the job of doing something about that. The chair and the deputy chair, both of whom are credible and eminent people, have quit. I do not think that we know enough about that. There may be a tendency to want to move on, but if we put our fingers in our ears and do not explore that further that sends out a pretty bad signal. We know, by virtue of what has been in the media, that those two individuals believe that the direction of travel is counter-productive to doing something about the drug deaths toll. That is fundamental. It would be remiss of us not to explore that further.

**The Convener:** I thank members for their comments. There is a lot in there. I agree with some of the issues that have been raised, including Jamie Greene's question about the capital budget, particularly for policing. There is a lot in what has been said about issues such as FAIs and deaths in custody. We all acknowledge that a lot of work has been done and progress made on that, but we must keep an eye on the issue.

I propose consolidating the points that have been made. We may wish to follow that up with some correspondence to the cabinet secretary, seeking clarity on those points, or we may be content with the reply that he has provided. Do members agree to some follow-up correspondence with the cabinet secretary?

**Jamie Greene:** I sort of alluded to the issue of correspondence. On an issue such as legal aid, where the Government simply responds by saying that it respectfully disagrees, that is fine. The Government is entirely within its rights to disagree either with stakeholders who have given evidence

or with the committee's summary and recommendations. It is entirely appropriate for the Government to disagree with committees and their findings—that is common and I do not have a problem with it—but when the Scottish Government does not answer questions at all on important issues, I would push back, uncontroversially, and say, “With respect, cabinet secretary, the committee made a recommendation, and just to say that no response has been provided is not good enough.” If a further response comes back to say that a response is not possible or that the cabinet secretary disagrees with the committee, that is fine. That is a response. However, to say that there is no response is not a response. I would be minded to push back on those issues.

It is also worth noting, however, that this is just a draft budget. The budget will go through its iterative process. Political parties and their spokespeople are within their rights to press the Government for more money on whatever they want and that will form part of the negotiations. There may be other opportunities for revisiting these issues as the budget goes through the process. By the time we get to the final stages of the budget, we will know what the final numbers are. It is not necessarily a given that the numbers that have been presented to us are the final numbers, and I am sure that the cabinet secretary has the wherewithal to request as much as he thinks is needed, off the back of the committee's recommendations, from his colleagues in Government. Perhaps we could schedule an opportunity for the committee to review later iterations of the numbers to see whether they meet us some way in some of our tasks.

**Katy Clark:** I think that it is important that, in our response to the cabinet secretary, we push on the deaths in custody issue. However, it would also be useful to ask about the evidence that we have taken and the discussions that we have had about how sexual offences and domestic abuse are dealt with, and how that relates to the budget and, in particular, the new budget strategy. I am not sure, but it may be that the financial implications of the implementation of any measures that are necessary would be dealt with in the new justice strategy. If the Government is talking about significant changes in how sexual offences and violence against women and girls are dealt with, that must have financial implications. It might be quite useful to use the correspondence to see whether we can get more detail on what the thinking is.

**The Convener:** Thank you for those follow-up comments.

As Jamie Greene said, we are at the draft budget stage, and I have no doubt that we will

return to some of the issues that we feel quite strongly about. As we progress through our work programme, we will have an opportunity to monitor budgetary issues and aspects of the work that we are looking at. When issues come up around a particular topic, we can raise them at that point and in the appropriate way. Do members agree?

I see that no one disagrees.

Finally, I would like to pick up on Russell Findlay's point about the task force and the recent resignations. I understand where he is coming from with that, but I am not sure that it is necessarily directly a budget issue. However, I am sure that we will have further discussions about that in the context of the issue that Mr Findlay raised.

If we are content not to issue any further correspondence to the cabinet secretary on the budget response that he provided us with, I will bring this agenda item to a close, and thank members for their comments and contributions.

That concludes the public part of the meeting. Our next meeting will be on Wednesday 26 January.

10:40

*Meeting continued in private until 11:38.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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