



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 8 November 2023**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**29<sup>th</sup> Meeting 2023, 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)  
\*Sharon Dowey (South Scotland) (Con)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Rona Mackay (Strathkelvin and Bearsden) (SNP)  
\*Pauline McNeill (Glasgow) (Lab)  
\*John Swinney (Perthshire North) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Angela Constance (Cabinet Secretary for Justice and Home Affairs)  
Catriona Dalrymple (Scottish Government)  
Teresa Medhurst (Scottish Prison Service)  
Gerry O'Donnell (Scottish Prison Service)  
Heather Tully (Scottish Government)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Criminal Justice Committee

Wednesday 8 November 2023

*[The Convener opened the meeting at 09:31]*

### Pre-budget Scrutiny 2024-25

**The Convener (Audrey Nicoll):** Good morning, and welcome to the 29th meeting in 2023 of the Criminal Justice Committee. We have received no apologies. Katy Clark will join us shortly.

Our first item of business is to continue our pre-budget scrutiny of the Scottish Government's 2024-25 budget. I am pleased to welcome Teresa Medhurst, the chief executive of the Scottish Prison Service, and Gerry O'Donnell, its interim director of finance. *[Inaudible.]*—for their written submission.

We have about 68 minutes for this session. I will begin with some general questions. Will you outline the main challenges relating to spending on prisons in this financial year? What is your view on the budget that you will need for 2024-25?

**Teresa Medhurst (Scottish Prison Service):** Good morning, convener and committee members. Thank you very much for the opportunity to answer questions on the budget for the SPS.

On your first question, our submission mentions some high-level pressures that our organisation is experiencing, particularly the population pressures, which have compounded over the course of this year. The increase in the prison population this calendar year alone—about 700 people—equates to the size of HMP Perth, and the total number tipped over 8,000 on Monday night and Tuesday this week.

We run a 24/7 operation—we operate with a staff group of about 4,500 every day of the year—and we are required to deliver a number of contracts, operations and services to that increasing population. We have experienced significant inflationary pressures right across our budget, and the increasing population and complexities have put additional strain on service delivery.

I should stress that it is not just about numbers. We also experienced a high population in 2018-19. The difference with the situation now relates to the complexity of the population, which results in additional costs, such as those for social care. Given the different population types, there is an increased need to keep people separated in order

to keep them safe. All that results in cost and infrastructure pressures.

In addition, we have major capital projects. We concluded construction of HMP Stirling, which opened this year, although phase 2 of that project—demolishing Cornton Vale prison—and the new builds for HMP Highland and HMP Glasgow, which will replace HMP Inverness and HMP Barlinnie, are still to be finalised. The construction industry has experienced significant pressures relating not just to workforce but to additional costs associated with supply chains and infrastructure.

Therefore, we are experiencing, and have experienced, significant pressure across a number of areas this year, and that has led to some challenges in our ability to live within our budget.

We are still unclear about what our budget is likely to be for next year. Part of the challenge relates to where the population is likely to rise or fall. For the whole of this period, we have engaged with the Scottish Government's justice analytical services team to better understand the drivers of the population increase, but it is very difficult to predict or anticipate what we will get and, therefore, it is difficult to plan for next year's budget pressures and service delivery.

**The Convener:** I know that the prison population issue is complex and that multiple factors have an impact on it. Do you think that an element of that pressure still derives from the Covid pandemic and will ease in time, or is it not that simple?

**Teresa Medhurst:** With the increase in court business—funding was sourced to increase the capacity for both summary and, now, solemn cases—we anticipated that the increase in the sentenced population should lead to a decrease in the remand population. However, although we are experiencing an increase in the population of both short-term and long-term prisoners in our prisons, we are not seeing any reduction in the remand population. Prior to Covid, the remand population was about 15 to 17 per cent of the overall population, but that figure still sits worryingly high, at about 27 per cent.

**The Convener:** I will bring in Mr O'Donnell.

**Gerry O'Donnell (Scottish Prison Service):** Good morning, convener and committee members.

Last year, we received a budget uplift of £29 million. However, at the spring budget revision, we required an additional £14.5 million of in-year funding in order to have a balanced budget last year. In real terms, the increase was about £14.5 million this year, which equates to about a 3.4 per cent uplift.

As it was last year, the situation is challenging. We find ourselves with a number of cost pressures. Teresa Medhurst highlighted the increased prison population, which has arguably resulted in a new cost pressure this year, because the increases started from the beginning of this year. To date, we have more than 8,000 people in our care.

We also have challenges relating to inflation in private sector contracts. One of our main contracts for HMP Addiewell is based on the retail prices index plus 1 per cent. In September, RPI was 6.9 per cent, so you can imagine the impact that that has when our budget increases by 3.4 per cent.

Our pay settlement increases are above those that are outlined in public sector pay policy. This year, we have the added pressure of the women's national facility coming online, which has created additional staff costs.

We have continued high inflation in areas such as utilities. In particular, there has been a dramatic rise in food costs in the past two years. As a result of those food prices and the increase in the prison population, we are looking at an overall spending increase of 40 per cent over two years. There is also backlog inflation. Maintenance contracts are being renewed, and there are price increases again this year.

In relation to my concern for next year's budget, we need a settlement that will deal with in-year cost pressures and which will adequately fund increases for next year.

**The Convener:** Thank you very much indeed. I open up questions to other members.

**Sharon Dowe (South Scotland) (Con):** Your submission states that the transfer of HMP Kilmarnock into public ownership is one of the "key pressure areas" and that

"A full assessment of any likely budgetary requirements for the transfer of the asset into public ownership is currently underway."

Has that assessment been completed? The transfer is due to take place in four months.

**Teresa Medhurst:** It has not been completed, but it is well under way. The SPS's operating model is different from the current model at HMP Kilmarnock. We have almost completed the work to better understand the implications of changes in the models and how things can be recalibrated for HMP Kilmarnock, because it has a one-tier prison custodial officer cadre, whereas we have two tiers in our prison officer grouping. We had to work through some issues to better understand the implications. We are almost at the point of finalising that work, but we are not quite there yet. We can provide costings once the work has been completed.

I appreciate that the transfer will take place on 17 March 2024, but we have a year during which we will recalibrate or harmonise the position regarding staffing and other elements of the operation in order to bring the prison fully into SPS operational ownership.

**Sharon Dowe:** That will obviously have an impact on this year's budget, so should that cost analysis not have been done already?

**Teresa Medhurst:** The transfer date is 17 March, so only minor adjustments will be made in-year. An outline cost was provided for that, but it is for only a couple of weeks. The more detailed work will have to be factored into next year's budget, and that work will be done in time to feed it into the budget round for next year.

**Sharon Dowe:** But will the transfer of HMP Kilmarnock from Serco to the SPS not have a big impact on this year's budget?

**Teresa Medhurst:** I am not sure that I understand the question. The contract is still operational as it stands. We have factored in additional pay costs for the project team that is developing the transitional arrangements, but the contract is still running as a private sector contract, so I am not sure where you see there being additional costs this year.

**Gerry O'Donnell:** In this year's budget, we have a transformation budget of approximately £1.4 million. That budget is for the team that is working on the transfer project, and it takes into account the last week of this financial year. Our position is fully costed this year.

**Sharon Dowe:** Is £1.4 million the cost just to transfer the prison from Serco to the SPS?

**Teresa Medhurst:** That is to establish costs to ensure that we have fully developed the arrangements under which the private sector contract will cease and the prison will move to public sector operation. Those arrangements are quite complex because, as well as the transfer of people, which obviously comes with a range of sensitivities, we must decide whether to retain the systems and processes that are owned by Serco or replace them with our systems and processes. All that has had to be factored in, and that has taken the best part of the past two years. We have been planning for the transfer for about two years.

**Gerry O'Donnell:** Work has been done on digital transformation and even on buying uniforms for the transfer. There is a range of items. The team that has been working on the project is quite small, but the staff costs for that team are covered in the £1.4 million.

09:45

**Sharon Dowey:** Those are the kinds of costs that I am talking about. There will be costs for basic things such as uniforms, but there will also be costs relating to procurement. For example, you said that the price of food has resulted in your costs increasing by 40 per cent. I imagine that all Serco's contracts will stop on 16 March, so you will have to have new contracts in place on 17 March. I thought that you might have a better idea of the impact that that will have on your budget, given that the transfer will take place in four months.

**Gerry O'Donnell:** Some of those contracts will be novated. The organisation is going through the budget process now. All the costs of running HMP Kilmarnock—estate costs and the cost of support services—were probably covered by Serco's head office. Those costs are now part of our budget. We are going through the budget process, and we will have a clearer idea of the exact budget that is required to run HMP Kilmarnock as an operational establishment next year.

**Sharon Dowey:** Is taking HMP Kilmarnock back into the public sector best value for money for the public purse? Have you considered taking any current best practices at Kilmarnock and implementing them in the SPS system?

I do not know whether you could tell me a better figure, but I have heard that extra on-going costs, not including the £1.4 million just for the transfer from Serco to SPS, could be £3 million to £5 million. Have you taken any best practice learnings from Serco?

**Teresa Medhurst:** There are two elements to your question, and the first one is about costs. The contract for HMP Kilmarnock is a 25-year contract, and the prison started operating in 1999. I think it was one of the first private sector contracts in Scotland. Pricing mechanisms and arrangements in 1997, when the contract was originally let, would be markedly different from today's, considering today's cost pressures.

I can tell you that the price for HMP Addiewell, which is about 14 years old, is higher than the price for HMP Kilmarnock and other public sector prisons. Although there are no other direct comparators within Scotland, the cost of running HMP Kilmarnock is cheaper than the private sector contracts in England and Wales. As I said, however, there is an iterative process of contract changes and updates. I do not know what the cost would be now, but it would be more expensive and we anticipate that running costs would be significantly higher.

On the second part of your question, which was about best practice, I am keen to explore any learning that we can take from Kilmarnock,

because the way that it operates, being in the private sector, is quite different in a number of ways from how prisons operate in the public sector. The project team is working hard to identify areas of best practice that we will explore when we take on the operation of the prison next year to see whether there is anything we can extract and share across the prison estate.

**Gerry O'Donnell:** I can give a good example. We have decided that we will keep the custodial management system operating at Kilmarnock. It allows those living at Kilmarnock to book visits and order their meals from the canteen online. That is an innovation that we will keep and we want to develop it as part of our own in-cell telephony project as well. We are keeping some aspects of best practice.

**Sharon Dowey:** Thanks. Just one quick—

**The Convener:** I will have to move on. I am sorry, but a number of members want to come in.

**Pauline McNeill (Glasgow) (Lab):** Good morning. In response to Sharon Dowey's line of questioning, Teresa Medhurst said that Kilmarnock has a one-tier staffing structure whereas SPS has two tiers. I was aware of that, and I think that one of the reasons why Serco said that they ran HMP Kilmarnock more cheaply than SPS was that it did not have the same grading structure. Does that mean that the figures that you have outlined incorporate going to a two-tier structure? Presumably, that will be a lower pay or higher pay structure.

**Teresa Medhurst:** The financial envelope that we anticipate we will require to operate HMP Kilmarnock will include that information, and I told Ms Dowey that we are in the final stages of developing it.

Serco has an operational support group that has no contact with prisoners, whereas anybody who is operational in our staff will have prisoner contact. There are some quite distinct differences that we have had to work through to ensure that the operating model reflects best practice and is as cost effective as it can be.

**Pauline McNeill:** Will we just wait and hear when that work is done?

**Teresa Medhurst:** Yes.

**Pauline McNeill:** Thank you very much.

I want to ask about recent press reports about Barlinnie prison in Glasgow. I think that you have already alluded to issues with the construction industry. Could you elaborate on that? Has the timetable changed again and what are the actual reasons that you are being given for the delay? I understand that the cost of raw materials is going up, but that is the case across the sector. Given

that we are building one prison here, and that it is a priority, I am having difficulty in understanding what seem to be repeated delays in bringing it about.

**Gerry O'Donnell:** Our original timetable for HMP Glasgow back in, I think, September 2022 had a date, but it was very much an estimate. I would not say that there have been significant delays in Glasgow. One of the challenges this year was that our capital budget was £97 million, which meant that we could undertake only a certain amount of advance work. In Glasgow, we are still in discussions to finalise a design and a price with the contractor. It is anticipated that we will complete that process in the next 12 months.

The original date was based on us having a design for large parts of the prison by this month, but some areas would still not be fully designed. We have now decided that we will finalise the whole design by April next year. Although I do not think that there has been any delay in the overall design of HMP Glasgow, there has been some delay in the sense that we have not done the amount of advanced work that we had anticipated and that that will probably have some impact on the programme. However, I would not say that it will have a significant impact.

**Pauline McNeill:** Do you agree that there is an urgent need to replace Barlinnie?

**Gerry O'Donnell:** Absolutely.

**Pauline McNeill:** As a lay person, I do not understand why there could be such a delay in the design of a prison. We have built prisons before. Is there some requirement to build something different here? Why would it take until April to finalise the design before you can put something in the ground?

**Gerry O'Donnell:** Our approach with HMP Glasgow has been to have early contractor engagement. A traditional approach would be to get an architect or a designer to design a building, then engage a contractor and take the vision and create a construction design.

**Pauline McNeill:** It just seems to be a lot slower, from where I am sitting.

**Gerry O'Donnell:** It is actually the opposite. We are on track for our design. We have achieved the things that we anticipated for the design by this month. We are now designing the whole facility. I think that the date of our engagement with the contractor was July last year. Yes, that does seem like a year and a half, but it is a significant project and you will find that many other projects have had longer design periods from inception to—

**Pauline McNeill:** There may not have been the same urgency in other projects. Here, as we have discussed many times, prisoners are putting up

with what is a human rights disgrace. I am passionate about this issue, because I am a Glasgow MSP, so I say this openly. I am horrified that in west central Scotland we have people on remand sent to Barlinnie. I do not even fully understand all the complexities of the issue, but I am deeply concerned that it seems to be taking an eternity to build a prison. We have built a lot of prisons before now. I cannot understand what you are telling the committee. Is there something special about this design? I am struggling.

**Teresa Medhurst:** Can I come in?

**Pauline McNeill:** Yes. I am really struggling.

**Teresa Medhurst:** I understand what you are saying about the design, and I equally understand what you are saying about the concerns about Barlinnie. I carry the responsibility and the risk for any failures in infrastructure in an aged prison and the pretty poor conditions that people are living in. The infrastructure becomes ever more fragile each year that it operates. I completely understand the concerns and would be delighted if we could deliver HMP Glasgow in a much shorter timescale.

**Pauline McNeill:** So why do you not? Deep down, I do not understand what the problem is. The design is not going to be available until April. What does that mean in practical terms? When you get the design, does that mean you can go ahead and build it and how long does that take, roughly?

**Teresa Medhurst:** Although we have built prisons in the past, we have not built prisons of this size. HMP Glasgow is the biggest prison that we have built. The teams have looked very carefully at recent designs in other jurisdictions and we needed to include learning and best practice from Covid. We understand the requirement to operate a prison in a much more discrete way, with smaller populations. Barlinnie, as you know, has 300 to 400 people in a hall, and they come up and down the stairs to collect meals and go back up again. Having much more discrete communities of around 20 individuals will feel much safer and will produce much improved support arrangements for individuals on their rehabilitative journey while in custody.

We also need to design features that are compatible with net zero. All of that takes time. Certainly, though, I can assure you that the team is not sitting on their laurels and we are all committed 100 per cent to getting this through as quickly as possible.

**Pauline McNeill:** I really do not doubt that. I am just trying to understand it. Is it 2026, that—

**The Convener:** I know that you are very passionate about this but if you could just maybe—

**Pauline McNeill:** I am only asking the panel what I already asked them. Can you give us a rough indication of the year?

**Teresa Medhurst:** I cannot remember the last date exactly. I will need to come back to you on that. Let me do that.

**The Convener:** I am happy for Ms Medhurst to follow up in writing with any answers that you are seeking, Pauline.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good morning. I want to ask about throughcare services, which is an issue that has come to the committee before and there have been various exchanges on. Generally, what is the current position with throughcare services? Forgive me if I have missed it, but I did not see anything on that in your submission.

**Teresa Medhurst:** The throughcare support officer arrangements that were in place were stood down in 2019 due to operational pressures at that time. Since then, there has not been any opportunity to reinstate the throughcare support officer arrangements. We have looked at how best we can ensure that people are as well prepared as they can be, pre-release. There are now throughcare arrangements that are supported by the third sector organisations that come under the remit of Community Justice Scotland, which commissioned those support service arrangements.

If there comes a time when we can look at reinstating them, I would want to do so but with the considerable pressures that we are experiencing, it will not be in the near future.

10:00

**Fulton MacGregor:** Is the decision not to reinstate throughcare support simply due to budgetary pressures?

**Teresa Medhurst:** It is due to operating pressures. The increase in the population has put significant pressure on the organisation. We came out of the pandemic and hoped to achieve a stable operating period with the population in particular but, unfortunately, that has not materialised. In addition, we have workforce challenges, as do other parts of the public sector. We normally operate with the assumption of a 1 per cent vacancy rate, but the rate is currently sitting at 2 per cent, so there are staffing pressures that also do not allow me to consider any other type of service delivery at this time.

**Fulton MacGregor:** Are the Community Justice Scotland throughcare services still offered through the Wise Group and Sacro? Do the costs of providing throughcare services not come out of your budget at all?

**Teresa Medhurst:** No, they do not.

**Fulton MacGregor:** Do the Wise Group and Sacro provide throughcare services for everybody, including all prisons and all populations?

**Teresa Medhurst:** I do not have that information at the moment. My understanding is that we still have support arrangements in place for women and young people. I am not able to tell you how far they extend to the adult male population but I can come back to you on that.

**Fulton MacGregor:** That is okay; if you could come back on it, that would be fine but we can also get that information from other sources.

Community Justice Scotland gave evidence at last week's committee meeting. One of the things that I will be asking the cabinet secretary about later is the direction of the justice system in Scotland. We obviously want fewer people to be in prison and I know that Teresa Medhurst and others agree. However, it feels as though we need to invest more in community justice in order to achieve that. At the same time, however, that is the first thing to go when things get tough.

Do you recognise that as part of SPS's decision about throughcare? It was an invaluable service and I think one that has been highly praised across the board. HM Inspectorate of Prisons for Scotland said that the decision was highly regrettable; most folk who have spoken to us about it have praised the standard of the throughcare service that you used to have in place. What factors were taken into account when you made the decisions about throughcare?

**Teresa Medhurst:** At the time that the decision was made, the organisation was under considerable pressure because of the size of the population. When we have significant population rises, the increased pressure that is experienced within the system affects not only the population and the people in our care but the staff group as well. We need to ensure as far as possible that we retain the maximum operating capacity that we can in order to ensure that staff and those in our care are kept safe. There is a focus, as you rightly say, on doing what we are legally required to do, and a lot of the transactional work that we are required to do takes up significant amounts of staff time. As a consequence, there is a decrease in the amount of time that staff can spend on relationships and supporting people, which leads to a deterioration in the sense of wellbeing for staff and prisoners.

Decisions of that nature are not taken lightly—they have to be taken as a consequence of the pressures being experienced by the organisation. It was unfortunate that throughcare support was one of the things that had to go but we have to keep our prisons safe and we have to protect the

public. Those things are expected of us every day and therefore we have to prioritise that work.

**Fulton MacGregor:** Thank you. It seems that the bulging prison populations are continuing to cause a host of issues.

**Russell Findlay (West Scotland) (Con):** I have two questions, one of which relates to HMP Kilmarnock and one to HMP Glasgow.

The staff at HMP Kilmarnock are extremely anxious about the forthcoming transfer to the SPS and nothing that they have heard today will go any way towards reassuring them. The SPS has known about this transfer since 2019, yet just months away from it happening, the staff are being told that you have no idea how much it will cost to make the transfer or how much the running costs to the SPS will be. Is that not a complete dereliction?

**Teresa Medhurst:** Thank you for the question, Mr Findlay. We have been engaging with staff at Kilmarnock in a meaningful way for more than a year now. We have had two engagement sessions, which I have attended, and more than 100 staff attended those sessions. The most recent session was in September. The project team has ensured that there have been regular monthly communications with the staff group. The concerns and issues that the staff are raising with us are not about the running costs or the cost of delivering the services. Their concerns are more personal to them. We are about to enter a phase of one-to-ones with each of the staff to have informed discussions about what the transfer means for them and the choices that they will need to make about their personal circumstances. We have also committed to providing rosters for them prior to the transfer in the middle of March. Those are the kinds of things that are important to staff, who have questions such as, "What does this mean for me? How will it affect the quality time off that I have with my family?" Things like rostering are very important.

We are responding to the things that are important to staff as individuals and we are taking their questions on board. There is a mechanism through which Serco staff can contact the project team directly and they can raise any questions or concerns, as well as doing so through the local management team. We are responding to those concerns—

**Russell Findlay:** I understand. Can I interject? I am sorry to interrupt but we have very little time. The staff indeed have concerns. For example, they will lose their body-worn cameras and they will go from an electronic human resources system for holidays and so on to the paper-based system that is used by the SPS, which seems regressive to me and to them. However, what I am surprised

at, and they are surprised at, is that the SPS is sitting in front of us today unable to say how much the transfer will cost or how much the running costs will be. Can you explain that?

**Teresa Medhurst:** There are several factors. Do you want to come in on that, Gerry O'Donnell? I can come back to it as well, Mr Findlay.

**Gerry O'Donnell:** We are not just going to come up with a figure at the last minute. The work of preparing the budgets has been going on for several months. That is tied in with the operational decisions about how we are going to operate the facility. As I said earlier, there is an impact across not just the establishment budget at Kilmarnock, but across all SPS budgets. There are impacts on the utilities budgets and all the support services budgets and so on. All that budget team work comes to a conclusion around December in time for the annual budgeting process. Work has been under way and, as part of that process, we will get information and then look to challenge that information. We are looking at the budgets and analysing them and we will come to a figure that we can accurately report—

**Russell Findlay:** Right. Thank you. SPS has known about it for four years. It is four months away and we still do not know the numbers. Moving on to HMP Glasgow, in your earlier answer, Mr O'Donnell, you said that—

**The Convener:** I know that it is important to discuss this but I am want to make sure that we are focusing on pre-budget scrutiny. I am quite happy for Ms Medhurst and Mr O'Donnell to follow up in writing specific queries that relate to staff. This discussion is about the budget.

**Russell Findlay:** Absolutely. That question was about the budget for HMP Kilmarnock but my next question is specifically about the budget for HMP Glasgow and the impact that that will have on the SPS. The SPS capital budget for 2024-25 was £192 million; for 2025-26 it will be £80 million; and—I have not done this in chronological order—for 2023-24 it is £97 million. The total for those three years is less than the projected or speculated cost of £400 million for the new HMP Glasgow. First, is £400 million the most up-to-date figure and how on earth can you expect to pay for it, given these sums?

**Teresa Medhurst:** I think that that was two questions, Mr Findlay. The figures for Glasgow will be known once we have finalised the design. That has gone out for costing and we are still working through that process.

**Russell Findlay:** Can I quickly interrupt? Are you familiar with the £400 million figure? Did that come from the SPS as a guide price?

**Teresa Medhurst:** Yes, I think that that figure was given as part of the infrastructure investment programme—it was an indicative figure because the detailed work on the outline business case and the design had not been developed at that stage. That work is now well in train and will conclude next year. At that stage, we will have an understanding of the full implications for the cost.

**Russell Findlay:** The background to that is that the governor of HMP Barlinnie said over the summer that a catastrophic incident in the prison is a question of when, not if. HMP Glasgow, the replacement prison, was due to open in 2026, yet here we are now saying that it will be another 12 months before we even know the cost of it and nobody knows what the opening date might be. Is that a fair representation?

**Teresa Medhurst:** I do not think so, Mr Findlay. I can counter that because the delivery date for Glasgow will be very much dependent on your second question, which was about the capital allocation provided to the SPS by the Government over the next few years. That will determine the cash flow and, therefore, the timescales for delivery.

**Russell Findlay:** Given the very real concerns around costs and the fact that we do not know how much the new prison will cost, are you having conversations with the Government about additional capital funding to meet the cost of HMP Glasgow?

**Teresa Medhurst:** We are in constant conversation with our colleagues in the Scottish Government over the capital budget allocations and the revenue budget.

**Russell Findlay:** Okay. Thank you very much.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning, panel members. I want to ask about your contract with GEOAmeY, which I understand is worth around £240 million. There have been highly publicised problems with GEOAmeY, with one lawyer describing it as an “absolute disgrace”. In your written submission, you say:

“Additional funding is likely to be required”

for that. How will you look to improve the service, and what kind of additional funding are you looking at?

**Teresa Medhurst:** A lot of work has been undertaken this year, in particular. We operate the contract, but we do so on behalf of the justice partners. There are other key players and any adjustments to the contract or the service are agreed through our partnership arrangement. It is more complex than it being an SPS-owned and run contract.

10:15

Two of the biggest challenges with the GEOAmeY contract are that it was awarded in 2019 and we hit the pandemic in 2020. Court services and a lot of other services that GEOAmeY expected to deliver against the original contract went down and we were in a period of significant change and adjustment. Even since we have left the pandemic behind us, the way that all the business was incorporated in the contract that was set in 2019 has changed and been reconfigured. Court business is not operating in the way that it operated before, when we would have big vehicles turning up at Barlinnie and Edinburgh prisons and, once full, distributing people around courts. The way that the courts have reset means that there are much smaller numbers of people, requiring an additional and more intensive staffing profile. Our business has changed significantly as well, in that our demands for things such as hospital escorts have increased, and they are quite staff intensive.

All of GEOAmeY’s work is fairly staff intensive. GEOAmeY has experienced workforce challenges, which has meant that its workforce has dropped by 25 per cent. It is operating at a level that means that service delivery cannot manage the demands that we place on it. That has required recalibration—not just within the contract but among justice partners—to reset the demands on GEOAmeY, as well as to provide some additional resource to ensure that it can improve its staffing profile, because it is boots on the ground that will make the difference. That has been agreed recently. We were able to secure additional funds from the Scottish Government to support that, and we have made agreed changes to the contract arrangements with our partners and with GEOAmeY, which are now in place.

The workforce was balloted on an increase in pay rates, and that went through resoundingly this week. A slowdown in the attrition rate of GEOAmeY staff has started. Although the numbers are small, there are an 20 more staff this month than it had a couple of months ago, so things are improving. We are monitoring month to month, and we are reviewing the revision and contract arrangements on a four-monthly basis to ensure that performance levels increase.

**Rona Mackay:** Does the four-monthly basis that you just mentioned mean that you are monitoring the situation? If you do not see an improvement, is there a cut-off point at which you will say that things have not improved?

My other question is about GEOAmeY staffing. Do we know why it has reached such a crisis point? Was it due to Brexit or not paying its staff enough? It is a private company, so it does not seem like a satisfactory arrangement—or at least it has not been satisfactory. You said that you

have been in discussions with the other justice partners. As you say, it is quite a complex picture, but are you confident that things will improve with GEOAmev from now on?

**Teresa Medhurst:** The changes that we have made should result in an improvement. We are already seeing some green shoots of improvement, including the fact that staff were given a pay offer earlier in the year, which they did not accept but are doing so now. Pay rates are a factor but, equally, workforce expectations have changed. People want flexible working and the ability to have some home working, as well; clearly, GEOAmev cannot offer the flexibilities that some employers can offer.

The four-monthly reviews are very much set with the thresholds that we expect GEOAmev to meet in mind. If those are not met, we can go back to the original contract, which means that significant penalties are applied to GEOAmev. However, in the background, on-going discussions around mitigations and contingencies are taking place with our justice partners.

**Rona Mackay:** Were any alternative suppliers considered during the period of trouble once it was clear that there were such problems? You told us the reasons for those. Are you stuck with GEOAmev or can you look around?

**Teresa Medhurst:** Nothing is off the table. We are looking at all available options to us.

**The Convener:** I have two more members wishing to come in, so I ask for fairly succinct responses to questions.

**John Swinney (Perthshire North) (SNP):** What is the month during the year when the inflation rate for the private prison contracts is set?

**Gerry O'Donnell:** It varies. For the Addiewell contract, it is September and I believe that, for GEOAmev in Kilmarnock, it is December.

**John Swinney:** I take it that those provisions are built into the contract at the point of negotiation.

**Gerry O'Donnell:** Yes.

**John Swinney:** Essentially, the private sector contracts were inflation proofed at the time of the agreement of the contracts. What is the risk transfer involved in that, whereby the private sector is protected from the rampant inflation that the public sector faces?

**Gerry O'Donnell:** The issue is that it is a 25-year contract and a forecast is made at the start of the contract. At that point, the risk is determined and I suppose that, during a period in which there is low inflation, a low consumer price index and a low retail price index, there is a greater risk for the private sector. In this period, when RPI and CPI

are high, there are significant cost increases for the public.

**John Swinney:** How I would interpret your completely fair observation, Mr O'Donnell, is that the private sector is, in essence, insulated from the effect of inflation, and the public sector carries the can. The argument that those contracts represent some degree of risk transfer is complete baloney.

**Gerry O'Donnell:** I do not disagree with that, Mr Swinney.

**John Swinney:** Thank you. I turn to the capital cost issue. Do you have any current experience of the real increase in capital costs in the current environment? I am probably talking about capital costs in this financial year versus what you would have expected them to be, let us say, three years ago. For example, for a particular project two years ago, you might have expected it to cost £20 million, but, in fact, it has cost £20 million plus X—are you able to furnish the committee with any live examples of that, because that would be a helpful piece of data?

**Gerry O'Donnell:** Yes. After the pandemic, there is a backlog of projects. One of the challenges is that we are in a marketplace in which there are a lot of construction projects going on. That makes it very difficult when going out to tender to the supply chain to get competitive prices back; you often get only one supplier coming back with a price. Therefore, it is difficult to get competitiveness at times.

There are significant supply chain issues in the construction industry with labour, which, before the pandemic was probably as a result of Brexit and freedom of movement. Construction inflation is significant in fuel, energy costs and so on. There have been significant rises in inflation in many marketplaces, but particularly so in the construction marketplace. It has made the cost of projects significantly more expensive than it was a few years ago.

**John Swinney:** The long and the short of it is that the Scottish Prison Service, finding itself in a position to deliver capital projects in the aftermath of Covid, is stung by the combination of an intensely competitive marketplace because of the backlog of construction projects; supply chain costs increases, which are fuelled by Brexit and the loss of freedom and movement and the increase in fuel costs, all of which are beyond the control of the Scottish Prison Service; and the challenges of securing an appropriate workforce to deliver such projects. That is the context in which you are trying to rejuvenate your estate.

**Teresa Medhurst:** I agree with that entirely, Mr Swinney.

**John Swinney:** That is helpful. Thank you.

**Katy Clark (West Scotland) (Lab):** I have some questions about budgetary issues in relation to HMP Greenock. You outlined to Pauline McNeill the long lead-in times that projects can incur. There are plans for a new build in Inverclyde, but has any work started on that? On the current estate, will you outline the budgetary implications of the current fabric of HMP Greenock and the conditions that your staff and the prisoners are having to endure? I understand that substantial work is going on in relation to the walls. Will you give an update on that and the budgetary implications?

**Gerry O'Donnell:** A replacement prison is still in the future pipeline, but no dates have been set. On the maintenance of the existing establishment, we have undertaken work in a number of areas to improve it. A number of cells were out of use because of dampness et cetera. Budgetary constraints prevented us from doing a full—

**Katy Clark:** I understand all of that. Can you say how much you have spent and how much you envisage spending? If it is the case that you are unable to do the work that you think is necessary, it would be helpful for the committee to understand that.

**Gerry O'Donnell:** I do not have the exact numbers, but I can provide you with information in due course.

**Katy Clark:** Thank you.

**Gerry O'Donnell:** What I can say is that is that we are going out to tender for roofing works, kitchens are being redesigned and, as I said, work is being undertaken this year to bring cells back into use.

**Katy Clark:** I am sorry that I cut you short, but we are tight for time. If you could share that information with the committee, that would be very much appreciated.

As you know, Scottish Government policy is very much in favour of rehabilitation. However, there is a disconnect between policy and what is happening both in the prison estate and outside it in other parts of the justice system. How is the Scottish Prison Service dealing with that? What are you doing to try to ensure that you can expand the rehabilitation programmes that are available within the prison estate? For example, we are often told that sex offenders who are voluntarily asking to have access to programmes and other forms of rehabilitation are unable to get that because it is just not there. Will you explain how you are trying to make that shift within the budgets that you have?

**Teresa Medhurst:** I have a couple of points to make on that. We have been recalibrating some of

our delivery around rehabilitation to focus particularly on health, wellbeing and people who use drugs and alcohol. There has been much more focus on that, given that a significant portion of our population is affected by those things.

We already had pressures with regard to programme delivery and progression before the pandemic because of the slow, steady increase in long-term prisoners, and we had looked at a number of different ways and means by which we could not just readjust the programme delivery, but construct our resource to do so. That was paused by the pandemic, and in that period an even bigger backlog was created. As a matter of priority, we are focusing some time and resource on our case management system and our delivery of programmes to ensure that we are future proofed and not just dealing with a backlog.

**Katy Clark:** What does that mean in budgetary terms? There are two approaches—putting more money in, and trying to make better use of the money that is already there for that purpose. Are you putting in any more money? Are you able to do that, given all the pressures on you, or are you having to cut back in financial terms? Are you trying to do things better to make them more efficient? Will you explain the strategy briefly?

**Teresa Medhurst:** It is all those things. It is about making the best use of our staff time. There is a move to in-cell technology that will free staff up from transactional work and allow them more time to do their relational work in case management systems. It is about allowing greater access to in-cell services such as education services. Our learning strategy is being revisited and the contract will be re-let. There are a number of different strands. I will be happy to give you more detail on that.

**Katy Clark:** That would be helpful. I appreciate that I may be asking, “How long is a piece of string?” However, it is clear that there is a disconnect and that the service has not been provided in the way that, I suspect, we would all like. I am sure that you could spend an unlimited amount on these things, but have you looked at how much it would cost to deliver an adequate service through programmes and other forms of rehabilitation? What amount should we be spending compared with what you are able to spend?

I completely understand that there are pressures on the service, particularly as prisoner numbers are increasing and are likely to continue to increase. I am not being critical, because I understand the pressures, but I am trying to understand what the disconnect is and whether you are actively engaging with it and working on it. Can you share that with the committee, perhaps in writing?

**Teresa Medhurst:** I am happy to respond to all of that in writing, Ms Clark.

**Katy Clark:** Thank you.

**The Convener:** I have to draw this session to a close. I thank our witnesses for attending this morning. We will have a short suspension to allow a changeover of witnesses.

10:32

*Meeting suspended.*

10:37

*On resuming—*

**The Convener:** I am pleased to welcome our second panel of witnesses this morning for our final evidence session on pre-budget scrutiny. I welcome Angela Constance, Cabinet Secretary for Justice and Home Affairs; Catriona Dalrymple, interim director of justice with the Scottish Government; and Donald McGillivray, director of safer communities with the Scottish Government.

I will allow around 90 minutes for this session, and my intention is to broadly cover the following areas in turn. We will start with the Scottish Fire and Rescue Service and then move to community justice. After that, we will cover policing, courts and prosecution services, prisons and then any other parts of the justice sector that members may wish to ask questions on. We have a lot of ground to cover so, as usual, I ask members to keep questions as succinct as possible. If we do not manage to get through all the questions, we can send the remainder in writing seeking a response.

I will start with a general opening question and will then open up to members for anything similar before I move on to the Scottish Fire and Rescue Service. Cabinet secretary, it will be of no surprise that virtually every organisation that we have heard from has painted a stark picture of their finances, with capital budgets being under significant pressure. All have said that their finances are insufficient, and many have said that they have cut as far as they can. What is the possibility for a change that might address that situation? Have you had any discussions so far with the Deputy First Minister and Cabinet Secretary for Finance on the scope for further investment, particularly on a spend-to-save basis?

**The Cabinet Secretary for Justice and Home Affairs (Angela Constance):** Good morning. As you specifically mentioned capital budgets, I will start with that. It is no secret that capital is under extreme pressure. The UK Government has not inflation proofed capital so, in the financial year 2024-25, we will see nearly a 4 per cent real-terms reduction, with nearly a 7 per cent real-terms

reduction by 2027-28. The capital position is particularly stretched and severe. We have some prominent commitments, particularly in the prison estate. I have of course had many discussions with the Deputy First Minister and Cabinet Secretary for Finance. As you would expect, there is an intense amount of engagement at this stage prior to the budget. Obviously, the budget will be published in due course and it will be for Parliament as a whole to scrutinise and agree to that budget or not.

**The Convener:** I will go straight to other members for their questions. As nobody is looking to ask a general opening question, we will move to the Scottish Fire and Rescue Service.

**Katy Clark:** Cabinet secretary, you will be aware of the campaign for additional funding from the Scottish Government for the Scottish Fire and Rescue Service spearheaded by Fire Brigades Union Scotland, and no doubt you have seen its report "Firestorm—A Report into the Future of the Scottish Fire and Rescue Service". There has been a decade of real-terms cuts to the fire service and a lack of investment—particularly capital investment but also other investment—over many years, so what the service now faces is cumulative. Are we now legally exposed as a result of, for example, the failure to provide safe systems of work and the failure to have adequate decontamination available for firefighters?

**Angela Constance:** There are a number of issues there. I acknowledge that, in the same way as households up and down the country are challenged because of the cost of living crisis, public services across the board are challenged on the back of a decade of austerity. I should point out the Scottish Government's record of investing in justice and that we have continued to make year-on-year increases in investment—

**Katy Clark:** Will you focus on fire, because we will be coming to the other issues?

**Angela Constance:** I am focusing on fire, because it is a general point that is applicable to fire. The fire budget for this year increased by £14 million in comparison to the previous year, and the budget for this year was certainly in a better position than was the case at pre-budget scrutiny, so there is a very important role for pre-budget scrutiny.

We will, of course, continue to work with the FBU and the Scottish Fire and Rescue Service. Ministers continue to receive assurances from His Majesty's Fire Service Inspectorate in Scotland and chief fire officers that we have a safe service. There are, of course, choices and challenges to address—no one disputes that for one moment—but we have continued to make year-on-year increased investment in fire services. Indeed,

comparing the current budget to that for 2017-18, investment is £55 million higher. Of course people are entitled to argue for more. If we invest more in one area, there will be an issue for Parliament to identify where that comes from, bearing in mind that the Scottish Government as a whole has to operate within a financial envelope and that our abilities to raise revenue are somewhat limited.

**Katy Clark:** Do you accept that firefighters currently lack suitable decontamination facilities?

10:45

**Angela Constance:** That is an important staff welfare issue. The Scottish Government is engaged on the issue with the FBU and the Scottish Fire and Rescue Service. There are operational procedures in place around decontamination, particularly for some of the more rural stations. It is important that, as a Government, we have contributed to research on the health impacts for firefighters and we are supportive of additional health screening.

**Katy Clark:** Firefighters have told me that guidance has not been issued. I understand that the guidance is being worked on, so perhaps the cabinet secretary could say when guidance will be issued by the Scottish Fire and Rescue Service. The service told the committee that its capital funding has remained at £32.5 million over the past seven years, yet it needs at least £60 million per annum of investment. Is that level of underfunding acceptable?

**Angela Constance:** I dispute whether the service is underfunded. You are right to point out that people will always make a case for more—that is the function of pre-budget scrutiny. It is rare for any organisation to address all its capital needs within one year. When the Deputy First Minister publishes the budget, she will also publish multiyear indicative spend for resource and capital in the longer term. That does not replace the annual budget process but it allows people to plan ahead. Capital is extremely stretched. Capital funding has been maintained at £32 million for the Scottish Fire and Rescue Service, but there remains deep pressure on capital budgets.

**The Convener:** I will have to bring in other members but, if we have time at the end, I am happy to bring members back in with any outstanding questions.

**Sharon Dowey:** At the committee's previous pre-budget scrutiny session, Ross Haggart stated that the Scottish Fire and Rescue Service may have to save £14 million next year on the basis of a flat-cash budget, and that that was a "conservative estimate". He said that that would equate to 339 full-time equivalent officers and 18

fewer appliances that could be crewed. What is your response to that comment?

**Angela Constance:** I am conscious that many organisations, including the Scottish Fire and Rescue Service, have submitted their evidence to the committee and much of that is based on the resource spending review of May 2022. I point to the fact that the current year's budget was in a better place than the resource spending review that was published in May last year. I will continue to do my best to argue and negotiate for the best possible deal for all justice organisations.

As with any estimate of savings that will have to be made, they are based on various assumptions, whether around inflation, pay increases, future financial commitments and budgets, all of which are variables that can change. We have seen that with this year's budget, because we have seen some of the highest levels of inflation in more than a generation, which has had an impact on the Scottish Fire and Rescue Service and other justice organisations.

**Sharon Dowey:** Are you concerned about the safety aspects of the Scottish Fire and Rescue Service not getting enough budget? If appliances are unable to be crewed, there will be an increased response time. I cover quite a big rural area, and the response times would be reduced there. Are you worried about the fire service's ability to respond quickly to fires if it does not get the further funding that it needs?

**Angela Constance:** It is important to remember that the number of fires has reduced in the past 20 years, which is to the credit of firefighters. My understanding is that, many years ago, the fire service moved away from having targets on response times. Instead, it has a targeted approach to risk and the allocation of resources. I do not know whether it was the current Criminal Justice Committee or a previous justice committee that was not convinced that time targets for response times was the best way to go. Bearing in mind the preponderance and incidence of dwelling fires and primary fires, we are in a safer place because fires have reduced. Nonetheless, community safety is a priority and we will continue to do what we can to support people with as much resource as can be afforded.

**Sharon Dowey:** I have one final question. The retained duty system, which provides the primary fire cover for around 80 per cent of the geography in Scotland, is losing one tenth of its on-call firefighters every year and the service cannot recruit or retain enough replacements. What additional funding could you provide to address the vacancy level and ensure that terms and conditions are standardised for retained firefighters?

**Angela Constance:** It is important to acknowledge that this is not so much a resource issue and is much more an issue of recruitment, which exists across the UK. When I visited Inveraray fire station a month or so ago, people there spoke about the challenges for rural communities, particularly with recruitment and retention of retained firefighters. We are actively engaged with the SFRS on what more can be done on recruitment and how to more effectively recruit and retain staff.

**Russell Findlay:** The FBU's "Firestorm" report is sobering and deeply concerning. Of course, inflationary issues have contributed to the capital backlog, but there has been a decade of accumulated underspend. The most recent figure put forward by the FBU is more than £800 million, and the SFRS does not disagree with that. Firefighters say that they and the public are being put at risk because of the situation, and that firefighters do not have the required decontamination facilities. Given the scale of the backlog, are you now having critical discussions in the Scottish Government about additional funding, over and above what might be committed in the budget? Is there perhaps an argument for the issue to be subject to a royal commission?

**Angela Constance:** I dispute that, Mr Findlay, with respect.

**Russell Findlay:** Which part do you dispute?

**Angela Constance:** The part about a royal commission.

**Russell Findlay:** You do not think that there is a need for that.

**Angela Constance:** No. There is, of course, a place for in-depth inquiries, but they do not come without a financial cost. If you had to ask me to choose between investing in front-line services or some sort of inquiry, I would opt to invest in front-line services. It is important to recognise that fires and fire deaths in domestic premises have reduced in the past five years.

On facilities, I accept the point that it is important that workers are afforded dignity, safety and privacy. Despite a challenging situation in the past, we have maintained capital spend at £32.5 million. The issue is not just inflationary pressures, although I point to such pressures on construction services, and the cost of basic materials to replace buildings has certainly rocketed thanks to record-breaking UK-wide inflation and other matters such as Brexit. However, there has also been a proactive decision by the UK Government not to increase capital funding—not to inflation-proof that—so that gives us challenges, and we will have to prioritise in terms of safety, because safety is a priority. We also have His Majesty's Fire Service Inspectorate in Scotland, which

provides independent oversight of fire and rescue services and which should give us all some assurance.

**Russell Findlay:** There has been a decade of underspend, year after year, and those are decisions that have been made by the Scottish Government. Is there an argument that more money should be forthcoming to go some way to address the £800 million-plus backlog in capital expenditure?

**Angela Constance:** I will not argue with you that we have had a decade of austerity, which has had an impact on the decisions that we could make and decisions that we will be able to make. As I pointed out in an earlier answer, I will always do my best to negotiate the best possible deal for all justice organisations. Our discussions within Government are intense on these matters, particularly bearing in mind the volume of pre-budget evidence that has been submitted to the committee.

**The Convener:** We move to questions on community justice. I will kick off with Fulton MacGregor, to be followed by John Swinney.

**Fulton MacGregor:** Good morning, cabinet secretary and officials.

You might have seen last week's evidence session with witnesses from Community Justice Scotland, during which we heard quite a strong case about a disconnect of some sort between the Scottish Government's policy intention with regard to the justice sector and how its budgets are actually operating. What they really meant was that, with the focus on prisons and so on and the large numbers involved, the community justice sector's budget has remained very small and fairly static in comparison with the rest of the sector, which is hindering any chances and opportunities to shift things in the way that we all want.

I apologise, cabinet secretary, if I have taken the long way round in asking that question, but do you agree with that overall analysis?

**Angela Constance:** There is an alignment between the justice vision and the national strategy for community justice, and the delivery plans in that respect. There is nothing new in the delivery plans, but they are continuing to put our words into practice. I would also highlight the transformational change programme, particularly the way in which it shifts the balance from prison to community justice.

The overall community justice budget for this year is £134 million, which includes the continuation of an additional £15 million of investment that began in 2022-23 to support pandemic recovery efforts and to bolster capacity. However, there is no doubt that the early

intervention that we want to see in justice services applies beyond those services. The Government's broader agenda in relation to early intervention and prevention, whether in health, early years, social security, employability and so on, is crucial, too. I do agree, though, that there is a very strong argument for picking up the pace in achieving our ambitions for community justice, bearing in mind the situation that we are in with a growing prison population.

11:00

**Fulton MacGregor:** Is there any plan in this budget for how we might pick up the pace? For example, in the previous session, I asked the Scottish Prison Service about throughcare. The previous throughcare service was very highly respected, but it has been pulled, what with the growth in the prison population and the pressures that that is putting on the staff. It seems that, whenever something has to give, it is the community justice side that has to go, and this is an example of that.

Can anything be done through the budget process and in the upcoming budget to try to pick up the pace, which we would all want to see? After all, I do not think that a single member around this table would doubt that the Scottish Government's policy intentions in this area are to reduce our prison population and enhance community justice.

**Angela Constance:** Obviously, the budget for the next financial year has still to be published and agreed, but I should point out that the changes that SPS made to its throughcare arrangements date back to 2019. I am ensuring that the calendar years 2024 and 2025 will be our implementation period for the Bail and Release from Custody (Scotland) Act 2023. I do not need to rehearse the arguments that were made in this committee on underpinning the focus on throughcare and on starting to plan for people's release on admission to prison, if they are subject to remand or a determinate sentence.

I will undoubtedly come back to Parliament to discuss how we address our rising prison population, but I am strongly of the view that the actions that we take to address that issue now must also address it in the future. The approaches that we adopt must be not just short-term responses but for the longer term.

**Fulton MacGregor:** Can I ask one more question, convener?

**The Convener:** Very quickly.

**Fulton MacGregor:** Do you agree that having a multiyear funding model for third sector bodies could be helpful in the longer term, or are you quite happy with the current model? I ask that

question, because the witnesses in the previous session were talking about the throughcare model being replaced by third sector organisations, such as Sacro and the Wise Group, which I think do an absolutely fantastic job. Is there an argument for multiyear funding for such organisations within the justice sector?

**Angela Constance:** I think that there are very pragmatic arguments in favour of enabling, as you have suggested, voluntary organisations to be put on a more secure and stable footing. Indeed, we have adopted that approach with the victim-centred approach fund, which is worth £48 million over three years.

However, I want to be up front and direct with the committee: the fact is that multiyear funding is somewhat challenging when you have to operate with single-year budgeting. Perhaps I can give you an overview of the justice portfolio budget. Well over 70 per cent of it goes towards staffing costs, and we have had what are obviously very welcome pay increases for front-line staff. That leaves us with around 15 to 20 per cent to meet our statutory commitments, and around 5 per cent going towards voluntary organisations.

**Fulton MacGregor:** Thank you, cabinet secretary.

**The Convener:** I call John Swinney, to be followed by Katy Clark.

**John Swinney:** It is very obvious that there is intense financial pressure on the Government and on public services after austerity, Brexit and the spiralling punitive impact of inflation, and I am certainly not underestimating the financial pressures on the Government. In that context, it strikes me that the comments that you have put on the record about the importance of picking up the pace on preventative services are absolutely critical. To all intents and purposes, it looks as though the Government is in a bit of a bind with a rising prison population, because that is a more expensive problem to service than putting in place preventative services, which are much more affordable and, in some circumstances, produce better outcomes.

What impetus is being given across Government to make the shift into preventative services that the cabinet secretary has highlighted? I recognise that this is not just a justice compartment issue, but a wider issue across Government. Is the cabinet focusing its discussions on how a shift might be made in order to reduce the higher-cost custodial service that is being supported, with greater priority being allocated to preventative interventions?

**Angela Constance:** To be blunt, I would say that doing nothing to move towards preventative services and early intervention is not an option.

Indeed, we can see that in the obvious example of the rising prison population, and the same could apply to other justice services. In our broad strategic approach, we need to reduce demand for some services, and you can do that only by acting earlier.

With our precious resources, we need, where possible, to have a longer-term spend-to-save vision through, for example, certain digital investment. The evidence tells us that, although there will always be a place for prisons and although there will always be people who will be required to be in custody, the use of robust community supervision is far more effective at reducing reoffending than, for example, a short-term custodial sentence. In some circumstances, prison is an expensive way of making things worse.

I think that your cross-Government point is well understood; indeed, I would highlight as an example the overrepresentation of care leavers in our prison system. Therefore, it is not just investment in community justice or rehabilitation programmes in prisons that is important to me, but our investment in the early years, in supporting families and in the Promise, and there is also the work that we are doing in justice on the bairns' hoose pathways. All of those things will lead to a different approach to supporting children and victims.

Moreover, there is the proceeds of crime money that is invested in diversionary activities for young people. Over its history, it has supported hundreds of thousands of them; indeed, I think that the current programme will benefit around 33,000 young people across the country.

**John Swinney:** So is this the moment for the Government to be bold in the challenge that it puts in front of a range of organisations—all of whom have been in front of this committee asking for more money—to say that we must shift our focus, because we cannot go on like this?

**Angela Constance:** Indeed. I say this with the greatest respect to the many valued stakeholders who have come before the committee and given detailed evidence, in person and in writing, but when I add up all of their asks, I can see that I cannot meet them all. I am just being dead straight with the committee when I say that. That means that we will have to do things differently and leverage in incentives within the resources that we have to see where people can do things such as spend to save.

Our journey with public sector reform is not over. There will still be examples, whether in justice or across the public sector, of services being delivered in a way that might meet the needs of an institution or organisation but not of

individuals. It is the perennial challenge of how we support people earlier on in their life's journey to prevent problems further down the line.

**John Swinney:** Finally, if better outcomes are being achieved, is there an argument for money to be allocated to other purposes as a result, instead of its being argued that the money allocated to a particular organisation or policy area can be increased only because it was argued for in the pre-budget process?

**Angela Constance:** The ultimate assessment must always be whether we are getting better outcomes. In other words, is the number of crimes, fires and so on going down? How do we have services that reach people earlier? How do we have services that prevent, where appropriate, people going to prison? After all, that is in the interests not just of individuals, but of our communities and our country. We need to move the debate from quantum to quality and, also, to change, notwithstanding the undoubted difficulties with the financial envelope available to us.

**Katy Clark:** In 2019, the Parliament passed legislation that enabled the use of GPS electronic monitoring and bracelets that monitor alcohol use. Both of those technologies have the capacity and potential to reduce reoffending. I visited G4S relatively recently and I understand that it has not been asked to start work on those initiatives. I know that the cabinet secretary visited shortly before me, so I suspect that she has been looking at these issues. Is she now trying to get this work started?

**Angela Constance:** There are two aspects to Ms Clark's question. Yes, indeed, I visited the premises in East Kilbride to be able to apprise myself of the further advantages of GPS technology. I have commissioned my officials to explore that work and hope to keep Parliament abreast of that. We have seen success with the increase in the electronic monitoring with bail, for example. That is a good example of the use of technology that is not just to the benefit of individuals and families but also to communities in the long run. It is an important part of the jigsaw in relation to community payback orders. Community payback orders can have a very wide range of conditions attached to them and I would like to see that fuller spectrum of conditions utilised. I have recently discussed with Social Work Scotland how we can move forward and do that.

**Katy Clark:** I will ask a general follow-up question on that. This Parliament passed that legislation in 2019, and a huge amount of scrutiny goes into legislation. The expectation from MSPs when we pass legislation is that it will be enacted pretty much immediately. However, it seems to be a theme that legislation gets passed and it is not

necessarily enacted. Is the cabinet secretary concerned about that?

**Angela Constance:** Well, Ms Clark, I am always a woman in a hurry, but there are obvious financial constraints that inevitably mean that choices are made around the implementation of legislation. That is nothing new. In broad terms, Government should be up-front about our anticipated implementation timescales when legislation is going through. Sometimes, for good reasons, there has to be a phasing in of reforms and legislative changes. Particularly with the pandemic, there has had to be a phasing in of reform to ensure that we do not overwhelm systems.

11:15

**The Convener:** I will bring in Rona Mackay, and then we will move on to questions around policing.

**Rona Mackay:** Good morning. I want to ask a couple of questions about the Scottish Government's commitment to combating violence against women and girls. Can you identify or break down how that budget has been spent? I appreciate that you might not have that information to hand, and a response in writing would be fine if that is the case.

**Angela Constance:** I know from my previous posts the importance of the delivering equally safe fund. That work is still of paramount importance to the justice sector, although it sits in another portfolio. The delivering equally safe fund is worth £19 million a year and supports 121 projects from 112 organisations. In my portfolio, the victim-centred approach fund, which I mentioned, is worth £48 million over 23 years. A big part of that—£18.5 million—is for specialist advocacy in response to gender-based violence.

**Rona Mackay:** Can you say how that lines up with the Istanbul convention, which was passed fairly recently, with regard to its estimation of what is needed?

**Angela Constance:** In a previous life, I advocated for the incorporation of the Istanbul convention and worked closely with Westminster colleagues to pursue that at UK level. The Istanbul convention is looking for action around prevention to combat all forms of violence against women and girls, and, in particular, for policies to be integrated across Government, and for the impact of those programmes to be measured.

**Rona Mackay:** On numerous occasions, Scottish Women's Aid has raised the issue of domestic abuse survivors being able to access legal aid, and the issue of their eligibility for it. Do you have any plans to address that situation and the availability of legal aid solicitors basically,

because that seems to be a huge gaping hole in the justice system?

**Angela Constance:** We have a generous legal aid system that compares well with those of many or most of our European counterparts. Our civil legal aid has a wide scope, and there have been four uplifts to legal aid since 2019, and an additional resource of £31 million since 2021. The latest uplift of £11 million, from memory, equates to a 10 per cent increase. We invest heavily in legal aid and we also support the Scottish Women's Rights Centre. We also support, with up to around £400,000 over a period of three years, a pilot project that has been established through the Scottish Legal Aid Board to support Scottish Women's Aid with regard to the provision of legal advice to women who are affected by gender-based violence. That is being taken forward in collaboration with Edinburgh Women's Aid and a firm of solicitors.

On the point about solicitors, the Minister for Victims and Community Safety jointly chairs a working group about the future of the legal profession, which, of course, is about diversity but is also about capacity.

**Rona Mackay:** That is encouraging, and I think that the funds that you mentioned might go some way towards alleviating the issue of the lack of legal aid solicitors that are available and will help women who have suffered violence.

**The Convener:** We will move to questions around policing. We have three more areas that members are interested in—police, courts and prisons—but we have a wee bit of time.

**Russell Findlay:** David Kennedy of the Scottish Police Federation has described policing in Scotland as having been “asset stripped” over the past decade, with more than 140 police stations being closed and a reduction in the number of officers. We have heard similar concerns in the past from the previous chief constable and others in policing. What does the Government intend to do to deal with the capital backlog in policing?

**Angela Constance:** I dispute the phrase “asset stripped”. It is true and a matter of public record that the formation of Police Scotland into a national police service from eight legacy services has resulted in savings of £200 million a year, which of course is a resource that is available for other public services. That is a good example of public sector reform releasing savings. We can also take assurance from His Majesty's Inspectorate of Constabulary in Scotland, which has time and again spoken of our outstanding operational policing services.

I have spoken at a fair amount of length about the challenges with capital. Police Scotland's estates strategy has a very firm focus on the co-

location of public services, not just because of the financial challenges that we all face but also in the interests of more collaborative working, which always seems like a sensible proposition to me. Police Scotland has probably instigated more than 60 co-location projects—there is one in my constituency. Reshaping the estate in light of capital challenges seems like a sensible thing to do, and can also lead to a better way of working.

On police officer numbers, we have 370 more officers than we did in 2007. Since the beginning of 2022, Police Scotland has recruited nearly 1,500 new recruits. We have 30 police officers per 10,000 of the population in comparison to 25 per 10,000 of the population south of the border. I contend that policing is secure and stable in terms of what it is achieving with regard to the investment and police numbers.

**Russell Findlay:** We can debate police officer numbers all day long and interpret statistics in our own way, but one thing that we can agree on is that, uniquely in the United Kingdom, Police Scotland officers do not have the protection of body-worn cameras. Provision of those was a commitment made by the First Minister on at least two occasions, but the most recent response with regard to the budget for Police Scotland is that it may not have the money to bring them in to give officers protection. Are you concerned about that specific area, and is there anything that can be done to assure officers that they will get those cameras?

**Angela Constance:** We still have to set the budget but I accept the point that body-worn cameras are a priority for the Scottish Government. As you said, the First Minister has spoken of that on a number of occasions. In the evidence that Police Scotland gave to this committee, it was made clear that it is also a priority for them. I believe that body-worn cameras are a good example of investing to save and of reforming how the business is done. Their use will lead to more effectiveness and efficiency, perhaps around the provision of evidence, and there is also an important point about officer safety.

**Russell Findlay:** Can you give a suggested timescale for their provision?

**Angela Constance:** The programme for government made a commitment about beginning to roll out body-worn cameras, and said that this Government will support Police Scotland to begin that process in summer 2024, rolling them out to, I think, 14,000 police officers.

**Russell Findlay:** Is that the beginning of the process?

**Angela Constance:** Yes.

**Russell Findlay:** When is completion likely?

**Angela Constance:** We do not want to take for ever and a day about it, but that will be finalised once the budget is finalised. I hope that I can convey to you and also to police officers, that the body-worn camera investment is a priority.

**The Convener:** I want to follow up on the discussion about police officer staff numbers. We know that those numbers have been falling and are predicted to be cut as a result of budgetary constraints. What are your views on that, particularly with regard to the impact on policing in communities, which we know that the public like to see? I am aware that things such as information and communications technology development—with police officers now, for example, having electronic notebooks as opposed to the old-fashioned paper notebooks—and that the investment in ICT has enabled police officers to remain in communities as opposed to having to always come back to police stations to write up notes and details of cases and inquiries.

On policing numbers—police officer and staff numbers—I seek an assurance from the cabinet secretary that, where possible, those numbers will be retained and not cut.

**Angela Constance:** The assurance that I can give to this committee is that I will work as hard as possible to get the best possible budget for Police Scotland because I want the new chief constable to be able to make decisions as she sees fit around police numbers and the deployment of those resources. I know from my engagement thus far with the new chief constable that she is particularly focused on community policing and presence as a priority.

It is always the case that, in the lead-up to budgets, people make predictions, and predictions have to be made on assumptions, but I point to the fact that, this year, we ended up in a better financial position, and the most recent quarterly statistics around police numbers show a stabilisation at 16,600. We all value each and every police officer, and we want to support them to work in communities, whether that is via technology or other means.

**The Convener:** John Swinney would like to come in, and then we will move on.

11:30

**John Swinney:** I have one brief question, convener. The cabinet secretary referred to the chief constable's priority on community policing, which I understand is welcome. The criminal threat that society faces is much broader than just community policing—for example, there is the sophistication of online activities that threaten the population. The necessity for Police Scotland to have the necessary online skills might not lend

itself to the traditional definition of police officers and police officer numbers being the best indicators of the strength and effectiveness of the organisation. To what extent is the changing nature of crime reflected in the dialogue with the chief constable and the Scottish Police Authority, and in the budgetary choices that might be made?

**Angela Constance:** What I observe and am part of across Government, and in my dialogue with the new chief constable as well as the previous one and through my involvement with Police Scotland, is that, at strategic level, Police Scotland is focused on community policing but its focus also applies to the threats that we experience globally and nationally. The advantage of having a national police force is that we have more flexible deployment of resources.

John Swinney is correct to say that the nature of crime is changing. We need only look at cybercrime as an example of that. Tackling that will, of course, require different forms of expertise. That is why it is important that I secure the best deal possible for the chief constable, who is, I say with respect, better placed than anybody sitting at this table, including me, to make decisions on how best to combat the threat that we face at community or national level, and how to deploy our resources to best effect.

**John Swinney:** The nuance that I am trying to get across is whether the skills that Police Scotland requires for the policing challenge of today are best served by a discussion about the number of police officers that we have available to us.

**Angela Constance:** What I think John Swinney is driving at, on keeping our communities safe, is that the debate is much broader than being just about police officers because the work must also involve police staff and other associated professionals, who will bring various forensic skills to bear.

**The Convener:** As there are no more questions on policing, we will move on to questions about courts. I will bring in Russell Findlay.

**Russell Findlay:** I was not expecting that. I can certainly try to come up with a question but, if someone else has one, they might want to come in. I had a general question that might fit for courts.

**The Convener:** Feel free.

**Russell Findlay:** The Scottish Courts and Tribunals Service expects that the most recent ruling on corroboration not being required in some rape cases will result in a significant number of new prosecutions. Has the Scottish Government analysed that in any way, and has it discussed with the SCTS that new workload and its cost?

**Angela Constance:** It is a very recent judgment. I am conscious that it has immediate and retrospective effect. The judgment—Catriona Dalrymple will keep me right—will apply beyond sexual offence cases.

**Catriona Dalrymple (Scottish Government):** Yes, that is correct.

**Angela Constance:** How the Lord Advocate pursues prosecutions is a matter for her. I will have meetings and catch-up sessions with the Lord Advocate and it will be for her to perhaps look at modelling to anticipate the impact that that will have on prosecutions. However, as I said, the judgment has an immediate and retrospective impact.

**Russell Findlay:** Yes. This will potentially add a significant volume of work, but we just do not know. It is too early to say.

**Angela Constance:** It is too early to say, but I think that it is fair to say that it has the potential to increase prosecutions.

**Russell Findlay:** Okay. Thank you very much.

**The Convener:** Do any other members want to come in on courts? I think that Pauline McNeill does.

**Pauline McNeill:** I have a question that relates to one of the Scottish statutory instruments that we will deal with later on. The committee will be asked to vote on an SSI that would extend the time limits for court proceedings. I will just ask you this directly, cabinet secretary. Is one of the reasons why we are being asked to do that that the Scottish Courts and Tribunals Service does not have the budget to get nearer to the legal requirements?

**Angela Constance:** No—although it is about our on-going recovery from the pandemic. We will discuss this in greater detail later. Originally, there were seven extensions to time limits. With committee approval, after its hearing on the issue, we will remove some of those and we will have in place three out of the seven.

We are making progress because the court backlog programme is making progress. The backlog is down by a third since the start of last year. Increasing resources went into solemn cases, with two additional High Courts and six additional sheriff summary courts. The test of the measures that were applied was whether they were necessary and proportionate. We are lifting the time limits because they are no longer necessary and proportionate. We believe that the remaining extensions, which we will discuss later, continue to be necessary.

**Pauline McNeill:** Thank you.

**The Convener:** Before we move on to our final topic—prisons—I will ask the cabinet secretary about some of the evidence that the Crown Office and Procurator Fiscal Service has given to the committee. It has set out increased costs for developing evidence on commission, a greater number of solemn cases being prosecuted, the additional work that will be required through the changes that the Victims, Witnesses, and Justice (Scotland) Bill will introduce, and the increase in death reports and investigations. What priority does the cabinet secretary give to those individual areas of work and ensuring that the required resources are in place?

**Angela Constance:** Those issues are important. The Lord Advocate negotiates her budget with the Deputy First Minister in the same way that all Scottish Government ministers do. Although the justice portfolio budget has a direct bearing on the police, fire and courts services, that is not the case for the Crown Office. I am limited in what I can say about that because that is a discussion for the Lord Advocate with the Deputy First Minister.

I will not say too much about the Victims, Witnesses, and Justice (Scotland) Bill because we have a number of lengthy sessions ahead of us on that, but I hope that the bill will reach stage 3 in advance of next year's budget. The implementation of legislation will certainly be a live issue for next year's budget, and I will talk to the committee more about my initial thoughts on how the implementation of a landmark bill can be phased.

**The Convener:** Thank you very much for that. We will move on to our final topic for questions, which is prisons. I will kick things off before I bring in other members with a question about the prison population, which we heard a little bit about in our previous session this morning. Does the cabinet secretary feel that the current prison population and remand prisoner levels are acceptable and sustainable? Does she have specific plans to address that? If so, when will those be set out for Parliament to consider, and are there any budgetary implications for justice organisations arising from them?

**Angela Constance:** Notwithstanding the fact that people are imprisoned based on decisions made by the courts, I think that the current prison population is too high and I do not think that it is sustainable. When I went to work 20 years ago, the HMP Perth population was 5,500. This week, it is 7,964. A high prison population comes with risks. His Majesty's Inspectorate of Prisons for Scotland made that very clear, and has issued a clarion call for action. I intend to pursue that because a high prison population does not just present risks for the wellbeing of prisoners and

staff; it is not in the best interests of our communities when it comes to reducing reoffending. When I met justice spokespeople a few weeks ago, I made it clear that the statement that I made to Parliament in October would not be my first and only statement to Parliament, and I certainly anticipate returning to Parliament before the end of the year.

There are, indeed, budgetary implications of having a high prison population. Some costs are operational costs for the Scottish Prison Service. As I intimated earlier, there are smarter ways to invest money to keep our communities safe, notwithstanding that there will always be a need for prisons and it will always be the case that prison is absolutely necessary for public protection.

**Pauline McNeill:** Cabinet secretary, I had an exchange with Teresa Medhurst and Gerry O'Donnell about the plans for the new HMP Glasgow in the earlier part of the meeting. I am sure that I do not need to rehearse how urgent the matter is, or the pressure on the prison population, the standards for prisoners and so on. When I tried to press them on the completion date—there has been some press coverage on the issue—it was unclear to the committee what the date is or what the ambition for the date is. Teresa Medhurst said that that will depend on the capital allocation. I am not sure what she meant by that. I presume that she meant that the SPS is in discussion with the Scottish Government about what capital allocation will be available to it in the year of building the prison. It is hard to follow this. Is the Scottish Government prepared to make the capital allocation when it is required for the build of HMP Glasgow?

**Angela Constance:** I can assure Ms McNeill and the committee that the replacement of HMP Barlinnie is a priority. Prioritising it will have consequences in that we will not be able to pursue other actions in the prison estate as quickly as we want.

The prison will be a large infrastructure project that will require funding over a number of years and it will require a sustained commitment. We will not know the timescale until we know the costs, and we will not know the costs until we get the final designs. That is the bottom line. There perhaps is not the specific information that people desire. We are all keen to have that information, but we need to know the final design so that we can know the final anticipated cost. I say "anticipated" because the costs of infrastructure projects change, as we know. Once we know the cost, we can work out the timescale and the capital budget accordingly. This is not a one-year-only investment.

11:45

**Pauline McNeill:** Does that mean that the anticipated date of 2026 is not a real date any more? Is that just fluid?

**Angela Constance:** I know that various dates have been produced and bandied about but, to be absolutely clear with the committee, we want to get the costs so that we can get to implementation, make the plans and set out the capital budget so that there is an up-to-date timeline for everybody to work towards.

**Pauline McNeill:** We have been told that it is expected that the design will be complete in April next year, but we currently have no idea whatsoever about how the prison will be built. I understand that it is a big infrastructure project. Will you press the relevant people to provide an estimate of when the project can start? Am I right in thinking that, if you have a design plan at that point, you can cost it?

**Angela Constance:** Yes, and that is the point that I was making. It is in my interests—I am particularly motivated on this—to see those final design plans as soon as possible, so that we can then have a more definitive—

**Pauline McNeill:** You will see them in April.

**Angela Constance:** Yes. Then we will have a more definitive view of cost, and once we know costs we can plan accordingly, but it is an absolute priority.

**Pauline McNeill:** I take it from what you are saying to the committee that the new prison is a priority, you will see the design plans in April and then you will start to release the relevant capital to get work started. Is that fair?

**Angela Constance:** Yes. I did not want you to be under the impression that this was a one-year-only capital investment.

**Pauline McNeill:** Yes, I am learning, but, to be candid, it is not fair for the committee to be left with the perception by the Government or the SPS that the timeline just moves all the time. I know that it is complicated, but, up this point, it feels that there is some smoke and mirrors when we try to pin down anything at all on a project that is meant to be a priority. That is all that I am trying to press you on.

**Angela Constance:** Not being a builder, I share some of that frustration, but I know that the Scottish Prison Service, and particularly the governor of Barlinnie, is very focused on the project. We have to accept that the pandemic and the construction materials price index, with a 47 per cent increase overall in construction materials, have an impact. I want to have as much clarity as

soon as possible, and I know that the Scottish Prison Service shares that view, too.

**Rona Mackay:** I have a quick supplementary that follows up on Pauline McNeill's line of questioning. You said that building costs increase astronomically year by year. I do not know whether there are any precedents for this, but would you ever put a cap on the final cost? Could you say, "This is the maximum that we can go to and the design needs to be brought into line with that"? I do not know whether that has ever been done, but would it be a way to provide more certainty?

**Angela Constance:** I am conscious of other public sector infrastructure projects that have been impacted by events such as inflation, construction labour shortages, Brexit and all the rest of it. Given the lengthy lead-in time for infrastructure projects, it is difficult to rule out the prospect of an event interrupting plans. People sometimes start building infrastructure projects and then find something of historical or architectural importance. All sorts of things can happen.

Perhaps I can give you some assurance that the Scottish Government executive team is very interested in the matter and it has had some discussions and opportunities to delve into the plans as they exist right now to ensure that they are as robust and as realistic as possible, because that is in the interests of all the justice partners.

**John Swinney:** When the Scottish Prison Service witnesses were with the committee this morning, the director of finance highlighted the backlog of construction projects post-Covid, coupled with the challenges in the supply chain for the replacement of infrastructure because of the impact of Brexit, with the loss of free movement of individuals, and the wider effects of construction inflation, which you told us involves a 47 per cent increase in the cost of construction materials. Is it correct that those factors will affect not just the cost of renewing the prison infrastructure, but all other aspects of capital investment across the Scottish Government's capital programme?

**Angela Constance:** Yes—that is true. When I visited our prison establishments on my summer tour, I looked very closely at conditions and where we are with making improvements to the estate, as well as our ambitions for HMP Glasgow and HMP Highland. I know now that, according to the Office for National Statistics, there is a 65 per cent increase in the number of vacancies in construction, and the Building Cost Information Service materials cost index shows a 47 per cent increase overall, with an 82 per cent increase in structural steel, a 39 per cent increase in pre-cast concrete and a 32 per cent increase in gravel and sand. All of that has an impact not just on our ambitions in justice, but across the Government.

**John Swinney:** Has the United Kingdom Government engaged with the Scottish Government on any changes to expected financial support to take account of what is a colossal and unprecedented set of damaging impacts on the sustainability of a long-term capital programme?

**Angela Constance:** It has not, that I am aware of. Obviously, the Deputy First Minister and Cabinet Secretary for Finance will engage with the UK Government but, as I said in answer to an earlier question, the position with our capital budget is extremely challenging. There will be a real-terms reduction of nearly 4 per cent for the next financial year, and between now and 2027-28 there will be a reduction of nearly 7 per cent. There will, of course, be an opportunity for the Deputy First Minister to lay out indicative long-term spends in accordance with the anticipated envelope for resource and capital. However, it is just a matter of fact, as opposed to a political point, to say that the UK Government has not inflation proofed capital. That applies to Scotland and it will also apply to local authorities across the UK and the Welsh devolved Government.

**John Swinney:** I will move on to another aspect. I was very struck by the detail that you placed on the record a moment ago regarding your experience in your professional life of the size of the prison population and where it is now. Making a rough calculation of the financial difference in the budgetary costs of accommodating that larger number of prisoners, I estimate that it must come in at something in the order of £90 million. It strikes me that that scale of additional financial pressure to be managed by the Scottish budget creates conditions in which the Scottish Government, the judiciary, community justice services and diversionary activity services should be absolutely focused on maximising the opportunities to avoid incarceration if it is safe for that option to be taken. Are all those players engaged in that dialogue? Are they all pointing in the same direction?

**Angela Constance:** In my engagement with all the justice partners, I am endeavouring to ensure that all the arrows are facing in the right direction—

**John Swinney:** With the greatest respect, that is not the question that I asked, cabinet secretary.

**Angela Constance:** I think that we are getting there. There is the prison population leadership group. We need to avoid people seeing the Prison Service as the end of the line once they have done their jobs—once people have been arrested and prosecuted and the courts have done their job. Of course those things need to continue to happen, but we must realise that having a growing and unsustainable prison population is not just a Scottish Prison Service problem. It is a justice

problem and, ultimately, it will be a community safety problem.

On ensuring that all the arrows are flying in the right direction, I am confident that there is a growing realisation in the justice sector that our prisons are not the end of the line. Practitioners know that what happens in prisons matters because most people will come out, but it is also important to note that this is not just a justice sector issue. For example, my engagement with health services is particularly important. I will give an example.

As the Scottish Prison Service reconfigures the use of its current prison estate—there are limits to that—it is renovating part of Polmont to use spare capacity there. However, as the prison population increases in Polmont, that will place increasing pressure and demand on health services in NHS Forth Valley, which is a smaller health board. I have raised that issue in the cross-ministerial group on justice and health. That is just one example.

**John Swinney:** I appreciate that point, but is there also wider engagement and an understanding within Government, beyond the justice organisations, of the necessity for other solutions that could result in a reduction in the prison population, such as the availability of supported accommodation, employment and training opportunities, literacy and numeracy support, health and wellbeing support and mental health interventions? Is it recognised in Government that those things are important if we are to win the prize of reducing the amount that we are spending on incarceration—which, as you suggested in the comparison that you gave the committee, is a very substantial amount of public expenditure?

**Angela Constance:** Yes. I believe that there is a growing understanding and appreciation that this is not just an SPS problem or a justice problem. I report weekly to the Cabinet on the situation in and around our prisons. Part of the work that we are doing to address the situation—both immediately and in the longer term—is that recalibration of what we need to do in justice, but we will also have very specific asks of other colleagues across Government.

**The Convener:** The final committee member to ask questions will be Russell Findlay.

**Russell Findlay:** I will be quick as I know that we do not have much time left. My questions relate directly to the evidence that we heard earlier from the SPS. It previously put a potential figure of £400 million on HMP Glasgow, but it now seems reluctant to speculate until next year, when the plans will be complete. I wonder how it was able to come up with a figure prior to that. Does the

Scottish Government have any indication as to how much the prison might come in at, as a worst-case scenario or a best-case scenario?

**Angela Constance:** I will not speculate, because I just do not think that that would be helpful. I will say that it will cost more than £400 million. I am confident of that. As soon as we have clarity on the final design, we will have clarity on cost, and I will endeavour to share that with the committee because it is a matter of public interest.

**Russell Findlay:** Given that the SPS's capital budget has been less than £400 million for the past three years, are you confident that the Government and the SPS will be able to pay for the new prison?

**Angela Constance:** I have already indicated that the new HMP Glasgow is a priority, and it is a high priority. Decisions will, of course, have to be made about the phasing of resources. It is not a one-year project or investment. However, I do not think that anybody is under any misapprehension that we will not have to replace the somewhat Victorian HMP Barlinnie.

**Russell Findlay:** The SPS witnesses were also unable to tell us how much it would cost to transfer HMP Kilmarnock or the likely cost of running that prison. Has the Scottish Government done any financial analysis of that? Can that be shared with the committee?

**Angela Constance:** I would expect that information to come from the SPS. We will pick that up with the SPS.

**Russell Findlay:** Was a financial analysis done in 2019, when the Government decided to bring HMP Kilmarnock into public ownership? Can that be shared with the committee?

**Angela Constance:** I will double check that. I was not the cabinet secretary in 2019. A decision will have to be made as the contract comes to an end. When the contract comes to an end next year, it will be necessary to either bring HMP Kilmarnock into public ownership or go through a retendering exercise.

**Russell Findlay:** It would be really interesting to know what the financial considerations were at the time of that decision.

**Angela Constance:** I will see what can be shared. I know that part of the financial considerations would be that the more recent private prison HMP Addiewell is certainly more expensive than HMP Kilmarnock, because it will be reflective of more recent market conditions. There will be some information that we can share, and I hope that it will be helpful.

**Russell Findlay:** Thank you.

**The Convener:** That brings us to the end of our time for this evidence session. I thank the cabinet secretary and her officials for joining us. We will have a short suspension before we move on to our next agenda item.

12:02

*Meeting suspended.*

12:07

*On resuming—*

## Subordinate Legislation

### **Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023 [Draft]**

**The Convener:** Our next four agenda items all relate to our consideration of two affirmative instruments, namely the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023, and the International Organisations (Immunities and Privileges) (Scotland) Amendment (No 2) Order 2023.

We will start with the extension and expiry of temporary justice measures and I refer members to paper 3 and particularly to table 1 on page 12, which contains a helpful summary of what is proposed. I also refer members to paper 4, which contains a letter that we received from the cabinet secretary earlier this week that sets out plans for a consultation on the permanency of certain criminal justice measures from the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

I am pleased to welcome back to the meeting the Cabinet Secretary for Justice and Home Affairs, Angela Constance, and her officials. Susan Black is senior policy officer in the civil law and legal system division of the Scottish Government; Emma Thomson is from the Scottish Government legal directorate; Heather Tully is from the justice reform unit of the Scottish Government; Patrick Down is from the criminal law practice and licensing unit of the Scottish Government; and Nicola Guild is from the Scottish Government legal directorate. I invite the cabinet secretary to speak to the instrument.

**Angela Constance:** Thank you very much, convener.

As the committee knows, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 includes a range of temporary justice measures that are due to expire at the end of this month. The measures were introduced to make sure that our justice system had the tools that were needed to respond to the pandemic's impact. Justice agencies have made significant progress towards recovery and the need for some of these measures has reduced.

Therefore, the regulations that are before the committee this morning will expire the measures that I believe are no longer necessary or proportionate. That includes four of the time-limit

extension provisions that were put in place at the start of the pandemic.

The regulations will modify the expiry date in section 52(1) of the 2022 act so that the remaining provisions, which I believe are still needed, will stay in force until 30 November 2024. To inform decisions on which measures to extend, we reviewed the operation of the provisions and consulted stakeholders, and we engaged with justice agencies to understand the effect that each provision is having and the likely impact if it were not extended.

We also sought views from the legal profession, the judiciary, victims organisations and third sector organisations. The findings of our review and consultation are set out in the statement of reasons that has been laid alongside the regulations.

I will briefly highlight three key reasons that mean that we need to retain the provisions that the regulations will extend. First, we are still seeing the impact of the pandemic on criminal court backlogs, although substantial progress has been made. The backlog has fallen by about 15,700 cases since January 2022.

However, the committee will know that the modelling of the Scottish Courts and Tribunals Service predicts that solemn-proceedings backlogs will remain above pre-pandemic levels until 2026. The temporary measures that we wish to extend have an important role to play in ensuring that court resources are used efficiently. Without them, the timescale would be longer and there would also be a serious risk that some cases could not proceed at all.

The regulations are particularly important for extension of the statutory time limits for certain criminal proceedings. The regulations seek to retain three of the seven extended time limits. Those extended time limits will increase the courts' capacity to hear trials rather than procedural matters, which helps with throughput of cases and protects victims' access to justice.

As the statement of reasons explains, without the extended time limits for the prosecution of certain summary-only offences, many prosecutions for drink-driving and drug-driving offences could be abandoned because those time limits cannot be extended case by case.

We all want a return to pre-pandemic time limits as soon as possible, but none of us wants to jeopardise the throughput of trials or to put prosecutions at risk. It is clear to me that the three remaining extended time limits need to be continued at this stage, although we will, of course, keep them under review.

The second key consideration is protection of health. The Bail and Release from Custody (Scotland) Act 2023, which was passed by the Parliament in June, includes a permanent power allowing for the early release of some prisoners in certain emergency situations. However, that power is not yet in force. The temporary provisions on emergency early release of prisoners therefore remain an important safeguard, in response to a threat from Covid, in making sure that we can act to protect the lives of those living and working in prisons. Although, of course, I hope that the likelihood of such a threat arising remains low, the harm that could be caused by not having the measures available could be severe.

Finally, our review highlighted that there is support for making some of the temporary measures permanent. That is beyond the scope of the regulations, but this week we launched a public consultation that proposes making permanent the temporary measures that I believe can deliver significant longer-term benefits and help to make our justice system more resilient, efficient and effective. The regulations are binary: we can either extend or expire provisions but we cannot modify them. The consultation offers us an opportunity to hear views on how we might adapt and improve provisions so that they deliver even better outcomes and experiences for the people who use them.

In the meantime, I believe that the package of measures that will be extended by the regulations is critical to helping to support our justice system's continued recovery and resilience in the coming year.

I am happy to answer any questions.

**The Convener:** Thank you very much for that helpful statement. I will bring in members who want to ask questions.

12:15

**Fulton MacGregor:** This is a quick question on part 3, which is about failure to appear before a court following police liberation. It enables the courts to modify the date on which a person is required to attend court on an undertaking, if they fail to appear at court for a reason attributable to coronavirus. I am assuming that that is if they are unwell with the virus. The proposal is that that will expire on 29 November. What was the thinking behind that? I know that coronavirus is still among us.

**Angela Constance:** That measure is expired by the regulations because it is no longer proportionate or required because of the progress that has been made overall in the functioning of our justice system. That measure will expire on 29 November. We have consulted carefully on that, in

particular with all our justice partners, and there was support for allowing that part of the coronavirus legislation to expire.

**Pauline McNeill:** I want to make sure that I have understood what we are being asked to do. The Government set out its position in the debate on the extension of time limits due to coronavirus. I think that you also said that there might be a requirement to review the situation in 2026. Does that mean that you have to come to the committee with an SSI each time you want to extend by a year? I am trying to understand the procedure.

**Angela Constance:** The Government can keep the three remaining time limits under review, and we propose to continue only three out of the seven original time limits. They can be extended only year by year, so they can be extended until next year and thereafter they can be the subject of only one further extension. Any permanent changes to those time limits would require primary legislation; we do not have plans to introduce primary legislation on time limits. We want to get back to the pre-pandemic normal.

**Pauline McNeill:** Thank you. I understand. You were not cabinet secretary at the time, but in the chamber I was particularly exercised, as I have been for some time, about the extension of time limits. The first point to make is that for some reason the Scottish Courts and Tribunals Service was, before coronavirus, outwith the time limits of the Criminal Procedure (Scotland) Act 1995 by several months. We never got to the bottom of why that was allowed to happen in the first place. That is why I have severe reservations about allowing further extensions, albeit that I accept that progress has been made.

There is one particular debate that I want to highlight and ask you about. I can at least understand where the Government is coming from in relation to solemn proceedings and extending the time limits on first appearance, the preliminary trial and the trial itself. I have never had an explanation about what happens on indictment. The Crown previously had 80 days to prepare a case; under the regulations it will have 320. Why on earth is that? I need to press the matter. If you have not done this, will you do it? The Crown should be pressed to the n<sup>th</sup> degree on why it needs 320 days to prepare a case. Compared to other justice services, it has had better settlements over the years on pay, although I know that there is still a significant shortfall. How on earth can it justify asking for the extensions? I am at a loss to understand the preparation of the detail of an accusation in court following indictment. I am very suspicious as to why there is the extension.

The Crown has always complained that 80 days is too tight, but we have always said, as a country, that we are proud of the tight time limits. You

might remember the debates that we have had through the years. I need to press you on why the Crown needs an extension to 260 days, until 2026, to prepare cases?

**Angela Constance:** I will answer what I think is within my remit. First and foremost, I want, at the earliest opportunity, for us not to have coronavirus time-limit regulations in place. I want them for no longer than they are needed. I want to get back to our original legislation and the standards that are set out in it. This goes back to my experience from the prison system—although that was not yesterday.

I am aware that time limits can always be altered case by case. I do not have statistics to hand, but such alteration is far from uncommon. One of the reasons why I want us to continue with the three time limits is that I want to avoid misuse of precious court resources that should be focused on the backlog and on getting through trials, and I want not to clog up the system with procedural hearings.

On your reflection on increasing investment in the Crown Office, I think that it is a matter of record that in the past five years its budget went up by 50 to 75 per cent—notwithstanding that demands on its workload have most certainly increased, for reasons that were outlined in an earlier evidence session. To be helpful, the committee might wish me to ask the Lord Advocate to reply to Ms McNeill or to write to the committee. I have endeavoured to answer your question as best I can, from my position.

**Pauline McNeill:** I understand that you cannot answer that question. I suppose that I would like to think that the Government is pressing the Crown for an answer. You are coming to the committee asking us to endorse the extension, but I do not think there is any justification for the Crown asking for it. I am less sympathetic to the extension to that time limit.

Can I ask you about the letter, which I have only just seen? I understand that you are consulting on making permanent measures that would include electronic signing of documents, virtual attendance at criminal courts and national jurisdiction for callings from custody—there is a list of things that you are asking to be made permanent. We will not be able to cover this today, but can I highlight a few areas of concern? Have you discussed national jurisdiction with the legal profession, for example? That must have huge implications for where people are tried and where the lawyers have to be.

**Angela Constance:** Yes. I read a very helpful quote from a High Court judge, who said that the advantage of having national jurisdiction for callings from custody is that, where there are a

number of warrants and indictments from various courts across the country, they can be heard in one place. I am also an advocate for, where possible, not bussing prisoners around the country. I do not think that that is efficient or effective.

**Pauline McNeill:** If you get this power and there is national jurisdiction, that is exactly what will happen. Cases will just be tried in courts wherever they can be tried, I presume.

**Angela Constance:** It will mean that someone can be tried in any court, which means that it could be done in a more local court, as opposed to transporting somebody from a prison at one end of the country to a court at the other end. My view is that that is just common sense. Nonetheless, it is a matter for consultation and people will have the opportunity to respond. The Government will have to reflect on the consultation and then there will have to be the normal legislative process. I hope that I can give some reassurance on that process.

**Pauline McNeill:** I have a point of clarification about virtual attendance at criminal courts. I have expressed my concern about what I have seen so far. The quality is not good enough to justify that being a replacement for physical attendance. Does this apply to custody courts? My reason for asking is that I thought that the Government had supported my amendment on not having virtual appearances at custody courts. You do not have to answer that today; it is just that I am confused by this.

**Angela Constance:** I heard you raise that in earlier committee sessions. I am happy to write to you offline, but my understanding is that you lodged amendments at stage 2 and stage 3 but then did not move them. That related to an exchange that you had with Keith Brown, but I am happy to supply the information that I have been privy to on that.

**Pauline McNeill:** I do not think that that is accurate. Just for completeness of the record, there was one amendment that was accepted by the Government and I understood that that was because of the experience of custody courts going on until 10 o'clock at night—in Glasgow anyway—at huge cost to the public purse, because the quality of the connection was so bad. I saw for myself the mistakes that were being made and, for that reason, I thought that at least there was a ban on virtual appearances at custody courts. Anyway, I would be grateful if I could get some clarification on that. For that reason, I have to raise my concerns about the continuation of virtual appearances.

**Angela Constance:** Perhaps for clarity on the regulations, for most criminal business the default position is that people attend hearings physically,

but the provisions give the Lord Justice General a power to issue determinations to change the default to virtual attendance for certain types of case or in certain circumstances. I suppose that virtual appearance is not new. Obviously, there have been developments, extensions of scope and further use of the existing legislative opportunities or the existing powers of the Lord Justice General in relation to the pandemic. The consultation will be on electronic signing and the sending of electronic documents, virtual attendance at the criminal court, national jurisdiction for callings from custody and the maximum level of fiscal fines. That is what the consultation relates to.

**The Convener:** Katy Clark, I am not sure whether you want to ask about the consultation letter. I want to keep our questions focused on the motion and I am very happy for us to write to the cabinet secretary with any questions on the consultation letter. I am quite keen to pull things back.

**Katy Clark:** My question is on both. It is to do with the language that is used.

**The Convener:** If you can ask questions about the motion, that would be helpful.

**Katy Clark:** It is to do with national jurisdiction for callings from custody. The cabinet secretary made specific mention of trials. To be absolutely clear, you are not talking just about the initial appearance from custody and this relates to all aspects of the criminal process. Pauline McNeill has already referred to agents, so presumably that would mean that witnesses would also have to go to a different part of the country to give evidence if this relates to all aspects of the criminal process. Can we have clarification of what “calling” means?

**Angela Constance:** That is a good point. I will ask officials to answer that.

**Heather Tully (Scottish Government):** The provisions in the regulations are about callings from custody. They are specific to custody cases and those first callings rather than being something that is available for trials generally.

12:30

**Katy Clark:** It is not for every diet but is just for the initial appearance from custody. Thank you.

**Russell Findlay:** I have a couple of questions about part 2 and fiscal fines. Fiscal fines are issued by the Crown Office in response to certain offences. The threshold has been raised from £300 to £500. The regulations also extend their use to what is described as a wider range of crimes. Can you tell crime victims exactly what crimes this now encompasses?

**Angela Constance:** I appreciate that, for ideological reasons, some people may be opposed to fiscal fines as an alternative to prosecution and, of course, all prosecution matters are not for me; they are for the independent Crown Office, for good reason, as we should not have politicians presiding over matters of prosecution. The regulations are not so much about the fundamental existence of fiscal fines but about increasing the scope of the fine from £300 to £500. It could potentially—again, this is a matter for independent prosecutors—reduce the number of cases going to the justice of the peace court if the prosecutor decides to offer a fine.

**Russell Findlay:** The question was about what crimes are encompassed. What has the use of fiscal fines been extended to?

**Angela Constance:** Fiscal fines have existed for many decades for less serious crimes and, as I have indicated, they are likely to be crimes that could perhaps be dealt with by the justice of the peace court. There are limits on the type and the nature of offences that would be subject to fiscal fines. They are not for any offence, but maybe officials can give you some further reassurance.

**Heather Tully:** I believe that the COPFS has previously written to the committee setting out that it is not possible to set out a definitive list of offences that fiscal fines could be used for. However, legally there are no offences that can now receive a fiscal fine that could not also have received a fiscal fine before the Coronavirus (Scotland) Act 2020 introduced this new higher maximum. The measures in the regulations do not change the offences that can attract a fiscal fine.

**Russell Findlay:** That seems slightly at odds with the information that we have in the documents, which says that fiscal fines are now being applied to a wider range of offences, but I will move on, because it is clear that people are not being told what offences they will be applied to.

**Angela Constance:** Perhaps you could write to the Lord Advocate.

**Russell Findlay:** Perhaps. In response to the point that the cabinet secretary made about people’s ideological opposition, I do not think that crime victims are ideologically opposed to such fines. They want to see justice being done and they want transparency. One of the concerns that many of them express is that, with these direct measures, little or no explanation is given to them as victims. You also make the point that the Crown Office rightly deals with prosecutorial matters, but here we are as parliamentarians discussing what those should be. It is not a question of it being entirely up to the Crown Office.

Going back to the point about the extension of the use of fiscal fines and their increase in value from £300 to £500, is there not an argument to be made that, if the Government wants this to be part of the legislative framework for the criminal justice system, it should be brought forward as stand-alone legislation rather than brought in by stealth using the Covid pandemic legislation?

**Angela Constance:** Fiscal fines have existed since the 1990s. These regulations, as we have heard from officials, are continuing the increase in the fines from £300 to £500. On the point about stand-alone legislation, the letter that I sent to the committee earlier this week already advises that the measures in the coronavirus regulations that we believe would improve the efficiency and resilience of the justice sector will be a matter of public consultation. There will be a public consultation on our proposition to make some of those measures permanent. Depending on the outcome of that public consultation, legislation will be required.

**Russell Findlay:** But that is a public consultation on details that we do not know. We do not know what the criteria are for the increased scope of fiscal fines.

**Angela Constance:** To be clear, convener, while I am aware that Mr Findlay and not victims may have ideological objections to fiscal fines as an alternative to prosecution—

**Russell Findlay:** I have to pick you up on that, I am sorry—I do not have ideological opposition to fiscal fines.

**Angela Constance:** I am pleased to hear that.

**Russell Findlay:** I think that there should be a lot more transparency around their use and I do not see why there is opposition to that.

**Angela Constance:** Bear in mind that the Crown Office writes to the committee regularly and I, too, have written to Mr Findlay on this matter, again supplying a great deal of information, notwithstanding the importance of the separation of powers to the very fabric of justice and democracy.

**The Convener:** Thank you very much.

I invite the cabinet secretary to move motion S6M-10547.

*Motion moved,*

That the Criminal Justice Committee recommends that the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023 be approved.—[*Angela Constance*]

**The Convener:** The question is, that motion S6M-10547, in the name of Angela Constance, be agreed. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Mackay, Rona (Strathkelvin and Bearsden) (SNP)  
MacGregor, Fulton (Coatbridge and Chryston) (SNP)  
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)  
Swinney, John (Perthshire North) (SNP)

**Against**

Clark, Katy (West Scotland) (Lab)  
Dowey, Sharon (South Scotland) (Con)  
Findlay, Russell (West Scotland) (Con)  
McNeill, Pauline (Glasgow) (Lab)

**The Convener:** The result of the division is: For 4, Against 4, Abstentions 0.

I will use my casting vote and agree to the motion.

*Motion agreed to.*

**The Convener:** Can I have members' approval for the clerks and me to publish a short factual report on both our SSIs today?

**Members indicated agreement.**

### **International Organisations (Immunities and Privileges) (Scotland) Amendment (No 2) Order 2023 [Draft]**

**The Convener:** I invite the cabinet secretary to speak to the second instrument.

**Angela Constance:** The draft order is an order in council made by His Majesty under powers in the International Organisations Act 1968. The nature of the reserved-devolved divide means that, where privileges and immunities relate to devolved matters in Scotland, the function of advising His Majesty on the order is devolved. A parallel order has been made and is in force in the rest of the United Kingdom and for non-devolved Scots law. This order confers no new privileges and immunities but simply expands the range of meetings where they apply in line with the 1959 Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

To assist the committee, I will say a little more about the background to this order. In the 1959 agreement, the UK agreed to provide privileges and immunities to representatives of agency members attending

“any international conference, symposium, seminar or panel”

convened by the agency. That language was not entirely reflected in the subsequent International Atomic Energy Agency (Immunities and Privileges) Order 1974, which implemented the agreement obligations into UK domestic law. The discrepancy recently came to light during the development of

the host country agreement requirement to hold the 2023 IAEA fusion for energy conference in London, as it is at odds with the agreement obligation. It was agreed with the Foreign, Commonwealth and Development Office that that should be remedied by each Administration to the extent that it has power to do so.

Separately, this order makes consequential amendments resulting from the parallel UK order. That is to restate the provisions of the 1974 order that are within the legislative competence of the Scottish Parliament and is an opportunity to clarify the definition of representatives of members so that it more fully reflects the wording of the 1959 agreement. Passing this order will correct an historical error and ensure that we are able to fully meet our international obligations.

As a good global citizen, it is the responsibility of the Scottish Government to bring the order to the Parliament for consideration and I commend it to the committee.

**The Convener:** Do members have any questions or comments? Nothing at all? Thank you. In that case, I invite the cabinet secretary to move motion S6M-10537.

*Motion moved,*

That the Criminal Justice Committee recommends that the International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2023 be approved.—  
[*Angela Constance*]

*Motion agreed to.*

**The Convener:** Thank you very much, cabinet secretary and officials, for your time this morning.

That concludes the public part of our meeting. Next week, we will see the cabinet secretary again to take evidence on parts 1 to 3 of the Victims, Witnesses, and Justice Reform (Scotland) Bill and we will be looking also at the HMICS report on policing and mental health in Scotland. We now move into private session.

12:42

*Meeting continued in private until 12:53.*



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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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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