I am grateful for the opportunity to provide evidence to the Committee on 20 January 2015. I am also grateful for the matters raised by Mr Don on behalf of the Delegated Powers and Law Reform Committee (DPLRC). I would like to reiterate the offer of an informal session in private with officials to discuss the draft regulations, that will be subject to the affirmative procedure, and talk through any points of concern that members may have. In addition I also agreed to write to the Committee on a number of other matters.

The DPLRC raised two concerns:

- The power in the Bill enables Ministers to create penalties for breaches of Telecommunications Restrictions Orders, but doesn’t stipulate a maximum penalty; and
- The discrepancy between the scope of the power and what the Legislative Consent Memorandum in relation to the accessibility of court documents and hearings in private.

Penalties for breaches of Telecommunications Restrictions Orders

It is envisaged that a breach of a Telecommunications Restriction Order is likely to be prosecuted as Contempt of Court. In terms of section 15(2) of the Contempt of Court Act 1981, the current penalty for contempt of court is up to two years imprisonment or a fine (or both). However, the penalty for contempt of court in the Sheriff Court is, in most cases, up to three months imprisonment or a fine of up to £2,500 or both. It is thought that the need to seek the court to impose such penalties will be rare as this legislation is the preferred option of the Communication Providers and is being taken forward following consultation with them and at their request.

In addition the amendments allow the Scottish Ministers to make provision by subordinate legislation for the enforcement of Telecommunications Restriction Orders and this may include the creation of offences. It would therefore be open to Ministers to create a bespoke offence of breaching a TRO and create specific penalties for that offence. Although the current intention is to rely on contempt of court as a means of enforcing these Orders, there are therefore alternative means of enforcement available to Ministers should that be considered necessary.

Discrepancy between the LCM and the scope of the amendments

The Committee is correct to identify this discrepancy. It arises as the early draft provisions contained regulation making powers in relation to the accessibility of court documents and to allow court hearings to be heard in private. This LCM could only provide the general principles of the amendments as the final provisions had not yet been agreed and received. In the final provisions there is no power to allow court
hearings to be held in private as they were not considered necessary. There are already powers to regulate court procedures in s32 of the Sheriff Courts (Scotland) Act 1971 and s5 of the Court of Session Act 1988.

I agreed to write to the Committee on the matters which members raised as follows:

- The Pilot Projects at HMP Shotts and HMP Glenochil;
- The application of RIPA at 12c of the Memorandum;
- The process and timescales for obtaining a Telecommunications Restriction Order; and
- An information campaign for members of the public residing close to the perimeters of prisons.

**Pilot Projects – HMP Shotts and HMP Glenochil**

In December 2013, the Scottish Prison Service awarded contracts for the installation of mobile signal denial technology in two prisons. The installations test two types of mobile signal denial technology which act in different ways. Only one technology provides information in relation to the phone and its use.

The installations were completed in early March 2014. The installation at one site became fully operational following further independent acceptance testing by the Home Office Centre for Applied Science and Technology (CAST) on 7 May and was deemed to be compliant with both the operational specification and the Memorandum of Understanding between the Scottish Ministers, OFCOM and the Communication Providers.

The other installation has faced technical difficulties in providing the necessary signal denial within the prison and following changes implemented by the contractor, has been subject to further testing. The outcomes of these tests are currently subject to discussion between the Scottish Prison Service and the Contractor.

The Scottish Prison Service is aware of attempts by prisoners to develop countermeasures to the technologies. This is expected and further demonstrates the need to have phones that are illicitly used in prisons disabled or removed from the network by the Communication Provider.

**The application of RIPA in relation to 12(c)**

Under section 1 of the Prisons (Interference with Wireless Telegraphy) Act 2012, the Scottish Ministers may authorise the person in charge of a prison or young offenders institution to interfere with wireless telegraphy. Interference may only be for the purpose of preventing the use of communications devices (or their constituent or ancillary parts) in the prison or young offenders institution. The interference that may be authorised is the collection, retention, use and disclosure of “traffic data”. “Traffic data” is defined in section 4(4) of the 2012 Act as, amongst other things, data which identifies a person, apparatus or the location of the communication.

Depending on the wording of the Regulations made under these new powers, it may be that additional information which cannot be obtained under the 2012 Act is
required in order to evidence that a particular mobile phone is being used in a prison or young offenders institution. In those circumstances, the Scottish Prison Service could request the police to obtain an interception warrant under Part 1 of the Regulation of Investigatory Powers Act 2000 which would allow the police to intercept communications and disclose the material obtained to the Scottish Prison Service. It should be noted that such warrants are only granted for certain purposes, one of which being the prevention or detection of serious crime.

The process and timescales for obtaining a Telecommunications Restriction Order

There is still significant work to do and it is difficult at this stage to provide any definitive timescales in which a court order could be made and set out the process. A number of factors will impact on the timescale including the ability of the court to expedite such hearings. The Scottish Prison Service will now, going forward, engage with justice partners, including the Scottish Court Service, with a view to bringing forward more detail in the regulations that the Scottish Parliament will have the opportunity to consider. I certainly agree that should the need to obtain an order be urgent, we should explore and seek to have that ability to do so.

Information Campaign for members of the public residing close to the perimeters of prisons

I welcome the Convener’s suggestion that we explore how we inform members of the public residing close to the perimeters of prisons. In many of our prisons there are already established relationships through which information is shared with local communities. Where these exist we should seek to use them. Where they don’t, I have asked the Scottish Prison Service to give careful consideration as to how to best engage with those residing close to the perimeters of prisons. It is not uncommon for mobile phone users to experience difficulty with mobile phones and signals away from prisons and we would wish to avoid the local prison being the first point of call for all problems with mobile phones when these matters are unconnected to the prison and should be quite rightly raised with the communication providers.

However, we would clearly wish to ensure that any residents that might be anticipated to be at risk of service disruption are made aware of how they can verify if this is a result of the measures taken by the local prison and how this could be rectified if necessary and we will look to how best to address this.

Paul Wheelhouse
Minister for Community Safety and Legal Affairs
21 January 2015