



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 25 September 2012

Session 4

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JUSTICE COMMITTEE

27th Meeting 2012, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Sandra White (Glasgow Kelvin) (SNP)

*attended

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 4

Scottish Parliament

Justice Committee

Tuesday 25 September 2012

[The Convener *opened the meeting at 10:01*]

Interests

The Convener (Christine Grahame): Good morning. I welcome everyone to the Justice Committee's 27th meeting in 2012. I ask everyone to switch off their mobile phones and other electronic devices, as they interfere with the broadcasting system, even when they are switched to silent. Apologies have been received from David McLetchie. I welcome Sandra White to the meeting as our new member. She can tell us in private afterwards how she feels about it.

Item 1 is a declaration of interests. Does Sandra White have any interests that are relevant to the remit of the committee that she wishes to declare?

Sandra White (Glasgow Kelvin) (SNP): I have nothing to declare, convener, although I draw your attention to the fact that the committee has a number of petitions on the agenda and that I was on the Public Petitions Committee when it dealt with those petitions.

The Convener: We see that as an advantage to us.

Decisions on Taking Business in Private

10:02

The Convener: Item 2 is to decide whether to take business in private. The committee is invited to agree to consider items 4, 5, 6 and 7 in private—in fact, there is not an item 7 on my copy of the agenda, so it is items 3, 4, 5 and 6. Item 3 is—

Peter McGrath (Clerk): It is items 4, 5, 6 and 7.

The Convener: We shall rewind. The committee is invited to agree that items 4, 5, 6 and 7 be taken in private. Are we agreed?

Jenny Marra (North East Scotland) (Lab): No.

The Convener: What are we not agreed about?

Jenny Marra: I raised a similar issue at the committee a couple of weeks ago. We are proposing to take in private more than half of today's agenda for the Justice Committee meeting. I think that a lot more of the meeting should take place in public to allow the public to scrutinise our discussions and hold us accountable for the decisions that we take. Item 4 on my copy of the agenda is consideration of the committee's work programme.

The Convener: Can I correct you? There is a big mistake in your copy of the agenda. Consideration of the work programme is now agenda item 5.

Jenny Marra: Do you have an updated agenda?

The Convener: Yes.

Jenny Marra: So, the work programme is item 5. My party certainly does not have anything to hide in terms of our priorities for the Justice Committee. I propose that that item be taken in public.

The Convener: In order to enable us to get through business, can we have the debate on whether we discuss the work programme in private after we have gone through the petitions and so on? Are you happy to proceed in that way?

Jenny Marra: I am happy to do that, as long as we have the debate in public.

The Convener: We will have the debate in public—that is not a problem. We will park the item and come back to it.

It is agreed that items 4, 6 and 7 will be taken in private, so it is just the item on the work programme that is at issue. Item 4 is just consideration of the committee's approach to a

legislative consent memorandum, and items 6 and 7 are consideration of draft reports.

Jenny Marra: As I explained, convener, I think that it is of concern to the committee and Parliament that more than half the agenda would be taken in private. I would be happy to debate one by one whether to take the items in private.

The Convener: All right—but it just depends on what is on the agenda on a particular day. At some meetings we do nothing in private. However, I will not open the debate now, but will park the whole issue.

Sandra White: I am sorry convener, but I object to the language that Jenny Marra has used. In particular, she said that her party does not like to take items in private. I assure you that I, as a member of this Parliament since 1999, certainly do not like taking items in private, either. I think that the public should know what we discuss. I object to the fact that Jenny Marra said “My party”.

The Convener: I am not having the debate now. We will continue with the agenda and we will debate later what we will and will not take in private.

Petitions

Fatal Accident Inquiries (PE1280)

10:05

The Convener: I am happy to move on to petitions, of which we have five to consider. It is important that petitions be given time in Parliament because people make efforts to lodge them.

PE1280 calls for an amendment to the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require that a fatal accident inquiry be held when a person from Scotland dies abroad. Since the petition was referred to us in September last year, we have been keen to establish exactly when the Scottish Government intends to legislate on fatal accident inquiries. The latest response from the Government indicates that it will legislate on FAIs during the second half of the parliamentary session.

What are members' suggestions on the next course of action?

Roderick Campbell (North East Fife) (SNP): I suggest that the petition remain open, pending introduction of the legislation.

Graeme Pearson (South Scotland) (Lab): I agree. Could we also record that it is unfortunate that the Government has been unable to give us a date for introduction? On a number of occasions, I have offered to introduce a member's bill, if that would make it easier for Government business. The introduction of the legislation is a matter of some import.

The Convener: Across the committee, we all want the matter to be accelerated. We will keep the petition open and we have put it on the record that we want the Government to get a move on, as my mother used to say.

Justice for Megrahi (PE1370)

The Convener: PE1370 calls for an independent inquiry into the conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988. Since the petition was referred to us in September last year, a number of developments have taken place, not least of which have been publication of the Scottish Criminal Cases Review Commission's statement of reasons on the case, and Megrahi's death in May. The committee heard evidence from the petitioners in relation to the Criminal Cases (Punishment and Review) (Scotland) Bill, which has now been enacted, and it considered recommendations from Lord Carloway on appeals in relation to SCCRC references. The petitioners

have helpfully provided further information, which is in the annex to the paper for members.

I declare that I am a member of the Justice for Megrahi campaign, which I joined before becoming the committee's convener.

Graeme Pearson: We have had the statement of reasons from the Scottish Criminal Cases Review Commission. An appeal was activated and was then placed in limbo. It was open to Megrahi to continue that appeal, and I understand that it is still open to his relatives, or perhaps to relatives of those who were affected by the Lockerbie disaster, to continue that. If those who can directly progress an appeal process chose to do so, would that be a more effective way of proceeding?

Sandra White: I declare an interest, as I was a member of the Public Petitions Committee when it considered the petition. We must all be aware that the issue is in the public interest. I would like to keep the petition open. The question to ask is whether an independent inquiry would be helpful or should be proposed. Keeping the petition open would be in the public interest.

Colin Keir (Edinburgh Western) (SNP): I echo Sandra White's comments. It is not long since al-Megrahi passed away and it takes some time to put legal ducks in a row. I agree that we should keep the petition open.

Roderick Campbell: I will touch on what other members have said. A comparatively short time has passed since Megrahi died, and we have no information about his family's intentions on a possible appeal. The proper course is in the criminal courts. Until we are satisfied that no further criminal proceedings will be forthcoming, it would be inappropriate to support an inquiry. However, that does not mean that the petition should be closed.

John Finnie (Highlands and Islands) (SNP): I agree with a lot of what has been said. The additional information that we have received highlights the pressures on citizens in Libya and says, for example, that

"it is unlikely that the al-Megrahi family will be receiving encouragement to pursue an appeal".

Nevertheless, we should bear it in mind that the criminal investigation is still live and on-going. Consequently, I favour keeping the petition open.

The Convener: Our papers refer to a "letter of complaint" that has been sent to the cabinet secretary,

"lodging serious formal allegations relating to the conduct of the ... investigation and the ... trial".

Noting that the cabinet secretary has 30 days' grace to answer the letter, after which it will be published, I think that we should see both the

letter and the response before we decide anything. I accept the point that a court case might be one way forward, but as I have suggested previously, it is possible for the Government, under the Inquiries Act 2005, to conduct an inquiry into an issue that is wholly within its remit, which is certainly the case with regard to the operations of the police and the Crown Office. I simply record the fact that Governments have certain powers that they may choose not to use.

Given the existence of the letter of complaint and the fact that, as a result of Lord Carloway's recommendations on the Scottish Criminal Cases Review Commission, the situation with regard to the gatekeeping function of the High Court as court of appeal might well change, does the committee agree to keep the petition open for the time being, while all these things are in the air?

Members indicated agreement.

The Convener: Do members agree to keep the petition open until we receive a response, if any, from the cabinet secretary to the letter of complaint and until the letter itself is published, after which we can reconsider our position?

Members indicated agreement.

Access to Justice (Non-corporate Multi-party Actions) (PE1427)

The Convener: The first of the new petitions for consideration is PE1427, which calls for recommendations on multi-party actions, that were made by Lord Gill in his Scottish civil courts review, to be introduced through changes to existing protocols. In correspondence to the Public Petitions Committee on the petition, the Scottish Government has indicated that it agrees with Lord Gill's recommendations that a multi-party action procedure should be introduced, and that it will introduce legislation on the matter in the lifetime of this Parliament. The petition is the petitioners' attempt to allow multi-party actions to be introduced at an earlier date by existing means, before legislation is enacted.

The Government also suggests that the petitioners should contribute to a consultation that will be published later this year on progressing many of the recommendations in the civil courts review. Members also have a copy of correspondence from the Lord President and a response from the petitioner to comments that were made by the Scottish Government and the Lord President.

Do members have any comments about the course of action that the committee should take?

John Finnie: I favour option (a) as set out in our papers.

The Convener: What is that option?

John Finnie: Option (a) is to

“keep the petition open pending the introduction of primary legislation”.

The Convener: Does the committee agree?

Members *indicated agreement.*

Corroboration (PE1436)

The Convener: Petition PE1436 calls for the retrospective abolition of the corroboration requirement. As we know, Lord Carloway has recommended after his review of criminal law and practice that corroboration be abolished, and the Scottish Government intends to introduce legislation on Lord Carloway’s recommendations next year.

We have received a further submission from the petitioner, but I do not know whether members have had an opportunity to read it. I know that members have had loads of papers to get through and hours and hours of reading to do—the committee is, after all, very hard-working—and we shall try to get the papers out earlier. [*Interruption.*] The clerk advises me that the submission was made in good time, but certain legal issues had to be resolved before it could be circulated to members. I am by no means blaming our system.

Do members have any comments on the next course of action for this petition?

Graeme Pearson: Given that additional information might arise in this afternoon’s debate that might well have a bearing on the matter, I think that it is difficult to make a decision at this stage.

The Convener: Obviously it is open to members to trail the issue in this afternoon’s debate. In any case, I have huge problems with making legislation retrospective. Do members agree simply to keep the petition open for now?

Members *indicated agreement.*

Administrative Justice (PE1449)

10:15

The Convener: PE1449 calls for an independent Scottish administrative justice council to be preserved after the abolition of the Administrative Justice and Tribunals Council and, with it, the council’s Scottish committee. The Minister for Community Safety and Legal Affairs copied the committee into correspondence on 4 September, in which she outlined her intention to set up a non-statutory advisory committee to carry out many of the functions of the Scottish committee after its abolition. We also learned from

the AJTC’s—I cannot tell you how happy I am to use just the initials—Scottish committee during our consideration of the Scottish Civil Justice Council and Criminal Legal Assistance Bill about the possibility that it may take on administrative justice functions at a later stage. The petitioners have provided further information. Do members have any comments?

Sandra White: There are a number of options, but I propose that we close the petition on the basis that, since the petition was lodged, the minister has outlined new proposals for a non-statutory advisory committee and is considering longer-term options. I am sure that Mr Hinton, the petitioner, can feed into that.

Roderick Campbell: I am not sure that I agree with Sandra White. I think that we could ask for a few more details of what will be involved in the non-statutory advisory committee, for a timetable and for general further information from the Government. I appreciate that it is a moving feast, however, and that, in some respects, the Government is responding to events in another place.

Graeme Pearson: Rod Campbell is right. I was left with the impression that we are not yet on solid ground regarding what the future might look like. Therefore, it might be too soon to close the petition.

The Convener: We will leave the petition open.

Sandra White: I bow to the superior knowledge of my colleague.

The Convener: You bow to his superior knowledge? Do not grow his part.

Roderick Campbell: We could ask the Scottish Government for more details when it is able to produce them. I suspect that it will say that it cannot give us very much at the moment.

Jenny Marra: It would certainly be useful to keep the petition open until the bill is introduced.

The Convener: I am happy to do that. We can also encourage the petitioners to feed into the consultation and to submit any comments on the bill at stage 1.

Decisions on Taking Business in Private

10:17

The Convener: We return to item 2.

Jenny Marra: As I explained at the start of the meeting, more than half of today's business is being taken in private. I have raised before my unease at the work programme being considered in private. I do not feel that there is anything that I want the Justice Committee to consider going forward that needs to be discussed in private. I am happy to discuss our priorities in public. Sandra White picked me up on my reference to my party, and I clarify that I meant my party's priorities for the committee and what it should be looking at—I do not have anything to discuss in private. The work programme should be open to scrutiny by the public, which is why I propose that item 5—as it now is—should be taken in public.

The Convener: For 13 years, it has been standard practice for the committee to discuss in private our work programme as well as draft stage 1 reports, likely witnesses and approaches. Are you happy for us to consider in private item 6, which is a draft report, item 7, which is a draft stage 1 report, and item 4, which is our approach to an issue?

Jenny Marra: I am sorry but I have got the item numbers mixed up. Do you have a revised agenda?

The Convener: Item 4 is the approach, item 6 is a draft report and item 7 is a draft stage 1 report. Can we narrow our present discussion to the work programme?

Jenny Marra: I thought that your proposal was to take them one by one.

The Convener: I am just trying to move us on. We have a lot of work to do. If you do not want to debate them, we can tick off items 4, 6 and 7 and talk just about whether the work programme should be discussed in public.

Jenny Marra: I would be happier if we stuck to your original proposal to discuss them one by one.

The Convener: Right. My question is, why should we discuss an approach to a legislative consent memorandum in public?

Graeme Pearson: I suppose that you could turn the question around and ask why there is a natural presumption that we would always discuss such things in private.

The Convener: We have done so for 13 years.

John Finnie: Every parliamentarian wants the electorate to see the work that they are doing. I presume that, if there is a long-standing convention in place, there is a reason for that. Without putting the clerk on the spot—although I am about to put the clerk on the spot—would it be possible to outline the rationale behind decisions to take individual items in private? I am supportive of the committee doing as much as possible in public, but that may fetter us when we are discussing individual witnesses.

Peter McGrath: Each case must be considered on its merits, and it is obviously a decision for the committee.

The convener is right to identify that the main reason for discussing the work programme in private is that, in discussing potential future work, the committee may discuss potential future witnesses, and it may be considered more appropriate to do that in private. In each case, it would depend on the circumstances of the item that is under consideration.

The Convener: I am a very open member of Parliament, and I always have been. I take on the Government on all sorts of occasions; I will probably even do so this afternoon. For me, the issue is the freedom of members to discuss openly with other members whether we take on certain issues and how we approach matters. Members may sometimes say silly and inappropriate things—perhaps I should not have said that in public.

If we were to try and record such a discussion in the *Official Report*, it would be messy—people would be jumping in and the conversation would be very free. It is not like taking evidence or any of the other things that we do, in which we try to bring a coherence to our questioning, even though we have differences.

With regard to the efficient working of the committee, there is not a single sinister element in any of us doing any of those particular things in private. It just so happens that today there are four items in private, two of which are draft reports, which we have always taken in private to allow for free discussion and for amendments to be made.

We will go over the draft stage 1 report and perhaps take out the odd word, and members may fight over an adverb. It would look awfully daft to the world outside if we go to the wire over a conjunction or a semicolon. That free discussion allows members to relax and be honest, and sometimes not to look foolish.

I have been in Parliament for a long time and have been a member of various committees, and I have never objected to taking business in private with conveners of any other hue. When we go through the work programme, there is a reason

why we might not take something on: perhaps we have too much on our plate, or we think that a reasonable case has not been made to take on that piece of work rather than something else. That can be quite hard for people who have taken the trouble to write to the committee to ask us to do something.

In fairness to committee members and to those people, we must have the freedom to sift through work. As Jenny Marra knows, we decide on our work programme collectively. This committee has come to decisions collectively and in good will, even though we often have different views. I am rather sad to see business that has been held in private over my 13 years in Parliament being raised as a contentious matter, because to me that is wholly unnecessary.

Conveners across the committees have operated in that way for as long as I can remember, and today just happens to be one day when there are several items in private. On other days, we will take nothing in private.

I have said my bit, so I will let others come in, but I think that the issue is a bit of a red herring.

Graeme Pearson: Peter McGrath might be able to help us again. With regard to the likes of item 4, which is on the Prisons (Interference with Wireless Telegraphy) Bill, is it feasible that we could discuss our approach in public? If we decide that we want to take evidence, we can go into private session to discuss witnesses. At least we could have the logic of holding the debate on the public record, because it looks like a sinister thing—

The Convener: That is not—

Graeme Pearson: Wait a minute—let me finish. As a headline, it looks like a sinister thing, but in actual fact it is fairly mundane and practical.

The Convener: I agree with you, but I think that we would have to have a separate agenda item for the selection of witnesses.

Graeme Pearson: That is why I am asking.

The Convener: That is fine—that is not a problem.

Graeme Pearson: We might decide once we have discussed the issue that we are happy to let it flow through and that we do not need to do anything more about it, or we might want to talk about witnesses.

The Convener: I would be very unhappy about the discussion of witnesses being held in public.

Graeme Pearson: That is what I am saying—we can go into private at that stage. At least we will have talked the business through in public.

The Convener: I would also be very unhappy if draft stage 1 reports were debated in public. We come to a pretty well unanimous decision on such reports, and we manage to get a form of words that we can sign up to. That has sometimes not been easy, but folk have been prepared to give and take a bit. I do not know whether they would be prepared to do that if the discussion was held in public, and that worries me in respect of the operation of the committee, which has been very successful.

Jenny Marra: That relates to the discussion of our reports, whereas Graeme Pearson's suggestion relates to item 4, in which we will consider our approach to the Prisons (Interference with Wireless Telegraphy) Bill, rather than discuss a report. We can move into private for the selection of witnesses. That seems reasonable to me.

The Convener: That is fine. Does the committee agree to take item 4 in public, and to discuss only our approach to the legislative consent memorandum, not witnesses?

Members indicated agreement.

The Convener: Right, we have done that. I would like the committee now to consider whether we should continue to deal with draft reports, including draft stage 1 reports, in private for the reasons that I have given.

Graeme Pearson: If I remember what happened last year correctly, if a member of the committee feels strongly about a report, they can have a paragraph put in. That means that, if we fall out about something, we can record that there was a falling out, even though the discussion took place in private. If there is a feeling that, because of the way that the committee is operating, we are not ventilating matters properly, we can stand on principle and insist that a paragraph be inserted in the report, even though it might be a minority view.

The Convener: Absolutely.

Graeme Pearson: That is my memory from last year, not that it happened often.

The Convener: This is my fourth time as a convener. I have never stopped someone expressing a view. I try to get consensus on the wording first so that everyone can sign up to it but, sometimes, that is not possible. In those cases, so be it. It is perfectly right that someone should be entitled to express a different view.

Graeme Pearson: We need to be careful about the issue that Jenny Marra raises, which is that the fact that we are not discussing something in public makes it look like we are being secretive. We must demonstrate that we deal with matters in private only when we absolutely have to, and that we still publicly record our views. It is a reasonable issue

for discussion. I hope that we can come to a sensible outcome.

Colin Keir: I have a slightly different view. I find the private sessions handy because we can have a substantive debate, with ground rules that we all know, without having a party-political bun fight, because we have agreed the process beforehand. I am concerned about the possibility that we end up with something in public, then something in private, and then head back for a substantive debate, with everything looking a bit messy. That is my problem with the suggestion.

On the work programme, our workload has been heavy over the past 18 months and it will continue to be heavy in the coming months. However, if we have a piece of work to which someone has contributed and a member says, "I don't think we should be taking that at this time," it will almost look like the committee or the individual member who made that suggestion is devaluing that piece of work.

We should at least produce a line of work heading forwards that we are all agreed on. We should set ground rules that will enable us to get into the substantive debate more quickly.

Sandra White: Convener, I agree with Graeme Pearson, Jenny Marra and you about witnesses—that issue must be dealt with in private.

I do not think that it is helpful when Jenny Marra talks about secrecy, because we are not being secretive; we are protecting everyone. I am not a lawyer, so when I read the papers, I do not understand the lawyerspeak, and I am concerned that I might be seen to be stepping over the mark if everything is held in public. If we are going to have such discussions in public, the clerks would need to keep us absolutely right, because of the legal situation.

The issue must be looked at seriously. However, the clerks would need to produce a paper to make me comfortable with certain things being held in public.

The Convener: I have said what I have to say. As I said, I have been a convener four times and I hope that I know something about convening by now. Good will is terribly important to the good running of a committee. Political posturing is a committee's death knell. People having arguments in public over what might be, at the end of the day, quite a small matter in a stage 1 report is bad for a committee. Our duty is to try to work together, regardless of our political differences, to be coherent in our approach to legislation and to put the Government to the test. That is much easier to do in inquiries, although this committee has not had much opportunity yet to do that.

I have seen the process work well—if it ain't broke, don't fix it. I understand that it looks on paper like we are taking a lot in private. That happens to be the case today, but there will be weeks when there is nothing in private. It is swings and roundabouts.

We take items in private for the reasons that members have aired, particularly when discussing the work programme. We have good reasons for not doing certain things. If we decide not to take up something that somebody has raised with us, we write a letter to them explaining why we have been unable to take it up. It is not that they are not informed. It is done in a proper manner.

10:30

Roderick Campbell: I do not want to reiterate what members have already said but, on the work programme, there is something to be said for the fact that we can speak freely about competing priorities. If we all had to be very careful about what we were going to say because the discussion was going to be in public, that would be a disadvantage.

Jenny Marra: I will make a quick comment about the work programme item, which is the item about which I feel most strongly. I understand what colleagues are saying about having a free discussion, but I feel that, because we have been elected to the Parliament, we must have broad shoulders and be able to justify the committee's priorities in public and to the public.

Politics is all a matter of competing priorities—we will always have that issue. However, the more that we push into private our discussions of those priorities, the less transparent we are to the public.

The Convener: Right. We have aired the issues. I will now go through—one at a time—the items that we must decide whether to take in private.

Do we agree to take item 4, which is discussion of our approach to a legislative consent memorandum, in private?

Jenny Marra: Is that the one on prisons?

The Convener: It is item 4. We can take it in public and not discuss witnesses. Do members agree to that?

Members indicated agreement.

The Convener: Do we agree to take in public item 5, which is discussion of our work programme?

Members: No.

The Convener: There will be a division.

For

Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against

Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

It is regrettable that other members are not here. Is it proper to ask the other members who were not able to come for their view, or can they not take a view on the matter now?

Peter McGrath: They can express a view, but—

The Convener: We will ask them, because we have now taken a vote and it is unfortunate that they are not here. I would like them to express their view on whether the work programme should be discussed in public or private.

Do members agree to take in private item 6, which is consideration of a draft report on the legislative consent memorandum on the Defamation Bill?

Members indicated agreement.

The Convener: Do we agree to take in private our consideration of a stage 1 report, which is item 7?

Members indicated agreement.

The Convener: Thank you very much.

Prisons (Interference with Wireless Telegraphy) Bill

10:33

The Convener: Let us move on. I have lost my place. [*Interruption.*] That was a tactical switching off of the microphone, but it was nothing in private. In case anyone thinks that anything sinister was going on, I was just mumbling to myself.

We move to item 4. In paper 6, we are asked to consider our approach to the legislative consent memorandum on the Prisons (Interference with Wireless Telegraphy) Bill. The aim of the bill is to authorise interference with mobile phone signals in Scottish prisons and young offenders institutions.

There are some options on page 3 of the clerk's paper. I understand that there would be time to hear from the Cabinet Secretary for Justice—perhaps on 30 October after he has given evidence on the budget—and to seek some written evidence in the meantime, if members are keen to do that.

I ask for members' comments.

John Finnie: I would like some clarification on what would be considered to be "disproportionate interference", which is mentioned in paragraph 3 on page 1 of the clerk's paper. I absolutely see the need for the bill, but I want some clarification on the implications for the emergency services outwith the walls of the prison.

I also thought that the phrase "protection of health and morals" was fascinating.

I note my surprise that, although the provision or use of communication equipment in a prison is a criminal offence for most people, it is simply a disciplinary offence for prisoners. That is peculiar.

On paragraph 15 in the draft legislative consent memorandum, I am surprised that there has been no formal consultation at United Kingdom level.

Paragraph 16 of the draft LCM seems to make contradictory statements. It states:

"The Bill will impose no financial obligations on the public sector."

However, the final sentence states:

"There will be financial costs in the procurement of signal interference equipment."

I think that there is a contradiction there.

Graeme Pearson: It would be good to get clarification on the points that John Finnie raises.

I have read the paper, but it is not clear to me who will oversee the arrangements—I hope that I have not missed that—in terms of appeals and ensuring that the processes are properly adhered to. In other circumstances, inspectorates come in annually to check that such powers are operated appropriately and in the spirit of the legislation, but I see no mention of that in the paper. I hope that we can get information on how the arrangements will operate.

Sandra White: I entirely agree with John Finnie, who raised a point about the term “disproportionate interference”, and Graeme Pearson. I have a point about paragraph 4 on page 1 of the clerk’s paper, which talks about the bill providing for

“the retention and disclosure of information obtained through interference”,

and requiring that

“this information must be destroyed after three months”.

I am concerned about that. We need to write to the various operators to get their views on that. My concern is about where the information is obtained. Is it just from the emergency services, or is it from houses and people who live round about? I would like answers to those questions. Perhaps I am jumping the gun a bit, but to get answers we need to write to the various operators and hear from the Cabinet Secretary for Justice. I have concerns about the issues that are raised in paragraphs 3 and 4 of the clerk’s paper.

The Convener: It would be useful for a draft letter raising all those points to be circulated to send to the cabinet secretary. I am mindful of the timetable. Next week, we will decide whether to take evidence and discuss possible witnesses. By then, our letter will have gone to the cabinet secretary to alert him. In any event, I think that we will want to hear from him on 30 October, as he will be here then anyway. Is that all right?

Members indicated agreement.

The Convener: That will give him advance notice. In the meantime, we can discuss next week the interesting points that have been raised. There are also European convention on human rights issues with regard to surveillance.

We now move on to agenda item 5, on our work programme, which we will discuss in private session.

10:38

Meeting continued in private until 12:37.

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