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Official Report

JUSTICE COMMITTEE

Tuesday 16 December 2014

Session 4

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JUSTICE COMMITTEE
33rd Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)
*John Pentland (Motherwell and Wishaw) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andy Bruce (Scottish Government)
Kevin Gibson (Scottish Government)
Keith Main (Scottish Government)
Michael Matheson (Cabinet Secretary for Justice)
Colin McConnell (Scottish Prison Service)
Craig McGuffie (Scottish Government)
Jane Moffat (Scottish Government)
Kerry Morgan (Scottish Government)
Neil Rennick (Scottish Government)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 16 December 2014

[The Convener opened the meeting at 09:46]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the 33rd meeting in 2014 of the Justice Committee. I ask everyone to switch off 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 Alison McInnes.

Items 6 and 7 have been withdrawn from the agenda, as the order is being relaid, so we will not deal with those items today. That is good news, as it will make our meeting a little more sharp and swift.

Under agenda item 1, the committee is invited to agree to consider item 9, our draft report on the Assisted Suicide (Scotland) Bill, in private. Is that agreed?

Members *indicated agreement.*

Commission on Women Offenders

09:47

The Convener: Agenda item 2 is a one-off evidence session on the implementation of the recommendations of the commission on women offenders. I welcome Michael Matheson, the Cabinet Secretary for Justice. I also welcome Colin McConnell, the chief executive of the Scottish Prison Service, and the Scottish Government officials: Andy Bruce, the deputy director of the community justice division, and Jane Moffat, from the community justice division. I believe that the cabinet secretary wishes to make an opening statement.

The Cabinet Secretary for Justice (Michael Matheson): I am pleased to be able to join the committee this morning to discuss the implementation of the recommendations in the report by the commission on women offenders.

Achieving better life outcomes for women who get caught up in the criminal justice system and reducing the female prison population are important aspects of the Government's social justice agenda. As the committee will be aware, this is the third progress report since Dame Elish Angiolini reported in April 2012, and I am pleased to say that significant progress has been made. The committee will, no doubt, wish to ask questions about the detail of that work. As pleased as we are with the progress that has been made, however, there is still much to be done particularly to divert women at an early stage in their involvement with the criminal justice system and to get an integrated approach from all the mainstream services that women need to help them to change their lives for the better and live a life that involves not offending.

Last week, I visited one of the one-stop-shop women's centres that we have created—the tomorrow's women Glasgow centre. I spent time there with the multidisciplinary team and some of the women who use the centre. I was very impressed with how collaboratively the team is working and how much of a positive difference the centre is making to the lives of some of the most vulnerable people in our community.

However, looking ahead, we need to get better alignment between community justice planning and provision and wider community planning partnership activity. That is why I announced yesterday that one of the key features of the future model for community justice will be the local strategic planning and delivery of community justice services through our community planning partnerships.

I am conscious of the fact that the committee will want to discuss the report in more detail, and I am more than happy to respond to any questions that the committee may have.

The Convener: You have just won friends, cabinet secretary, by making a very brief opening statement.

Margaret Mitchell (Central Scotland) (Con): Good morning, cabinet secretary. I do not know whether you have had sight of the report by the Howard League for Penal Reform. It is very critical of the direction that the Government is taking in replacing Cornton Vale with what seems to be a large prison, which is contrary to the recommendation of the Angiolini commission report that we have a smaller, specialised prison for women who are serving statutory defined long-term sentences and who present a significant risk. Would you like to comment on that?

Michael Matheson: I am aware of the Howard League's view, and I met its representatives last week to discuss the matter with them in more detail. A significant amount of planning is being undertaken by the SPS into the development of a new women and young offenders institution in Inverclyde. I intend to take the opportunity to understand all the different aspects that feed into our thinking about the future shape of that facility before any final decision is made on the matter. That will include looking at its size as well as the model and approach that we will choose.

I do not necessarily accept the Howard League's interpretation of the SPS's proposal as going against the commission's report. The commission recommended a hub-and-spoke approach, and the facility in Inverclyde will not only be a national facility; there will be a regional facility there, too. We also have the new regional facility for women offenders up in Grampian, at the new prison there, and we are at the final stage of planning a new women's facility at Her Majesty's Prison Edinburgh. Therefore, I am very much of the view that we are taking the hub-and-spoke approach that was recommended by the commission.

On the final configuration—the size of the hub and so on—I want to take a wee bit of time to understand all the various dynamics that feed into that before I come to any final decision on what approach we should take going forward.

Margaret Mitchell: The recommendation certainly was for a hub-and-spoke approach. The Angiolini commission reflected what the Equal Opportunities Committee said in its report, which was welcomed and well received by the Government. However, it is a question of size. The hub seems to be much bigger than expected—almost bigger than the existing facility at Cornton

Vale—and the spokes were supposed to be modelled more on the 218 centre, with that kind of facility being replicated throughout the country. That is where the disparity lies.

Michael Matheson: I do not think that there is a difference of view around our wanting to reduce our female prisoner population. At present, our female prisoner population is too high and I want to see further measures that will assist us in reducing the female prisoner population in Scotland, which has almost doubled over the past 10 to 15 years. I also want to ensure that female offenders who are in prison are in an environment that is suitable for them. It must be humane and provide the right support and conditions that will help them to address their offending behaviour and prevent their offending again. That has to take place within a modern estate, and we know that Cornton Vale is not a suitable environment for that at the present time.

It is worth keeping in mind that around 75 per cent of female offenders who receive a custodial sentence receive a sentence of only a short period. The primary focus of the hub-and-spoke approach is to ensure that, for example, women offenders in the north of Scotland who are serving a short sentence or who are on remand go to HMP Grampian. Similar women offenders in the east will go to HMP Edinburgh, once that is established, and in the west—which is where the largest number of them come from—they will go to the regional facility in Inverclyde. The national facility will be for those—

The Convener: What will happen to those in the south? Two of us on the committee represent Borders constituencies.

Michael Matheson: They would probably go to either the unit in the west or the unit in the east. That hub-and-spoke approach reflects the proposals that were outlined in the Angiolini commission's report. The final determination of the size of the facility will be based on what I think about the projections going forward, how much we believe we can reduce our female prisoner population and what I think is in the best interests of meeting the on-going needs of our female prisoner population.

There is no difference between the view of the Howard League and that of the Scottish Government about our desire to reduce the size of the female prisoner population. Whatever the decision is at Inverclyde—if, for example, the decision is to go with the existing proposal—it will in no way reflect any lack of determination on our part to see a reduction in the size of our female prisoner population. The important thing is that the facility that is developed is flexible enough to reflect that change, as we start to see that reduction in the years to come.

Margaret Mitchell: I am glad that the issue is being looked at, especially to see whether the geographical placing of prisoners nearer home—which is welcome—reflects the kind of service that could be expected in a 218-type centre.

You said that it is important that women prisoners are in the right environment. Will you update the committee on progress on dealing with women with mental health problems?

Michael Matheson: We have undertaken work with the ministerial group on offender reintegration, which I was involved in as part of my previous ministerial responsibility. The issue is very complex because of its multi-agency nature: it involves health, housing and other support services, including mental health services.

We identified that work was needed to ensure that female prisoners could access the right psychological support and the mental health services that they may require. A recommendation that has come from the group and our national prisoner health network is that a review should be undertaken of the way in which we deliver psychological therapies—they are now delivered by the national health service—in the prison estate and how that can be improved. We expect to receive a report from the national prisoner health network by June next year on how we can improve the delivery of mental health services in the prison estate.

Margaret Mitchell: At present, serious violent male offenders go to Carstairs. Is there anywhere similar in Scotland that can deal with violent female prisoners with severe mental health problems?

Michael Matheson: Risk assessments regarding a prisoner's nature and their needs are undertaken. Colin McConnell will explain how the prison service manages women who have complex mental health issues.

We discussed the Inverclyde facility. The SPS proposes to have a facility at Inverclyde that can better manage female prisoners who have complex mental health conditions and who may require more support and assistance than we can provide presently.

I ask Colin McConnell to outline in a bit more detail how we manage those individuals in the SPS.

Colin McConnell (Scottish Prison Service): Thank you, cabinet secretary.

Margaret Mitchell hit the nail on the head when she referred to particular or acute needs. Our close working relationship with the NHS is developing as we move along day to day. For the most part, as far as possible, men or women who are in custody in the circumstances that you

described get access to quality of care and treatment that is at least equivalent to what you would find in the community.

However, you and I would probably agree that those who are sent to custody who present with extreme or extraordinary conditions are quite unique. It is probably not in my bailiwick to comment on whether facilities exist in every circumstance to meet every need, but I can tell you that we have relationships with facilities in England and Wales, so we look at the issue on a national basis.

A recent case was Tertia Kidd at Cornton Vale, who had experienced difficulties over a long time. Tertia was prepared to work with us—some others are not—so it was not a case of looking for somewhere such as the male facility at Carstairs. We looked more widely at what would be the appropriate facility for that individual. Tertia went to Rampton hospital, I think, which was quite appropriate.

There is a challenge for us all to ensure that, as far as possible, we can address individual needs as they arise. We must recognise that extreme needs are probably best dealt with case by case and by looking broadly at where the opportunities to address those needs are.

10:00

Margaret Mitchell: I have a brief supplementary question about NHS Lothian, which is carrying out a pilot that was referred to when I last asked about mental health generally. Some of the tests that have been done in that pilot, which is halfway through its two years, might be good to look at for women prisoners. Do you have any feedback on that?

Michael Matheson: Is that the mentalisation programme?

Margaret Mitchell: Yes.

Colin McConnell: Mentalisation-based therapy for those who have attachment problems was initially piloted at Cornton Vale. It is about interpreting the person's behaviour in relation to others, which perhaps touches on some of the issues that affected Tertia in her day-to-day life.

A two-year pilot is on-going in Edinburgh and some positive indications are coming out that perhaps mentalisation-based therapy will have some application not just in custody, but in the community. With regard to the discussions that we are having here, that integration is undoubtedly the way to go forward.

Jane Moffat (Scottish Government): On application in the community, we have the willow centre in Edinburgh and the multidisciplinary team

is linked to prison staff. The plan is to transfer that knowledge from the prison back to the community, so that workers who support individuals understand the basics of communicating with people with borderline personality disorders and continue the good work that started in the custodial environment.

Michael Matheson: An important part of improving the way in which mental health services are delivered is the linkage between community-based and prison-based services. Some aspects of our national mental health strategy recognise that, with regard to our prison population. The strategy period concludes next year, 2015, and we are already engaged in looking at how we can build some of the prison aspects into the process much more effectively, to improve that linkage. That is why we commissioned some of the work to review the delivery of mental health services in prisons by the summer of next year, to feed into the process.

The Convener: We will move on. Colin McConnell said that there are a number of women in special circumstances for whom orthodox prison, as it were, is not appropriate, and that other facilities have to be found to deal with them. Can you give us an idea of the numbers involved?

Colin McConnell: In my time in the SPS there has been only one—Tertia Kidd. Tertia's history expands over a number of years, not just in custody but in the community.

The Convener: It is useful to know how often such cases occur.

John Finnie (Highlands and Islands) (Ind): Cabinet secretary, my question follows something that Margaret Mitchell said regarding the recommendation that Cornton Vale should be replaced by a smaller specialist unit. Some sheriffs said that they sent women to Cornton Vale because there was a dearth of appropriate places in the community for the women: there was no alternative.

I will just float this idea: unless, things change in the community, is there a possibility that all these super-duper new facilities and arrangements in prison that tie up with the NHS will make a custodial disposal more likely for women?

Michael Matheson: I do not accept the idea that if you build a facility that has so many places in it, you will fill it. Polmont is an example of that. It has undergone major refurbishment and is now a state-of-the-art facility for young offenders, but the numbers there have been decreasing. A range of different measures have been taken on alternatives to custody, et cetera, which has made an important contribution to that reduction. Therefore, I do not accept that if you create facilities, sheriffs will just fill them. However, I

accept the point, which is the key to your question, that if there is no shrieval confidence in and knowledge of the community alternatives, sheriffs will tend to just give custodial sentences—although I accept that it is not quite as simple as that.

A big part of the work that we have been doing since we received the commission's report has been to ensure that we not only improve the quality of alternative sentences and support mechanisms in the community but offer a greater range to reflect local needs. I fully accept that an important part of our approach to reducing the population of women offenders in prison is making sure that we have good-quality, sustainable and accessible alternatives and support mechanisms in the community. That goes without saying. However, it is extremely difficult to assess whether providing X in the community will result in Y of a reduction in the prison population. I do not think that anyone has cracked that yet, because it is very difficult to measure. Very often, the impact is found out through experience, rather than our being able to model what the result will be.

That is part of the challenge around making a decision on Inverclyde. We are seeing improvements in the way in which alternatives and support mechanisms are provided in the community, but at this stage it is still difficult to tell what impact that will have on the female prison population in future years. We anticipate that we will see a reduction in that population, but until we see it, it is difficult to plan on that basis, given the lead-in time for building a prison and the facilities that go with it.

I fully accept that the quality and standard of what is available in the community, and confidence in it, are absolutely key to supporting us in working to reduce the female prison population in Scotland. The committee identified a number of years ago that shrieval confidence was key to making sure that we see that change in attitude towards alternatives.

John Finnie: Are there any specific proposals that will give confidence to the bench that there are viable alternatives in the community that are commensurate with the welcome good facilities for those who require to be in custody? None of us wants to see anyone incarcerated who can be dealt with in the community.

Michael Matheson: As we outlined in the annual report, we have been taking forward a range of things. The tomorrow's women Glasgow project, which I visited last week, is a very good example of a project that is helping to make a difference by reducing the risk of women reoffending. It is joining up and integrating services in a collective way. The team in the centre comprises not just social work but housing,

the police and the prison service, which has staff seconded to it. They are all working in partnership to try to reduce reoffending among the women who are referred to it. In Edinburgh, the willow centre takes a similar approach, as does the centre in Aberdeen.

Other models are being taken forward. In Lanarkshire, the criminal justice social work team has a specific women's team working with women offenders, testing that model. In some of our rural areas, an outreach approach is taken, which is about helping to support women in their community much more effectively in order to test that approach. What works in Glasgow will not necessarily work in the Highlands, so we need to test different models.

All the work that we are supporting now will help to inform us on the most effective way to support women in the community and to reduce reoffending. An evaluation is being wrapped around all those initiatives to help us to understand better. We will have the results of some of that evaluation work next year, which will allow us to assess the best way forward.

Having just come into the job, I am considering how we can draw that type of work together much more effectively in order to share good practice across the sector. I am starting to develop my early thinking around how we might be able to achieve that on the criminal justice side, given some of my experience of how we went about it on the health side.

We are doing a range of work, using different models and approaches, which we are evaluating and which will all feed into our thinking around how we can work better to reduce reoffending and support women much more effectively in the community.

Colin McConnell: I just wanted to come in on the back of some of the really useful things that the cabinet secretary has just said. I want to slay the dragon of the suggestion that somehow modern prisons are distinct and disconnected from the community. The direction of travel is increasingly to integrate the custody facilities with the wider approach that the justice community and social justice community takes.

My offer to the committee is the recognition that we should be investing in the custodial estate. You have heard me say before that Scotland should not be embarrassed about having a world-class prison service, because having a series of integrated facilities as part of the overall service is fantastic for the community to have. That touches on some of the issues that Mr Finnie has just raised.

John Finnie: I have one final matter to raise. The phraseology used in the report, which I

assume was compiled by your predecessor, cabinet secretary, suggests that a measure of persuasion has been required to get everyone on board with the problem-solving approach in court. Will that be resolved? Will that approach be rolled out further?

Michael Matheson: I will bring in Andy Bruce, who has been involved in the process. It is a new way of working and that, combined with new approaches, can bring its own challenges. We now have agreement with the sheriff principal in Aberdeen on the establishment of a problem-solving court. We are in the process of working through some of the practicalities of how to take that forward.

We would have hoped to have made a bit more progress on that than we have been able to, but we can now pilot and test out the approach, in agreement with the sheriff principal in Aberdeen. I am confident that that will allow us to look at how that model can be used in other areas, in the same way as we have done with other specialist courts that have been developed in recent years. Once we have tried and tested the process, we can learn from it and look at how the approach can be utilised in the rest of the criminal justice system. Andy Bruce can maybe give you a bit more detail.

Andy Bruce (Scottish Government): John Finnie is absolutely right that it has taken a bit of persuasion. There was a need to explain to local partners what the problem-solving approach was and to build their support for it. As the cabinet secretary said, we have done that. Aberdeen sheriff court will be the target and we have a supportive sheriff principal and an enthusiastic sheriff, who is up for it, and partners in the community will wrap around it. Work is now required to identify the cohort to focus on, which it is likely will cover both women and men. With the female element, there is the chance to link in with the women's justice centre in Aberdeen, which we fund.

The Convener: What is the problem-solving approach?

Andy Bruce: In effect, it frees up the judge so that, rather than being the passive arbiter in proceedings, he or she can get down off the bench and try to join up the services roundabout. I guess that there are similarities with the children's hearings methodology. It is about freeing up the sheriff's own problem-solving approach. One of the benefits is that there is continuity—the sheriff will continue to be involved in the person's case if it comes back again.

The Convener: Is it like the drugs court, where the same person would come back to the same sheriff?

Andy Bruce: It is very similar to the drugs court—Sheriff Wood would describe what he does in the Glasgow drugs court as a problem-solving approach.

Michael Matheson: The centre for justice innovation is expert in this field and is working with us to develop, shape and take forward the approach.

The Convener: That is fine. Thank you.

Gil Paterson (Clydebank and Milngavie) (SNP): Good morning, everybody. I have been involved in work on violence against women and children for a good number of years. It is quite clear to people involved in that area that one of the biggest problems for women prisoners is thinking about their family back at home and their children, particularly when a husband or partner has flown the nest or there is a worry that that might happen.

The commission has suggested using videoconferencing to help with that. However, the chief executive of the Scottish Prison Service said that personal access to those facilities was not available. He went on to say:

“we are not currently planning to provide such access, on the basis that it would have to be well consulted on in order to check out the sensitivities and risks that may be perceived.—[*Official Report, Justice Committee, 5 August 2014; c 4782.*]

I believe that if we could get this right and keep women in prison in touch with their families in a more meaningful way, it might really help the process and, perhaps, stop people going into depression, taking drugs and all the other things that are associated with these situations. What does the Government feel about that?

10:15

Michael Matheson: At Cornton Vale, we now have videoconferencing facilities available. They are there for issues relating to access, contact with families, court proceedings and interactions with legal agents. We also have the facilities at HMP Grampian, which is for males and females.

Colin McConnell can talk a bit more about the SPS's approach to the issue. It is testing out the effectiveness of the facilities and the impact that they can have before we think about rolling them out further in the prison estate in Scotland.

We have made progress on facilities at Cornton Vale and HMP Grampian. I recognise that, particularly at a national facility such as Cornton Vale, enabling children to contact their mothers is an important aspect of what we are doing. There are issues around how that is managed and how the child is supported, as the process can be quite difficult for young children. We have to understand that sort of thing more fully—how we can make as

much use as we can of videoconferencing in a way that is appropriate and with the right safeguards in place.

Colin McConnell: In the general conversation that we were having, Mr Paterson, your comments should be reframed. Every prison in Scotland currently has video facilities that can link with the courts. Some are increasingly linking with agents and, in some cases, some social work locations, but primarily videoconferencing facilities are there to service the courts. That is the first point to make.

Beyond that, if you look at our organisational review or if you ever have the time or the inclination to read some of the speeches that I have been making, you will see that, conceptually or ideologically, there is not a cigarette paper between our positions. What you are describing is an extraordinarily positive direction to be going in. However, I recognise that much of the technology that is already there and which we could use—particularly the social media-related technology—carries with it some risks. Therefore, although, as I say, the direction of travel is undoubtedly towards exploring how we can better connect women with their children and, more broadly, how we can connect those in custody with their families day to day, we have to do so cautiously. In answer to Mr Finnie, the cabinet secretary quite rightly said that the shrieval benches must have confidence in the offer in the community. Similarly, the SPS has to ensure that parliamentarians, the Government and the public can have confidence in the new approaches that we introduce.

If we put everything in context, we can see that the direction of travel is undoubtedly as you describe it. However, we are taking a cautious approach in order to properly explore and build up that confidence.

Gil Paterson: But you are going in the right direction. That is good. I am pleased to hear that.

Another issue that causes women who are in prison anxiety is the possibility of losing their house or their tenancy while they are in prison. That is an enormous problem. What is the Government doing to minimise that issue, while recognising that housing is a local government matter?

Michael Matheson: There are a couple of aspects to that. There are women who receive a custodial sentence and then lose their property as a result of not being there. Part of the challenge is to ensure that we make much more effective use of community-based disposals, which reduce the risk of women losing their property in the first place. John Finnie also highlighted the importance of ensuring that we have good-quality community alternative programmes in place to reduce

reoffending. Those are important ways of helping to reduce the difficulties that result from a woman losing her property.

The other aspect is the fact that a person's home can often be their anchor in the local community and, when we liberate someone from prison, it is extremely important that we ensure that they are in a position to go to a home—either their home or somebody else's—in order to establish themselves back in the community. The ministerial group on reoffending has established a pilot at HMP Perth in order to examine much more effective ways of ensuring that, when individuals are liberated from prison, their housing provision and needs are sorted before they go back into the community. If those things are not sorted out, the danger is that people who are liberated from prison quickly get drawn back into offending behaviour.

We are doing a piece of work on that, and we have commissioned some research across the country to enable us to understand more fully the work and engagement of housing providers and how we can better align the work of the SPS with housing providers' work on the reintegration of offenders, in order to support the work that we are doing to reduce reoffending rates.

Last week, when I was at the tomorrow's women centre in Glasgow, I met one of the full-time members of staff, who is from the Glasgow Housing Association. Their job is to work with housing agencies to support the women and help them to get their housing issues addressed. The solution involves being much more integrated in supporting those who go back into the community, while, at the same time, ensuring that we have the right alternatives in the community in order to reduce reoffending and the need for women to go into prison for short-term periods, which can lead to loss of their property and the complications that flow from that. That is why it is important that we continue to take forward work around supporting women in the community.

The Convener: You will be aware that one of the first things that the 218 project did was to ensure that women there kept their tenancy with the Glasgow Housing Association, which would otherwise automatically be lost. That is terribly important, given that, according to the statistics, 77 per cent of women offenders serve sentences of six months or less. Of course, a woman's home might be the wrong place for them to return to—for example, the circumstances there might be one of the reasons why she is in prison—but, that aside, the aim that we are talking about is already being tackled, certainly by project 218.

Michael Matheson: That is exactly the kind of thing that we need to build on. For example, the housing official at the tomorrow's women centre in

Glasgow explained to us that, sometimes, there is a good reason for a woman not to return to a particular property or area. That is not always appreciated by housing officials when they receive a referral for a property for someone who is coming out of prison or is in a particular programme. That is the sort of thing that, by joining up the services much more effectively, the centres can help to address in a better way. We need to continue to develop that.

The Convener: I think that the committee would support that.

Elaine Murray (Dumfriesshire) (Lab): What progress is being made on throughcare and enabling women to be rehabilitated into the community? I am from the south of Scotland, so I am particularly interested in what happens when a woman's place of incarceration is not near her home. Are there issues to do with support in that regard? Are lessons being learned about how to ensure that throughcare is effective for women whose communities are far from their places of imprisonment?

Michael Matheson: It is about ensuring that we do more to support such individuals. One aspect that we have been taking forward in that regard is the mentoring service, which involves identifying women who are serving short-term sentences or are on remand and working with them much more effectively to try to achieve better outcomes for them. A range of work is being done; Jane Moffat might be able to give more detail about the service's impact on the ground.

We are learning that the mentoring programmes that we support, which I think support in the region of 700 women annually, can help to improve throughcare in the prison system and the community, reduce reoffending and make links to agencies, which is an important way of supporting women, particularly when they are from more remote areas.

Jane Moffat: Women from the south of Scotland, in particular, are held either in Edinburgh or in the west. Mentors are based in those prisons, and they will start work early with a woman, with a view to understanding what is going on in her life and what the issues are. Mentors make connections with agencies, so that as much preparatory work as possible is done before liberation. They then link with local mentors—in Dumfriesshire, for example—and a relationship is built up between the mentor in prison, the woman and the mentor who will take over responsibility for supporting the woman when she comes out.

The outreach approach that the cabinet secretary mentioned is one of the four themes in our support for services throughout Scotland, post-Angiolini. The teams in the area will know that the

woman is coming back to Dumfriesshire and that she has a mentor who will be able to help her to navigate the various services and agencies that she needs to navigate if she is to get her life back together again.

Elaine Murray: Do the local mentors go to the prison to work, too?

Jane Moffat: Yes they do, absolutely.

Elaine Murray: It is good to have that continuity, so that the woman knows that there is an individual in her community whom she can trust, particularly given her anxieties around release.

Jane Moffat: The relationship is key. We have learned that, even at this early stage. As the cabinet secretary said, we are evaluating the mentoring service and all the services that we have supported post-Angiolini. At this early stage, we know that the quality of the relationship between the woman and her mentor is crucial to successful reintegration.

A woman's desire to reintegrate herself is also crucial. We are finding that a mentor can help a woman to keep mentally positive and to navigate the difficulties that she might encounter. For example, there can be delays in getting housing or access to her children. The mentor is someone who is positive and who can show her a different way of living her life, which gives her hope for the future. The system seems to be working really well.

Elaine Murray: That is interesting.

Gil Paterson spoke about access for families. For someone from my constituency, that is not easy: public transport links with Inverclyde and Edinburgh are not good. We know that women offenders tend to get fewer prison visits from their families. There is accommodation at Inverclyde to enable children to stay overnight, but there seems to be less accommodation than there was at Cornton Vale. I think that there were seven places at Cornton Vale and that there are only four in the new prison.

Colin McConnell: We have to be careful when we talk about the number of places. We can get confused, given the history of Cornton Vale: over time, things have come and gone and been labelled in all sorts of different ways.

You would expect me to say this, but Inverclyde will be an international exemplar of excellent practice. The approach to relationships with people who pass from the community to custody is growing and developing, almost daily, and will be continually updated. There will be excellent facilities at Inverclyde, regardless of scope or scale, to enable women to spend good, quality

time with their children and wider family. That is for sure.

10:30

Elaine Murray: In some Swedish prisons low-security prisoners can receive visitors in their cells rather than having to go to the visiting room. Has thought been given to allowing that for some female prisoners? It might be better for children to visit their mother in her cell than to meet her in a formal visiting room.

Colin McConnell: As we consider scope and scale, that might be appropriate for some people. However, we must also think about the consequences for children and other family members of moving into that environment. In the round, the direction of travel is to bring families together, for all the positive reasons that we know about. We recognise that what you suggest might be more appropriate for some people than for others, but we want to maximise the opportunities as they come along.

Michael Matheson: Elaine Murray asked about throughcare. At times there can be a disjointed approach, with different assessments for different purposes, such as housing and health. The ministerial group on offender reintegration, of which I was a member but which in my new role I chair, has proposed a single, multi-agency assessment for every prisoner, whether they are serving short or long-term sentences, to ensure that there is a comprehensive assessment of needs, so that throughcare is managed much better, with everyone having a part to play in achieving that much more effectively. Such joined-up working, which the SPS is taking forward, is starting to bed in, and I think that that will help to improve outcomes for female offenders, particularly those who go back to more remote areas.

Jane Moffat: Another recommendation from the ministerial group on offender reintegration was to do with Friday liberations, which I know is an issue that the committee has raised in previous studies of throughcare. As a result of the group's consideration, the Prisoners (Control of Release) (Scotland) Bill contains provision to allow prison governors flexibility to release prisoners up to two days early and avoid the Friday liberation scenario, particularly when people are going back to remote and rural areas and it is in their interests to be released early, because a plan is in place to help them to reintegrate more effectively in the community.

The Convener: If a child is visiting a parent who is incarcerated—in this case, a mother—is it not the case that the test is always what is in the child's best interests, notwithstanding the benefits

to the prisoner? Is the welfare of the child always paramount? I am sure that that is the rule.

Colin McConnell: Yes, absolutely.

The Convener: Thank you. I just wanted to make that plain, because something might not be in the child's interests, in some circumstances.

Christian Allard (North East Scotland) (SNP): Last week, I had a briefing from a third sector programme in Aberdeen—adjust—which works in partnership and co-ordinates services in exactly the way that the cabinet secretary has been talking about. We talked about videoconferencing, among a lot of other things, which in Aberdeen it seems is available only for families of male prisoners—it is not yet available for families of female prisoners.

The minister mentioned a pilot in Aberdeen, but I take it that that is for male and female prisoners. I seek reassurance that there will not be a two-tier system, with male prisoners getting facilities first but female prisoners falling behind, as has happened with videoconferencing. I visited HMP Grampian and it seemed a bit unfair that one gender should get facilities that the other gender does not get.

Colin McConnell: The video link at the Apex Scotland centre in Aberdeen, which I think is what you are referring to, is a fantastic concept, and we hope to build on the lessons that are being learned from it. It is important that we remind ourselves of the genesis of that great idea.

The video link was originally put in place for people in custody who would otherwise have gone to Aberdeen or Peterhead but who had been displaced because of the interregnum between those prisons closing and Grampian opening. In essence, it was for families in that area whose relatives or partners were in Perth or Barlinnie—all points south, really. That was the genesis of it and it worked well. It has been kept going and is beginning to give us some indications of how we might do things in the future.

These are the sorts of dragons that crawl around, but we can slay this dragon: we are not talking about a facility that is, per se, for men in custody, because women have used it. I draw on the example of Cornton Vale in particular—this relates to what Elaine Murray said. It is an uncomfortable truth that women in custody tend not to get many visits—that is just a harsh fact—but we are trying to change that. Because women from the north-east and the north more generally are now being held at the facility at HMP Grampian, the pressure that might otherwise have been put on Cornton Vale to connect through the Apex hub at HMP Aberdeen has diminished significantly. Over the time that the facility has been available, only two women have used it for a

virtual visit in that sense. The facility exists, but the demand for it among women in custody has not been as great as the demand among men in custody—again, that is just a fact.

We have already talked about the direction of travel. We want to flex the facilities as much as we can, but in a way that is robust and sustainable and which provides assurance for everyone who is engaged in the process.

Christian Allard: Is one of the problems the gender-specific training that is required for staff, which is maybe not optimal yet?

Michael Matheson: When my predecessor was before the committee, the possibility of providing additional training for SPS staff who work with female offenders was explored. That training has now been embedded in the induction programme, so all SPS staff who work with female offenders attend a two-day programme specifically on female offenders. I think that a one-day training programme was initially tested—I am not entirely sure about that—but a two-day programme is now part of the induction programme for SPS staff. There is also an additional one-day training programme for SPS staff in general on female offenders. What was initially a test programme has now been embedded in the standard induction programme for all SPS staff who work with female offenders.

Christian Allard: Gil Paterson talked about housing and the provision of accommodation. I am reassured by what the cabinet secretary has said about the possibility that someone who is in prison for a short period will be able to keep their tenancy. What about women who are looking for social security benefits? Have you spoken with the United Kingdom Government to see whether, instead of prisoners' benefits being stopped, they could be merely interrupted so that prisoners could know in advance of their release that they would not need to reapply and that their benefits would start again automatically on their release?

Michael Matheson: The ministerial working group considered access to welfare benefits, as concerns were raised around the stopping of benefit provision. In my view, part of the challenge is the need to reduce the number of women who receive short-term custodial sentences: we may question whether prison is the right place for them anyway. That is the approach that we are taking to deal with the issue.

There have been issues with female prisoners reintegrating into the community, and we want to ensure that those issues are addressed much more effectively. We have pursued the issue with the Department for Work and Pensions, as the area is reserved. We have some powers through the Scottish welfare fund, which can be used to

buy things such as furniture as well as for crisis grants and community care grants, although there have been issues with how that fund is operating. We want to make that provision more effective—we want it to respond more quickly to the needs of those who are being reintegrated into the community. As a result of the work of the ministerial working group, new guidance was issued to shape the approach that is taken to the management of applications for that funding and how they are dealt with in prisons as well as how local authorities deal with the matter. The guidance has helped to speed up the process and has clarified when the application process can be started so that the money can be released as early as possible to support individuals who are being reintegrated into the community. We have been able to make some changes to improve the situation where we have the powers to do so, but some of the wider aspects are outwith our control.

Christian Allard: Those changes are very welcome. Are the assessments already being made before the women are released?

Michael Matheson: Yes, they are.

Christian Allard: Have you written to the DWP to try to get it to make the benefits that it provides subject to the same assessments?

Michael Matheson: Jane Moffat may be able to comment further on that. We are limited in what we can do because of the pan-UK approach to those benefits. However, the issue for us is the need to reduce the number of women who receive short-term sentences, who may lose their house and their benefits, which brings other welfare challenges especially if they have a child. If we can prevent that from happening to individuals who should not be in prison anyway, because prison is not the most appropriate environment for them, that will probably be the most effective way to tackle the issue.

Jane Moffat may be able to mention some of the wider work that we are doing around welfare provision.

Jane Moffat: Some committee members will remember that the cabinet secretary's predecessor wrote to Lord Freud immediately after the Angiolini commission reported. The two had a meeting, on the back of which we now have a small-scale pilot scheme operating at Cornton Vale whereby women get access to benefits advice much earlier before liberation than is normally the case, with the aspiration that they will get access to their money much more quickly than they currently do. That is a small-scale pilot scheme and, as the cabinet secretary says, it is a reserved area of policy. The matter is at the discretion of the UK Government and I do not think there are any plans to extend the pilot, but we are

being allowed to continue it at Cornton Vale at the moment.

What is important is how we support the women when they come back out into the community through the justice centres that the cabinet secretary has talked about. For example, in the Glasgow centre, a benefits adviser comes in to support the women, to ensure that they are maximising their entitlement to benefits and that they are claiming for everything that they can. In addition, as the cabinet secretary says, the Scottish welfare fund makes sure that the women have some transitional support to help them through the early days after release, when money is tight. It helps them to access the support that they need to furnish their house and so on, so that they have something to come back out to.

The Convener: Do the same problems arise in England?

Jane Moffat: Yes.

The Convener: Is the situation exactly the same? Do they face the same issues?

Jane Moffat: Yes. It is exactly the same. It is not a Scottish issue; it is a UK issue.

The Convener: It is to do with the DWP generally.

Jane Moffat: Yes.

Roderick Campbell (North East Fife) (SNP): I would like to focus on the £3 million of funding that has been allocated to support the local criminal justice partners over the 16 projects. I am not sure that I fully understand how that works for the more rural projects—the outreach projects. Do women in those situations get the full range of support that women get from the other projects?

Jane Moffat: Yes, they do. For example, the Fife team decided that they did not want a fixed base because they did not think that that would be the best way to support women in Fife. They therefore work out of three locations and, for one full day a week at each of those locations, women can drop in or make appointments. In the interim, that is followed up with one-to-one sessions with an individual and their key worker, and any work that needs to be progressed will be progressed.

We have organised the provision in Scotland by working with the local partners. They all use the Angiolini commission report as their reference document—it is seen as a really valid, critical piece of work that informs how they shape their service provision—but, in rural areas, they tailor the provision to what they think best meets the needs of the women in those more rural localities. The women themselves do not want to have to travel to a centre many miles away, and the local services are provided where the women live, so

the idea of the outreach approach is that the teams go into the rural localities and work with the women there to link them into the relevant services, wherever they might be.

Roderick Campbell: And an independent evaluation will be carried out.

Jane Moffat: Yes.

10:45

Roderick Campbell: To what extent will the results of that evaluation be a factor in the consideration of community planning partnerships with regard to the delivery of community justice?

Michael Matheson: They will have an important part to play in helping us to understand the most effective approach for delivering services. A big part of ensuring that the CPPs are able to do their job effectively with regard to the delivery of community justice programmes is to ensure that they are using an evidence-based approach that is based on experience, so that they can make an informed decision about the best approach to apply at a local level. It is important to ensure that we are using an evidence-based approach. All the models are being independently evaluated so that we can identify what the pros and cons are and can use them to support on-going work.

As I mentioned earlier, I want to give a bit more thought to how we can ensure that we share that practice and experience in a much more effective way. We have practitioner forums and so on, but I think that there is a wider issue that I want to explore: I want us to share and spread good practice and improvement methodologies in a way that can assist us in delivering the most effective approaches in local areas and ensure that CPPs have the right type of advice, support and information to make informed decisions.

Roderick Campbell: On the evaluation of the success of mentoring projects, can you add anything else to that equation?

Michael Matheson: Jane Moffat is probably the best person to talk about that.

Jane Moffat: Again, we are having the mentoring service independently evaluated by Ipsos MORI. We have extended the evaluation in line with the fact that we have extended the change fund for another two years. Two years in, we saw early signs of the effectiveness of the mentoring service, but we wanted to give it more time to demonstrate its positive impact.

As Gil Paterson said, the on-going provision of the services is the responsibility of local government, and the idea behind the evaluations is that they will help local government and partners in communities identify where they want to spend

their resources on an on-going basis. As Elish Angiolini said, all of this can be achieved within existing resources. What we have tried to do is provide some additional money in the two-year period to give people a bit of breathing space in order to reconfigure their services in the way that she described. Ultimately, however, the sustainability will come from within localities. That is why we have allowed the service provision to grow organically in line with local partners' needs and desires. We see that as being the most sustainable way in which to take things forward in the long term.

Colin McConnell: In the context of the evaluation of mentoring services, you will be aware that we are changing the role of prison officers to dovetail with the work that is going on in the community to secure that integrated approach. As you know from a previous briefing, the pilot that was run at HMP Greenock was evaluated in the middle of this year by colleagues working out of the University of Edinburgh, and the results were really encouraging, giving us pointers about the positive effects of practical support that reaches back into the community as people resettle.

One of the things that we have learned from all of this is the fact that women are the most likely people to engage in on-going mentoring services. There is a real convergence in terms of approaches, integration and targeting the people who are most likely to benefit from what we are doing.

Margaret Mitchell: Does the cabinet secretary support the introduction of child impact assessments to effectively deal with the often devastating effect that the imprisonment of a parent can have on children?

Michael Matheson: In what way do you see them operating?

Margaret Mitchell: Impact assessments would consider the overall effect on children of a parent being imprisoned, from the child's perspective.

Michael Matheson: I mean, do you envisage that being something that is submitted to the court when the sentence is being imposed?

Margaret Mitchell: It would be a formal impact assessment.

Michael Matheson: It is important that we ensure that, when sheriffs are making determinations, they have as wide a range of information as possible to enable the issues to be considered. Clearly, there are different factors that must be weighed up in terms of public safety and appropriate sentencing, but welfare and child impact aspects should be fed into that process, so that people are aware of any wider issues.

If issues are identified but a custodial sentence is still considered to be the most appropriate route, it is important that the right support services are put in place in order to support the child in a way that appropriately meets their needs.

Such impact assessments have a role to play in informing the court and ensuring the court understands such matters, along with all the other factors that sheriffs and judges need to take into account when determining a sentence.

Elaine Murray: You mentioned the £3 million of funding that has been allocated to support local criminal justice partners across Scotland. Could you provide the committee with a written breakdown of how that has been allocated to different areas?

Michael Matheson: Yes, we could provide details of the 16 projects that have benefited from it.

The Convener: Thank you, that would be helpful.

That ends this evidence-taking session. I suspend the meeting for two minutes to allow witnesses to change over.

10:51

Meeting suspended.

10:53

On resuming—

Modern Slavery Bill

The Convener: Item 3 is the Modern Slavery Bill, which is United Kingdom Parliament legislation. The cabinet secretary has stayed with us for this item and I welcome to the meeting the following Scottish Government officials: Neil Rennick, the acting director of the justice division; Ann Oxley, from the criminal law and licensing division; Keith Main, from the safer communities division; and Kevin Gibson, from the directorate of legal services.

I invite the cabinet secretary to make a brief opening statement. I emphasise the word “brief”, cabinet secretary. This is a very important issue, but we are pressed for time today.

Michael Matheson: The trafficking of human beings and the use of them as commodities for profit is a heinous crime, and one that the Scottish Government is committed to combating.

This is a hidden crime that does not respect border controls or national boundaries, and it is crucial that we work with the UK and Northern Irish Governments to ensure that our laws take it into account.

The committee will be aware that the Human Trafficking and Exploitation (Scotland) Bill has recently been introduced to the Scottish Parliament. That bill will bring about the creation of a Scottish anti-human trafficking strategy, enhancing support and protection for victims, and includes measures to tackle human trafficking-related crime through the Scottish criminal justice system.

A UK-wide commissioner who can operate across the board, share good practice and ensure a consistency of approach in tackling this crime, supporting its victims and holding each jurisdiction to account on the same basis, will complement that legislation.

Scottish ministers will agree the work plan of the commissioner and request Scotland-specific reports that they will lay before Parliament, along with any such report that may come from the commission. Powers are included for the redaction of any report that might jeopardise the safety of any person in Scotland or which might prejudice the investigation or prosecution of an offence under the law of Scotland.

Christian Allard: What will change for the investigation of ships and vessels? What can Police Scotland do today and what will change?

Michael Matheson: At the moment, Police Scotland has general powers to investigate and detain and arrest in Scotland, which extend to adjacent waters up to 12 miles from the coast. Scottish police officers do not have the powers to go beyond that 12-mile jurisdiction and they cannot go into UK waters that are outwith Police Scotland's jurisdiction. The new provisions will give Police Scotland the power to continue to pursue this type of thing. For example, Police Scotland could go into Northern Irish waters in the Irish Sea if it was pursuing a vessel.

Last year, or perhaps in 2012, police pursued a vessel off the coast of Dumfries and Galloway and a vessel off the coast of Aberdeen. The challenge in the Aberdeen case was that the vessel went outwith the 12-mile boundary, so the police were not able to apprehend and detain the people on it. They had to wait for the vessel to run low on fuel and come back into the police's jurisdiction.

The additional powers will allow the police to investigate and search vessels and detain individuals beyond the 12-mile limit. The police will also be able to pursue vessels into UK waters that are outwith Police Scotland's jurisdiction and police in England and Wales will be able to pursue vessels into Scottish waters.

Christian Allard: I am seeking reassurance that Scottish vessels will not be boarded more than foreign vessels will be. There are vessels from different countries in our waters and we want to ensure that the powers are appropriate.

Michael Matheson: Sure. Police Scotland is able to stop, investigate and search vessels in Scottish jurisdiction as appropriate. I do not imagine that there would be more of a focus on Scottish vessels than on others. The provisions will ensure that Police Scotland has the necessary powers to be able to pursue vessels, given that they cross boundaries regularly to evade investigation. Providing these additional powers will give Police Scotland the same legal authority and powers to pursue these vessels as those that their counterparts in England and Wales have.

Christian Allard: What scope is there to have a Scottish commissioner?

Michael Matheson: That was considered. You will be aware that, in the last year, there were an estimated 55 cases of trafficking and exploitation in Scotland. We suspect that that is the tip of the iceberg, but it is difficult to quantify exactly how many cases there are. The view was that it might not be advantageous to have a commissioner who would deal with what may be a relatively small number of cases, whereas it might be useful to have a commissioner who would deal with a much larger number of cases, gain greater experience

and learn about good practice in other parts of the UK.

Notwithstanding that, we considered specifically the commissioner's engagement with Scottish ministers and their role in Scotland—how the commissioner will report to us and how we will propose specific work in Scotland for them, including any reports that we think need to be laid before the Scottish Parliament. Although the commissioner will operate on a UK-wide basis, they will have a specific Scottish aspect, which Scottish ministers will have a direct role in shaping. We wanted to have someone who could draw on wider experience to feed into our processes and improve the work that we are doing to tackle human trafficking and exploitation.

11:00

Elaine Murray: There has been some criticism that the proposed remit of the anti-slavery commissioner might be too limited. Are issues such as protection and assistance for survivors picked up in the Scottish Government's Human Trafficking and Exploitation (Scotland) Bill?

Michael Matheson: Our approach is slightly more ambitious. The Scottish bill requires Scottish ministers to ensure that victims and survivors get the support and assistance that they require. That goes beyond what is in the UK bill.

As I said on Friday, the fact that these heinous crimes are hidden means that victims can be reluctant to engage with services. There have been cases in the past in which individuals have been identified and have gone missing. There will be a requirement in the bill to create a national strategy in Scotland. A key part of that will be to ensure that victims are given the right support and assistance.

Elaine Murray: There will not be any sort of conflict between the UK-wide commission and what we want to do here. We can make that seamless.

Michael Matheson: We should learn from each other. The UK Government is taking a particular approach. Our view is that the victims of these crimes should get the right type of support and assistance. Our bill puts victims at the very heart of the process. This is not a national strategy that we can choose whether to implement; it is a requirement in the bill to embed such provision in practice in Scotland.

The Convener: I do not want to pre-empt the decision of the Parliamentary Bureau, but I think that it is likely that the Human Trafficking and Exploitation (Scotland) Bill will come to this committee. However, that is a matter for the bureau.

Roderick Campbell: I refer to the Home Office's "Review of the National Referral Mechanism for victims of human trafficking", which was published fairly recently. Clause 41(1) of the Modern Slavery Bill says:

"The Commissioner must encourage good practice in ... the identification of victims of those offences."

The UK Government has accepted all of the recommendations in the review. I take it from your letter on the Human Trafficking and Exploitation (Scotland) Bill that the full implications for Scotland are not yet known. I seek some reassurance, in relation to this legislative consent memorandum, that there will not be an issue down the path, as it were.

Michael Matheson: The LCM is based on the UK Government's reporting timetable for the Modern Slavery Bill. We support the provisions in that bill that apply to Scotland. I will bring in officials to comment further on the review to which you refer.

Legislation is one aspect of this. There is also the wider work that we need to do to tackle human trafficking. That is why we have placed a requirement on ministers to introduce a national strategy and to evaluate, maintain and review it. Our bill will mean that we are in an even stronger position than the position provided for by the Modern Slavery Bill.

Neil Rennick (Scottish Government): I can confirm that we are due to speak to Home Office officials this afternoon about the NRM review, its implications and the timescale for that. The Home Secretary is keen to have a number of pilots to test how the approach that the NRM review proposes might operate in practice. Early indications are that the timescale for those pilots will extend beyond the timescale for the Modern Slavery Bill. We are not expecting anything arising from the NRM review to impact on that bill or, therefore, on the LCM. Clearly, we will work closely with the Home Office about the implications of the NRM review because, as you say, identifying victims is crucial to this whole area.

The Convener: The LCM notes that Scottish police officers will in some circumstances require the consent of the secretary of state to proceed. What kind of circumstance might that be and do you think that it is appropriate?

Michael Matheson: That relates to some issues to do with international law that are reserved to Westminster, and some international protocols. The legal explanation of that can best be provided by officials, but the fact that some aspects are reserved means that the secretary of state's permission would be required. My understanding is that these matters are likely to be taken forward

through delegated powers to the UK Border Agency. It is largely about some areas that remain reserved to Westminster.

Kevin Gibson (Scottish Government): This really relates to the boarding of foreign vessels, all of which is regulated by the United Nations Convention on the Law of the Sea, which requires any circumstance where a foreign vessel is to be boarded to be routed through a central authority in the country whose officers propose to board that vessel. The central authority for the UK is the secretary of state, because, as the cabinet secretary has said, this is a reserved matter.

The Convener: Is this in UK territorial waters?

Kevin Gibson: No, it would be outside.

The Convener: It is when you get out of them.

Kevin Gibson: Yes, exactly.

The Convener: Okay. I understand now.

Keith Main (Scottish Government): That provision applies equally to police officers from England, Wales and Northern Ireland; it is not a peculiarly Scottish aspect.

The Convener: I just wanted to clarify that it applies when you get outwith UK territorial waters, given international conventions about boarding ships.

Keith Main: Yes.

The Convener: That is fine. Thank you very much. That concludes this evidence session. I will suspend the meeting for five minutes before we move to the next item of business. We will have to draft our report on the LCM at our next meeting on 6 January.

11:07

Meeting suspended.

11:15

On resuming—

Subordinate Legislation

Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [Draft]

The Convener: Item 4 is consideration of an item of subordinate legislation: the draft Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014. We took evidence on the draft order from a number of interested parties on 2 December. Today, we will take evidence from the Cabinet Secretary for Justice and his officials before the cabinet secretary moves a motion recommending the approval of the draft order.

The cabinet secretary is still with us. I welcome the Scottish Government officials: Andy Bruce, who was here before and is the deputy director of the community justice division; Kerry Morgan, who is from the community justice division; and Craig McGuffie, who is from the directorate of legal services.

I invite the cabinet secretary to make a brief opening statement. I remind members that this is an evidence-taking session so they can ask questions of all the witnesses, but the next agenda item will be a debate and the officials cannot take part in that.

Michael Matheson: Thank you, convener. I understand that it has been a long journey to get to where we are today. The draft order that is under consideration has benefited greatly from public consultation and the views that the committee previously expressed.

The model that is before the committee provides a system of independent monitoring that relies on volunteers as representatives of civic society and is professional, accountable and, importantly, compliant with the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—OPCAT.

The new system will introduce consistency of practice and effective leadership and governance, and will allow for the better integration of inspection and monitoring. It will promote independent monitoring, raise its profile and ensure that all parts of every prison are monitored regularly. Our priority is to ensure that this reform of independent monitoring delivers the best outcomes for prisoners, safeguards their human rights and fulfils our obligations under OPCAT and the national preventive mechanism.

John Pentland (Motherwell and Wishaw) (Lab): Previous witnesses raised concerns about the independence of the independent prison monitors. Are you satisfied that the revised draft order is fully compliant with the requirements of OPCAT?

Michael Matheson: Obviously, the independence of the independent prison monitors and the way in which that system of monitoring will operate has been important in deciding on the final model that is to be introduced. That is why the responsibility has been placed with Her Majesty's inspectorate of prisons for Scotland, which is independent of the Government and the Scottish Prison Service and is established under royal warrant. Placing the IPMs with the inspectorate ensures that their processes and work are independent. On that basis, we are of the view that the draft order is compliant with OPCAT.

John Pentland: Do you have any comments on the concerns that previous witnesses raised about the independence of the IPMs?

Michael Matheson: We are confident that they are independent. They will operate under HM prisons inspectorate for Scotland, which is independent of the Government.

There are three aspects to the role of the IPMs. The first is the inspections that they can undertake. The second is the programme of monitoring visits that they can undertake in agreement with governors and the programme that they can agree with the prison monitoring co-ordinators, who have an important role in ensuring that we examine all our establishments and all aspects of our establishments. The third is their discretion to decide to undertake monitoring visits themselves. That gives them the flexibility and the independence to undertake a role that will be an important part of the overall way in which we run our prison system.

John Pentland: Will you comment on the prison monitoring advisory group's constitution and clarify the process for appointments to the group?

Michael Matheson: An important part of the advisory group's role is ensuring that it has a level of oversight of how the monitoring system has operated. I understand that Her Majesty's inspectorate of prisons for Scotland's view is that the chair should be independent and that the group should have a range of different stakeholders on it in order to support and inform its work. I think that there has been some indication of the range of individuals and organisations that could be represented. For example, I understand that the chief inspector of prisons would want the Scottish Human Rights Commission to be part of the independent advisory group.

John Finnie: This issue has been around for some time—it has had quite a thrashing about and has come back in various forms. I think you would agree that perception is terribly important here. Some of us know the individuals involved; for example, I know Mr Strang to be an individual of the highest integrity. However, do you understand that some people perceive that rota-ed visits, compared with those that are spontaneous, have an element of control to them that takes away what is understood to be one purpose of such visits—that of a spot check, for want of a better phrase?

Michael Matheson: As I mentioned, there are three ways in which the monitoring visits can take place. A rota-ed visit is not in any way different from any other independent visit that is taking place. It may be that there is less autonomy because it is rota-ed as part of the work programme. However, it is important that we ensure that all our establishments are properly monitored.

The prison monitoring co-ordinators have an important role to play in shaping the work programme to ensure not only that that happens, but that all aspects of the prison are considered. However, there is the option for independent prison monitors to undertake visits without notification. They can do that in addition to a planned visit.

We have a much more comprehensive way of looking at the issue, which I believe to be much more helpful. I understand that some people may argue that the prison monitoring co-ordinators' independence is limited. That may in some way limit their autonomy, but it does not undermine the independence of the monitoring process. Indeed, it allows us to ensure that we have a much more comprehensive view of that process, so that all aspects of our establishments are being effectively monitored. That has not always been the case in the past, so it is important to have a system that is comprehensive, effective and independent.

John Finnie: That is very reassuring. To push you on that point, the perception of rotas and programmes suggests a measure of control that some might believe would be inhibitive. For the avoidance of any doubt, will you confirm that an authorised person can go to any prison at any time if they have concerns about an issue that is outwith the programme?

Michael Matheson: If the independent prison monitor wants to undertake an additional visit outwith the rota programme, they can do so. A visit can be part of the rota that has been agreed with governors; it can be part of the work programme that has been agreed with the prison monitoring co-ordinators; and it can be something that they choose to do on their own for whatever

reason they feel that it would be appropriate for them to do so.

John Finnie: That is very reassuring. On 2 December, we heard evidence from the Scottish Human Rights Commission—it has contributed throughout the process—and it would be fair to say that, while it is not against the proposal, its endorsement is less than compelling; at least that is my summary of its position. Would you welcome the SHRC's continued involvement in the process? I assume that, if agreed, the operation of the new system will be evaluated.

Michael Matheson: I very much welcome the SHRC's continued involvement. The SHRC has an important part to play in taking forward the new prison monitoring programme. That is why I understand that Mr Strang is keen for the SHRC to be a member of the advisory group and for the group to have an independent chair.

You touched on an important aspect, which is that we must evaluate how the new monitoring system is going, at an appropriate point. I have no doubt that the advisory group will flag up things that need to be improved or are not working effectively, so that those matters can be addressed. If there are issues for the Government to take forward, I will be more than happy to explore them with the group, when there has been a full assessment of the work that it has been undertaking.

John Finnie: Thank you; that is welcome.

Roderick Campbell: Still on the Scottish Human Rights Commission, in evidence to the committee Mr Adamson expressed concern that resources might be taken away from unannounced visits to support rota visits and additional visits. What reassurance can you give that that will not be the case?

Michael Matheson: There is a danger of my compromising the independence of the approach if I start to prescribe what will happen. I am keen for a balance to be struck between the ad hoc monitoring visits, the work programme that is agreed with the prison monitoring co-ordinators and the programme that is agreed with individual prisons. I am sure that that will happen.

I am keen to ensure that all establishments are effectively monitored, on an annual basis, on all aspects, and that reports can inform us about changes or improvements that are needed and about good practice that can be shared with the other establishments. I do not want to get into a situation in which I am in danger of prescribing how much of one thing or the other there should be. I have no doubt that it will be in the interests of the chief inspector of prisons and the advisory group to ensure that a balance is struck between unannounced visits, visits that are part of the

programmed work and visits that are part of the agreed programme with prison governors.

I think that I am right in saying that even work that is agreed with prison monitoring co-ordinators can be unannounced. Some of the programme will be agreed with governors, but there are other aspects of it. Prison monitoring co-ordinators must ensure that all our prisons are covered and that as many aspects as possible are considered, and visits in that work programme can be unannounced.

Roderick Campbell: Pete White, from Positive Prison? Positive Futures, told us:

"I think that the conduct of the independent monitors will determine how they are viewed by prisoners. They will have to develop a way of working that builds trust, but it sometimes takes a personality, rather than an order, to make that happen."—[*Official Report, Justice Committee, 2 December 2014; c 6.*]

Do you agree?

Michael Matheson: We must consider where a prisoner might be in terms of their level of trust in an individual and willingness to disclose information to them. It is extremely important that independent monitors can reassure prisoners that they are trustworthy and can provide the support and guidance that they require, so personal relationships are key.

Part of that will be about ensuring that monitors are trained effectively and have the necessary skills and attributes to be able to build relationships. In a prison, trust can be at a premium at times, so it is extremely important that the individuals who undertake monitoring and engage with prisoners are able to offer the reassurance and support that are required if a prisoner is to disclose information that they think it appropriate to disclose.

Christian Allard: I will ask about our next steps today. As John Finnie said, we have been talking about the matter for a long time. Professor Coyle told the committee that he was not sure that we should sign off the order, whereas Dr McManus said, "Let's get this going." One implication of our recommending approval of the order is that we will be OPCAT compliant. What would be the implications for prison visiting in Scotland of the order not being recommended for approval today?

Michael Matheson: If the motion is not passed today, the status quo will apply. If the motion was not passed, we would not change the system to the model that is outlined in the order. In effect, we would have the status quo.

11:30

Christian Allard: Apart from the fact that we will not be OPCAT compliant—

Michael Matheson: The existing model is not OPCAT compliant, but the new model is OPCAT compliant.

Christian Allard: Thank you.

The Convener: Is that it? Excellent.

Margaret Mitchell: No.

The Convener: Do you have another question? I did not mean "Is that it?" for all members—just for Christian Allard. Do not panic, Margaret. We will have Elaine Murray, followed by Margaret Mitchell.

Elaine Murray: A recent addition to the monitoring duties has been the requirement to oversee the temporary release of prisoners. Will you explain more about what that means?

Michael Matheson: Kerry Morgan is best placed to give you more detail on that addition. In part, it reflects the feedback that we had from the consultation process; we have had several consultations over the year. Some aspects have been a result of the feedback that we received during the consultations.

Kerry Morgan (Scottish Government): The addition was made to the order in the light of legal advice that Craig McGuffie can describe better. We did not want to be in the position where a prisoner wanted to speak to an independent monitor about aspects of their temporary release but, because temporary release was not stipulated in the order, they could not do so. For example, if a prisoner wanted to discuss with an independent monitor the transport to their temporary release location or their temporary release being cut short, we did not want that discussion not to be possible legally because we had not included the words that are now in the order. Craig McGuffie can describe better the legal position.

Craig McGuffie (Scottish Government): The issue arose during the drafting process. The powers that we previously gave the chief inspectorate to inspect prisons and the treatment of prisoners and the powers that we gave prison monitors to monitor prisons and the treatment of prisoners referred to the treatment of prisoners within prisons. We were concerned that the words "within prisons" might create a loophole that would prevent the chief inspector from inspecting the arrangements for temporary release and, similarly, prevent prison monitors from monitoring those arrangements.

We considered taking out the words "within prisons" but, following discussions with parliamentary counsel, it was decided that that would not be enough to close the loophole. That is why a paragraph was added. It is intended not to create a significant extra burden on prison monitors but to close a potential loophole that

might have prevented temporary release arrangements from being considered.

Elaine Murray: Will that be made clear in guidance? The provision is open to the interpretation that it is putting an onerous responsibility on monitors.

Michael Matheson: Additional guidance will go alongside the work, and it will include aspects of how the order will operate.

Elaine Murray: There are concerns about what looks like a requirement for monitors to use the official complaints system of the SPS, although some prisoners do not have confidence in the official system. Can you clarify—*[Interruption.]*

The Convener: I am sorry; I am just checking whether you are asking about complaints. There are voices on either side of me, and some in my head as well, so there you are.

Michael Matheson: As long as it is not complaints from either side of you.

The Convener: Sometimes it is, cabinet secretary, but I ignore those.

Michael Matheson: There are two aspects. There is a formal complaints process, which has been reviewed and changed. Additionally, complaints about the Prison Service can now go to the Scottish Public Services Ombudsman. Improvements have been made to the SPS complaints process.

If an issue was raised with an independent prison monitor that they wished to pursue directly, they would also have the opportunity to do that.

Elaine Murray: Will they still—

Michael Matheson: The monitor would still be in a position to do that. Outwith that, there is the formal prison complaints process, which has been enhanced and which now extends into the SPSO, which it did not do previously. That has been improved.

Elaine Murray: Would it be open to a prisoner, in discussion with a monitor, to decide that they do not want to take the official route and would rather take a more informal route?

Michael Matheson: That would be at the prison monitor's discretion, if they felt that the formal complaints process might not be the most appropriate route. The decision would depend on the complaint and how the prison monitor felt it could be taken forward most effectively.

Elaine Murray: Professor Coyle felt that the draft order was weaker than the existing legislation on prisoners' capability to take things up directly.

Michael Matheson: There is and has always been a formal complaints process, and the order

does not change that. However, the way in which the independent prison monitors will be established under the order means that they will be able to pursue a complaint directly if they feel that to be the most appropriate course of action.

As we have all found, sometimes the best way of dealing with issues raised by constituents is to engage directly with the organisation concerned and sometimes the best way is to go through the formal complaints process. That all depends on the complaint, but the order provides flexibility for the independent prison monitor to take such action if they so choose.

Margaret Mitchell: On the complaints system, I understand that the draft order was consulted on in September and redrafted in November. Monitors' role in handling complaints was removed in September—without warning, it would be fair to say—and then partly reinstated in November. If I understand the situation properly, the SHRC and the Howard League Scotland have expressed concern that the proposal for independent prison monitors to assist with existing internal complaints weakens the process. Is that the case?

Michael Matheson: As I have outlined, monitors can assist an individual prisoner to pursue a complaint through the complaints process—

Margaret Mitchell: Are you talking about the internal complaints process?

Michael Matheson: Yes—the internal SPS complaints process.

Margaret Mitchell: I think that that is the concern.

Michael Matheson: That process can lead to the Scottish Public Services Ombudsman; as that is an external body, a complaint would therefore go outwith the SPS. That is the normal complaints process.

An independent prison monitor has an opportunity to take up in an establishment or in the SPS an issue that a prisoner has raised with them. Kerry Morgan might be able to offer a wee bit more background on how that came about.

Margaret Mitchell: Before Kerry Morgan does that, I should make it clear that the crucial point is about monitors helping with the internal complaints system. According to previous evidence, that might compromise their independence in prisoners' eyes. As a result, there is a human rights issue to address.

The Convener: I have a feeling that that point was answered in the earlier kerfuffle, but perhaps the cabinet secretary will clarify the matter.

Michael Matheson: The issue is about choice. If an independent prison monitor wants to assist a

prisoner through the complaints process, the complaint might at some point go to the SPSO, which is outwith the SPS and is independent in such matters. I am not entirely sure how that will compromise the monitors' independence, and I am not entirely clear how those who have expressed such concerns have arrived at that view.

I point out that an independent prison monitor can pursue an issue directly through an establishment and the SPS. As I have said, I am not entirely sure how the view that you described was arrived at and, from what you have said, I think that it is not necessarily a view that I share.

The Convener: You keep talking about raising a complaint with the SPS, but can an issue that a prisoner raises with an independent prison monitor be taken to a prison governor without having to go through that process? I think that that is the point.

Michael Matheson: Of course it can. The independent prison monitor can go directly to the governor about an issue that has been raised with them; they do not have to go through the formal complaints process.

Kerry Morgan: I should point out that the independent prison monitor can, as they see fit, go directly to the governor with any issue that a prisoner or any person in the prison has raised with them. They can also go to the chief inspector of prisons, who can raise the matter with Scottish ministers or come to the Parliament.

As for the independent prison monitors' role in the formal complaints process, we are talking about assisting prisoners who might have literacy issues and who might not understand the system. It is all about assisting a prisoner who has decided to go through the formal process; it is not about the independent prison monitor being seen as part of the system that is dealing with the complaint.

Margaret Mitchell: I understand that, but the cabinet secretary will understand that perception is everything. The point that was made was that, if prison monitors chose to help—if prisoners chose to involve monitors in their complaints—that might be seen as compromising the monitors' position.

How many independent prison monitors are envisaged? Moreover, is there any idea of or provision for the number of visits that they will make?

Michael Matheson: Establishments should be visited on an annual basis and a range of visits should take place across the year. The issue is about the visits taking place rather than the number of independent prison monitors. Once the system is established, it will be for the inspectorate to determine how many monitors are required. There will be three co-ordinators with responsibility, and they will require a sufficient

number of independent prison monitors to undertake the visits that will be carried out.

Under the order, establishments will require to be monitored weekly, and there will have to be enough independent monitors to allow that to happen. The important aspect is the frequency rather than the global numbers that are brought on board to act as independent prison monitors. That will be determined on the basis of the need to carry out the frequent monitoring visits, as the inspectorate will need a cohort of staff that can undertake that workload.

Margaret Mitchell: The difficulty is with capacity for the three types of visit that you have mentioned and with the rota. We then have the fact that visits have to be approved by or co-ordinated with the prison governor, and the fact that some visits will be made without prior notice. There is a concern that visits without prior notice might slip if more predominance, influence or priority is given to other elements. Do we have any idea how many independent monitors we might need or how many visits we are talking about?

Michael Matheson: I am not specifying how many monitors there should be, so I do not know how their capacity can be questioned. If I said that we should have five, you might say that there would be issues of capacity and their ability to undertake the range of work, but we are not specifying a number; we are specifying the frequency with which visits should take place.

A weekly monitoring visit needs to take place, and there is a programme of work to ensure that all the establishments are covered on that regular weekly basis and that all aspects of establishments are considered. It will be for the chief inspector of prisons, along with the advisory group, to determine the right number of monitors to have in order to get the right complement of monitoring visits taking place to the frequency that the order sets out. I do not understand how capacity can be questioned if we have not specified the number.

Margaret Mitchell: Will all this—the number of visits and the number of independent monitors to be appointed—be left to guidance?

Michael Matheson: The frequency of visits is set out in the order.

Margaret Mitchell: Will the number of independent monitors be set out in guidance?

Michael Matheson: That will be taken forward by the chief inspector of prisons, who will determine with the advisory group how many monitors are needed to meet the requirement that is set in the order for weekly monitoring visits to be undertaken.

Margaret Mitchell: Will the issue be covered in guidance, along with the monitoring of temporary release arrangements that independent monitors are to be asked to carry out?

Michael Matheson: We are not specifying the number or determining how many we should have. We have been questioned about the monitors' independence. We are not saying, "This is how many you should have," because people would then say that we were limiting the number to ensure that monitors could do only X, Y or Z. We are saying to the inspectorate, "You have to do at least one monitoring visit per week in every establishment in Scotland. It is for you to determine how many independent monitors you require to have the capacity to achieve that." We are not constraining the inspectorate. We are giving it the opportunity to determine how many monitors it requires to do the job.

Margaret Mitchell: My difficulty is with the scrutiny. Would the cabinet secretary agree to any additional guidance having statutory scrutiny or being subject to a statutory review?

Michael Matheson: We are getting into the territory of my limiting the role. Part of the purpose of having it undertaken by the chief inspector of prisons is for them to determine the process and how it will operate. If I started issuing statutory guidance and saying, "This is how many you require," I could be accused of compromising the inspectorate's independence by defining and constraining the position.

We are creating the ground rules and stating what is expected and the visits that are required. We have put in place the advisory group, which will be responsible for monitoring and evaluating how the system is operating, and the chief inspector has indicated that he would prefer an independent person to do that. The group will involve stakeholders such as the Scottish Human Rights Commission, and if it were determined that, for example, the number of independent monitors who were appointed was insufficient to undertake the work effectively, I would expect the chief inspector of prisons to respond to that. If I started determining how many monitors there should be and within what constraints they should operate, I would be compromising the independence that is such an important part of the new model.

11:45

Margaret Mitchell: There is a balance to be struck between interfering and having the appropriate checks and balances, and that is what I fear there may not be, under the order as laid.

The Convener: That is more of a debating point, which we will come to later.

Michael Matheson: Yes, I think that it is.

The Convener: As no one has asked about it, I shall ask about the personnel who will make up the important independent prison monitoring committees. Such people are generally of a certain ethnicity and age—they are often retired.

As the relationship between monitors and prisoners is so important, it would be good if prisoners could relate to the parties who are coming in. One issue that prevents many people from becoming monitors is that they do not get time off work with pay to do the role. Is there any way of addressing that? It is not a matter for legislation, but there must be a way of addressing it. It must be difficult for some prisoners to relate to certain people who are coming in. It is not that there is anything wrong with those people, but they are from different backgrounds and are a different age, so it is difficult to talk to them about intimate details.

Has any thought been given to extending the pool of people who can become monitors by giving them paid leave from work? I understand that that happens if people who are involved in the General Teaching Council for Scotland or the Scottish Environment Protection Agency need time off from local authorities. Can that imbalance be addressed?

Michael Matheson: The intention is to recruit as widely as possible for individuals who would be attracted to taking on the role of independent prison monitor. We encourage as wide a range of individuals as possible to apply. There are technical issues around aspects of payment and legislation in that area, and Craig McGuffie can probably offer a bit of legal advice on the complexities.

I assure the committee that our intention is that independent prison monitors should be as reflective of our society as possible. When the opportunities are advertised, I have no doubt that committee members will know of individuals who would be suitable for such a role, and I would be keen for you to encourage them to consider applying.

The Convener: I think that you will agree that the problem is that the additional duties make it extremely difficult for somebody in employment who will not get time off with pay to take up such a post, so we are likely to get the same decent people coming in from the same catchments. Is there any way of changing that? I look at Mr McGuffie with anticipation.

Craig McGuffie: The difficulty is that we consider the issue to be outwith the Parliament's legislative competence. Paragraph 2 of schedule 4 to the Scotland Act 1998 provides that

“the Scottish Parliament cannot modify, or confer power by subordinate legislation to modify, the law on reserved matters.”

The subject matter of the Employment Rights Act 1996 is reserved, although we can make consequential changes.

The Convener: Is there any way of addressing the issue in liaison with the UK Government? I think that what I described happens elsewhere in the UK and it seems a fairly reasonable thing to do if we want to make the system work.

Craig McGuffie: Potentially. The last change to section 50 of the Employment Rights Act 1996, to add a Scotland-based body, was in connection with water legislation, and I think that a legislative consent motion was required to make that change. It is possible that an LCM could be agreed.

The Convener: I just wanted to put another thing in your in-tray, cabinet secretary, as I know that you do not have enough to do.

Michael Matheson: Of course not—the suggestion is much appreciated. We will certainly consider it further.

The Convener: The committee generally felt that a fair point had been made. It is the people who make the prison monitoring system work. The process might be fine, but it is the quality and range of people who will make it successful.

We move to agenda item 5, which is the formal debate on motion S4M-11850. I invite the cabinet secretary to move the motion.

Motion moved,

That the Justice Committee recommends that the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [draft] be approved.—[*Michael Matheson.*]

Margaret Mitchell: On the basis of the evidence that we have had last week and this week, it is with regret that I must say that I do not think that the order provides a better system. There are too many questions and far too much is being left to guidance. The development of the guidance is being led by an SPS deputy governor. I do not question her integrity for a moment, but it is inevitable that she will look at things from an SPS viewpoint.

For all those reasons, I think that we will end up with an inferior system. We are using a sledgehammer to crack a nut in bending over backwards to be OPCAT compliant. In other jurisdictions, the function has been taken over by the ombudsman. If that had happened, that would have been the end of the story: it would have rectified what was already a good system. It was not a perfect system, but it was a good one that could, with a little tweaking, have been improved.

Roderick Campbell: I reflect on the fact that this matter has a long history and it has taken us a long time to get to where we are today. It is important to reflect on the fact that the distinctions between inspection and monitoring came out well in the evidence. I was very impressed by David Strang’s evidence, in which he explained that they are complementary but distinct.

The Scottish Human Rights Commission has expressed concerns. I am reassured by what the cabinet secretary has said, but I hope that we will continue to recognise—as OPCAT requires us to—the importance of the unannounced visit.

We have dealt with the complaints procedure comprehensively. I reiterate what Dr McManus said in evidence:

“We have to bolster the SPS process rather than subvert it.”—[*Official Report, Justice Committee, 2 December 2014; c 31.*]

As far as the advisory group is concerned, I am reassured by what the cabinet secretary said. The proof of the pudding will be in the eating, and I wish the new system well.

Elaine Murray: I am in a bit of a quandary. I accept that a lot of progress has been made since the original order and that attempts have been made to address many of the issues. The problem for me is that I am not yet convinced that what is proposed is the best model. Professor Coyle is not convinced that it is the best model, either. It can be argued that a system that is more like the one in England and Wales might be preferable—I think that that was Professor Coyle’s preferred model.

I need the minister to convince me that there is a reason not to start again and reconsider the model. I need to be convinced that we are not settling for something inferior in proceeding with the system that the Government is proposing instead of ripping it up and starting again with a completely different model.

John Finnie: I had reservations that were apparent in my line of questioning last week. The issue has been on the go for a long time. The crucial question was posed by my colleague Christian Allard, who asked whether the present system is OPCAT compliant. It is not, but the system that is proposed is OPCAT compliant. Is anything perfect? We strive for perfection, but I have been reassured by what I have heard today about on-going monitoring and the role that the Scottish Human Rights Commission—which has been critical—will have to play. For that reason, I think that we should go ahead with what is proposed, while always looking to improve.

The Convener: My starting position was that what was in place previously was very imperfect. There were some very good prison visiting committees and some pretty poor ones, as we

know from evidence that we had before the proposals were redrafted. I had concerns about the rota system, but I am content with the explanation that we have had. The rota system will provide a context, or a backcloth. Such a system is very distinct from an inspection. By visiting a place regularly, it is possible to get a sense of the changes that are taking place. That will not impede ad hoc inspections by IPMs, so I am content with that.

Now that I have heard further evidence, I am also more content with the complaints process. I was concerned that if prisoners had to go through the formal process in the place about which they were complaining, although that might be appropriate, it might also be the last thing that they would want to do, if they had difficulty in writing or putting down their words, but I was pleased when I heard that it will still be possible to make complaints through the IPM directly to the governor and to bypass the formal process if that is appropriate. That is a lot better. Having the SHRC on the advisory group has made a big difference.

The order is not perfect, but I have yet to see a piece of legislation that is. Some of the legislation over the years has been terrible—I will not name names, but it has happened under various Scottish Executives and the Scottish Government. The order that is before us is a darn sight better, and my position is that we should suck it and see. Enough markers have been put down in evidence to the committee, and if the order turns out to be flawed we will be the first—I will be, at least; I cannot speak for anyone else on the committee—to jump on it.

Given all that, and some caveats about how the order will operate, all the matters that we have discussed have now been put in position, and I am content to support the order. I am happy to hear further words from the cabinet secretary about my colleagues' concerns.

Michael Matheson: Thank you, convener. I appreciate all the comments from members, and I appreciate that some members continue to have anxieties and concerns.

It is important to recognise that our prison visiting committees have, over many years, undertaken a lot of good and important work and have played an extremely valuable role. Despite our proposal to change the system, I do not want to underestimate that important role or the contribution of all the volunteers who have participated in them over the years.

The proposed new model will allow us to have in place in our prisons a much more effective monitoring regime that is independent of Government and the prison system. It will give us

an additional level of understanding of what is going on in our prison estate and, over and above that, of our independent inspection regime for prisons. That regime is a very robust mechanism and inspections take place regularly.

If members listened to “Good Morning Scotland” earlier today, they would have heard the chief inspector’s most recent findings from HMP Shotts. We have a strong and robust independent inspection regime, and the independent monitoring model that we propose will be effective and will give us an additional level of confidence around independent monitoring.

I am with the convener on this one—

The Convener: My goodness! That is breaking news.

Michael Matheson: It is the sort of issue for which other models with various pros and cons could be proposed. We have sought to strike a balance in our approach, hence the length of time that it has taken to arrive at this particular point, and the variety of consultations and changes that have been made during that time to address some of the concerns and to accommodate changes to improve the order.

I acknowledge that some members feel that we have not gone far enough, but the system will be OPCAT compliant, and the process will help to improve our prison estate and to ensure robust and independent monitoring.

I believe that we have in place the right safeguards to enable us to monitor effectiveness and, if necessary, to make further changes, should any be required in the future. The model is certainly better than what we have at present, and it is worthy of the committee’s support.

The Convener: I want to clarify something important. You said that changes would be made “should any be required”. How would those changes be made? I am sorry to come in again after your summing up, but that point is quite important.

Michael Matheson: If after a period there are issues—if people feel that there is a deficiency in the model’s operation, for example—we should consider them to see where any changes may be required.

I am confident that we have a model that will work but, as ever, the test will be how it operates. If deficiencies are identified at some point in the future, I am open to looking at how those can be addressed.

The Convener: Thank you. We now move to the question at item 5.

The question is, that motion S4M-11850 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allard, Christian (North East Scotland) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Finnie, John (Highlands and Islands) (Ind)
 Grahame, Christine (Midlothian South, Tweeddale and
 Lauderdale) (SNP)
 Murray, Elaine (Dumfriesshire) (Lab)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)

Against

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Motion agreed to,

That the Justice Committee recommends that the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 [draft] be approved.

The Convener: Thank you, cabinet secretary. Members will be aware that we are required to report on all affirmative instruments. Are members content to delegate responsibility to me to sign off on the report?

Members indicated agreement.

The Convener: We can bring the report back to the next meeting. Thank you.

Civil Jurisdiction and Judgements (Protection Measures) (Scotland) Regulations 2014 (SSI 2014/333)

12:00

The Convener: Item 8 is a negative instrument that will facilitate the application of Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters. The regulation is part of a package that aims to strengthen victims' rights, and is designed to complement the European Protection Order Directive and related regulations, which we have just considered.

The Delegated Powers and Law Reform Committee has not drawn Parliament's attention to the instrument. Do members have any comments on it?

Roderick Campbell: It is important to mention that the Scottish Government considers that the definition could, for example, cover interdicts and civil non-harassment orders. Although the Government says that it does not expect much business, I would have thought that it would cover more than the criminal procedure, which we are not considering.

The Convener: Thank you for that note. Are members content that we make no recommendations in relation to the instrument?

Members indicated agreement.

The Convener: We now move into private session.

12:01

Meeting continued in private until 12:58.

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