



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 27 September 2016**

**Session 5**



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**Tuesday 27 September 2016**

**CONTENTS**

	<b>Col.</b>
<b>SUBORDINATE LEGISLATION</b> .....	1
First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 [Draft].....	1
First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 [Draft].....	1
First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016 [Draft].....	1
Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 [Draft].....	1
First-tier Tribunal for Scotland (Chambers) Regulations 2016 [Draft].....	1
First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 [Draft].....	1
First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 [Draft].....	1
Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231).....	5
Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (SSI 2016/232).....	5
<b>INVESTIGATORY POWERS BILL</b> .....	6
<b>PETITIONS</b> .....	27
Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501).....	27
Fatalities (Investigations) (PE1567).....	27
Justice for Megrahi (PE1370).....	29
Emergency and Non-emergency Services Call Centres (PE1510).....	30
Inverness Fire Service Control Room (PE1511).....	30

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**JUSTICE COMMITTEE**  
**5<sup>th</sup> Meeting 2016, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*Mairi Evans (Angus North and Mearns) (SNP)  
\*Mary Fee (West Scotland) (Lab)  
\*John Finnie (Highlands and Islands) (Green)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)  
\*Liam McArthur (Orkney Islands) (LD)  
\*Oliver Mundell (Dumfriesshire) (Con)  
\*Douglas Ross (Highlands and Islands) (Con)  
\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Annabelle Ewing (Minister for Community Safety and Legal Affairs)  
Assistant Chief Constable Steve Johnson (Police Scotland)  
Michael Matheson (Cabinet Secretary for Justice)  
Detective Superintendent Brenda Smith (Police Scotland)  
Graeme Waugh (Scottish Government)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)

# Scottish Parliament

## Justice Committee

Tuesday 27 September 2016

*[The Convener opened the meeting at 10:00]*

### Subordinate Legislation

**First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 [Draft]**

**First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 [Draft]**

**First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016 [Draft]**

**Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 [Draft]**

**First-tier Tribunal for Scotland (Chambers) Regulations 2016 [Draft]**

**First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 [Draft]**

**First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 [Draft]**

**The Convener (Margaret Mitchell):** Good morning and welcome to the fifth meeting of the Justice Committee in 2016.

Agenda item 1 is consideration of seven Scottish statutory instruments that are subject to the affirmative procedure; all relate to implementation of the Scottish tribunals system. It is my pleasure to welcome to the committee Annabelle Ewing, the Minister for Community Safety and Legal Affairs. As this is the minister's first appearance before the committee, I want on behalf of the committee to congratulate her on her appointment, and to say that we look forward to working with her and her team in the future. I am sure that this will be the first of many appearances before the committee.

With the minister this morning are Sandra Wallace and Hannah Frodsham from the Scottish Government civil law and legal system division,

and John St Clair from the Scottish Government directorate for legal services. I remind members that the officials are permitted to give evidence under this item, but may not participate in the formal debate on the instruments under agenda item 2.

I refer members to papers 1 and 3 in the meeting papers and ask the minister whether she wishes to make a short opening statement.

**The Minister for Community Safety and Legal Affairs (Annabelle Ewing):** Thank you, convener. It is a pleasure to be here for my first appearance before the committee. I, too, look forward to working with the committee in what I think will be a very busy couple of years for all of us.

Before I start, I refer members to my entry in the register of members' interests, where members will find that I am a member of the Law Society of Scotland and hold a current practising certificate.

I am pleased to be here to discuss a suite of fairly technical regulations that will set up the initial structure of the Scottish tribunals system, and will transfer in the first of its jurisdictions.

First of all, I will give a brief overview of the instruments that are before the committee today. The First-tier Tribunal for Scotland (Chambers) Regulations 2016 divide the First-tier Tribunal into what at this stage will be five chambers: the mental health chamber, the housing and property chamber, the health and education chamber, the general regulatory chamber and the tax chamber. Separation of the first tier into chambers will protect the specialist knowledge and expertise of the separate jurisdictions.

The First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016 specify the type of member who will hear cases in the housing and property chamber, and the composition, which will mirror the existing composition of the two housing jurisdictions that will transfer into the Scottish tribunals structure in December. The draft regulations also set out the composition of the Upper Tribunal when hearing appeals from the housing and property chamber, and allow for a sheriff to hear appeals—which, again, mirrors the status quo, as appeals are currently heard in the sheriff court. It will be for the president of tribunals to determine who hears the appeals, and the president may also select herself—Lady Smith is the current president—the chamber president or the Lord President, if that is felt appropriate.

The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 create offences and specify the possible levels of fines and terms of imprisonment for committing an offence in

proceedings. The aim is to standardise offences across the First-tier Tribunal: such proceedings currently vary from tribunal to tribunal.

For the sake of brevity, convener, I will summarise together the other four sets of regulations, which are the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016; the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016; the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016; and the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016. They will transfer the functions and members of two housing jurisdictions to the First-tier Tribunal and will amend existing housing legislation to replace the various references to the committees and panels with references to “the First-tier Tribunal”. The current president of tribunals will transfer into the new structure as the president of the housing and property chamber. In addition, the regulations set out the transitional procedures for cases that are in progress on the date of transfer. As the individual panels and committees are listed separately in the Tribunals (Scotland) Act 2014, each of the jurisdictions needs to be dealt with by way of separate instruments, hence these four instruments.

That was a brief overview of the regulations. I will be happy to answer members’ questions.

**The Convener:** Thank you very much, minister. That was helpful. It seems that there are no questions from members, so would you like to make any closing remarks?

**Annabelle Ewing:** No.

**The Convener:** We move straight to agenda item 2, which is formal consideration of the motions on each of the seven affirmative instruments. Each motion will be moved, and there will then be an opportunity for a formal debate on each SSI. In practice, I expect that many of the issues will already have been covered. I shall take each in turn. The first motion is S5M-01516.

**Annabelle Ewing:** Having described briefly the instrument in my previous comments, I shall simply move the motion formally.

I move,

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Panel) Regulations 2016 [draft] be approved.

**The Convener:** As there are no questions from members, does the minister wish to make any closing remarks?

**Annabelle Ewing:** No.

**The Convener:** The question is, that motion S5M-01516 be agreed to. Are we agreed?

*Motion agreed to.*

**The Convener:** The second motion is S5M-01517. I invite the minister to speak to and move the motion.

**Annabelle Ewing:** I have no further comments.

I move,

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 [draft] be approved.

*Motion agreed to.*

**The Convener:** The third motion is S5M-01518. Would you like to make any comments, minister?

**Annabelle Ewing:** I have no further comments.

I move,

That the Justice Committee recommends that the First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016 [draft] be approved.

*Motion agreed to.*

**The Convener:** The fourth motion is S5M-01519. Do you want to make any remarks, minister?

**Annabelle Ewing:** I have no further comments.

I move,

That Justice Committee recommends that the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 [draft] be approved.

*Motion agreed to.*

**The Convener:** The fifth motion is S5M-01523. I invite the minister to comment.

**Annabelle Ewing:** I have no further comments.

I move,

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Chambers) Regulations 2016 [draft] be approved.

*Motion agreed to.*

**The Convener:** The sixth motion is S5M-01524. I invite the minister to comment and to move the motion.

**Annabelle Ewing:** I have no further comments.

I move,

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 [draft] be approved.

*Motion agreed to.*

**The Convener:** The seventh and final motion under this agenda item is S5M-01525. Minister, would you like to speak to and move the motion?

**Annabelle Ewing:** I have no further comments.

I move,

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Private Rented Housing Committees) Regulations 2016 [draft] be approved.

*Motion agreed to.*

**The Convener:** That concludes consideration of the affirmative instruments. The committee's report will note and confirm the outcome of the debate on all seven SSIs. It remains for me to thank the minister and her officials for their appearance before the committee.

I seek the committee's agreement to delegate authority to me as convener to clear the final draft report. Are members content with that?

**Members indicated agreement.**

**The Convener:** I suspend the meeting briefly to allow the minister and her officials to leave.

10:10

*Meeting suspended.*

10:11

*On resuming—*

### **Scottish Tribunals (Time Limits) Regulations 2016 (SSI 2016/231)**

#### **Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (SSI 2016/232)**

**The Convener:** Agenda item 3 is consideration of two Scottish statutory instruments that are subject to the negative procedure. These instruments also relate to implementation of the new Scottish tribunals. I refer members to paper 2.

Members have no comments, so do we agree that we do not wish to make any recommendation on the instruments?

**Members indicated agreement.**

**The Convener:** I again suspend the meeting briefly to allow the next panel to take their seats.

10:12

*Meeting suspended.*

10:18

*On resuming—*

## **Investigatory Powers Bill**

**The Convener:** Item 4 is consideration of a legislative consent memorandum on the Investigatory Powers Bill. We will hear from Police Scotland and then from the Cabinet Secretary for Justice. I remind members that our consideration will inform a report to the Parliament on whether a legislative consent motion in relation to the bill should be agreed to. We will consider a draft report next week.

I welcome Assistant Chief Constable Steve Johnson and Detective Superintendent Brenda Smith, from Police Scotland, to the meeting. I invite questions from members.

**John Finnie (Highlands and Islands) (Green):** I thank the witnesses for their attendance. There is always a balance to be struck between pursuit of an inquiry and intrusion into privacy. What options do you consider before you seek some of the authorisations that are available to you?

**Assistant Chief Constable Steve Johnson (Police Scotland):** The quick answer is that we explore all the options that are available to us. We look for the most and least intrusive means of conducting the investigation, which can be anything from normal street patrols and street investigations, conducted by our uniformed officers, right the way through to covert inquiries that use surveillance units and so on. We try to explore all the options that are available to us.

If we do not use an option, it has probably been ruled out because we have deemed that it would frustrate the purpose of the inquiry or the investigation in the first instance. There is a range of investigative opportunities for us prior to resorting to the tactic that we are talking about.

**John Finnie:** Thank you. Can you explain what significance is afforded to collateral damage through intrusion into other individuals' privacy when you make decisions about the pursuit of certain courses of action?

**Assistant Chief Constable Johnson:** On collateral intrusion, one of my key aims as the authorising officer is being clear about the information or intelligence that we are seeking to identify in terms of the subject of the application. The officers then have to tell me where they believe that collateral intrusion will occur and at what level it will be. For example, if a subject who lives among a wider family goes to visit their mother and father, it would be deemed collateral intrusion if I gained information about the mother and father, because they are not the subject of the application. I seek to minimise that by saying that,

if we know the times and dates when such visits take place, we will concentrate our activity on periods when we know that we can focus on the subject of the application rather than have other people involved. We ask the officers to be very specific and detailed, so that we can minimise collateral intrusion.

**John Finnie:** That is very reassuring, but nonetheless information will be acquired that is not necessarily pertinent to what you are pursuing. What happens about that?

**Assistant Chief Constable Johnson:** I hand over to Brenda Smith to explain how we manage the deletion of that material.

**Detective Superintendent Brenda Smith (Police Scotland):** In preparing the case for the subject, we prepare a background and do due diligence around that to understand whether the subject has family and who they are, whether they stay with each other and what their lifestyle and activities are so that we have a good understanding of what the individual does in terms of criminal activities. When we monitor that individual, we therefore have an understanding of what they do so that we can focus on certain aspects and times to minimise the collateral intrusion around that individual. For instance, if they were at home, we would monitor them only when they were at home. If we pick up collateral information on members of their family, we cannot know what we know but we do not continue with the information: we would not collect the information and we would not record it.

**John Finnie:** Do you make a recommendation to the authorising officer? Is that what you do when you scope the individual's background?

**Detective Superintendent Smith:** Yes. We would document in the application process exactly what we had done regarding the individual's background.

**John Finnie:** Have there ever been instances in which your recommendation has not been taken up?

**Detective Superintendent Smith:** No.

**John Finnie:** Never?

**Detective Superintendent Smith:** No.

**John Finnie:** Right.

I have a question about your relations with United Kingdom-wide agencies and the security services. Are you aware of their activities and have they sought authorisations that you yourself can seek?

**Assistant Chief Constable Johnson:** If we are working together with those agencies, we consider who is the most appropriate agency to submit an

application in terms of what they are seeking to achieve, whether it is in Scotland or in the broader UK. We work with those colleagues, and the principles of the Scottish crime campus are that we liaise with those other agencies that have the same powers as us so that we are not duplicating effort and are focusing in on individuals and not looking twice at the same people. That could not happen, given the way in which the application process happens, but we have a dialogue with those agencies as well.

**John Finnie:** Could they be the lead agency regarding investigation of crime in Scotland?

**Assistant Chief Constable Johnson:** It very much depends on what the investigation is, but yes, absolutely. The National Crime Agency or the security services could lead in investigations. If they do, they consult us on the jobs that we are aware of. However, for those jobs that we are not aware of, they put in their applications via their own means.

**John Finnie:** So it is conceivable that there are operations on-going in Scotland that you are unaware of.

**Assistant Chief Constable Johnson:** It is conceivable but, as I said, through the Scottish crime campus and the relationships that we have with those other agencies, we would normally be more likely to know about an operation than not.

**John Finnie:** Many thanks.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I want to probe how data is dealt with electronically and some of the implications around that, picking up in particular on what Ms Smith said earlier about not collecting or recording data when there is collateral intrusion. I just want to probe what that means. I assume that when collateral intrusion is involved in circumstances in which the data sought and received is electronic, it ends up in some form on police computers. Is that a reasonable assumption?

**Detective Superintendent Smith:** Are we talking about the intercept or the communications data aspect?

**Stewart Stevenson:** I accept that my question is a more general one that goes beyond the bounds of what we are dealing with today. I am trying to get some understanding of the operational processes around data, but my question is triggered by what is being said in relation to the Investigatory Powers Bill.

**Detective Superintendent Smith:** Any activity that we do is targeted against a specific individual or group of individuals, therefore the authority that we have in place is in relation to the authorised purpose—it may perhaps be murder, abduction, drug dealing and so on—against specific

individuals. The activity is targeted initially, so should a set of circumstances arise whereby the person is not utilising whatever we are monitoring, that is picked up very quickly and, once it is picked up, the data is discarded. As I said, we cannot unknow what we know, but we do not take it further.

**Stewart Stevenson:** To be clear, we are being told that if data comes to your attention as a police force, it will not be entered into the indexes and case files, but it can nonetheless be present—apparently transiently—on the police force's computer systems.

Okay—that is the point that I wanted to get to. I want to explore what you do under those circumstances. I have two questions. First, I want to explore how that data is removed from your computer systems—I accept that it has never reached case files or been indexed as such.

**Detective Superintendent Smith:** There are different types of data, because there are different types of intercepts and communications data. Intercept data, for instance, would be deleted straight away.

**Stewart Stevenson:** Before we proceed on that point, may I ask what that actually means? My background is technical, so you will forgive me. Deletion on a computer system in essence involves the removal of the electronic index but not necessarily the overwriting of the data, which might remain on a storage medium. Do you merely use the technology that is available to delete the index, thus leaving the data potentially to be recovered from another part of the storage medium?

**Detective Superintendent Smith:** The data would be deleted from the system.

**Stewart Stevenson:** Using the facilities of the system.

**Detective Superintendent Smith:** Yes.

**Stewart Stevenson:** The data is therefore not necessarily removed from the electronic medium that it is on; it merely ceases to be accessible.

**Detective Superintendent Smith:** No, it is deleted from the system.

**Stewart Stevenson:** Okay. I may come back to that.

I will ask my second question. I am sure that, as any professional users of technology would do, you back up your operating environments and all the data that is on the disks and other storage mediums that you have, thereby capturing to your back-up data operational data that you may have—in a different sense—deleted. How do you deal with the presence of data that may be in

historic back-ups of your electronic system and that you wish to have deleted?

**Assistant Chief Constable Johnson:** This is a highly technical area of business. In our systems, if we say that we have deleted the information, it is deleted in that it is not visible to the officers or myself, so we or Police Scotland are not able to use that data. I am not entirely clear about how the technology works and how the binary and all the widgets that sit behind it work, but our systems and processes in that regard are all inspected by the Interception of Communications Commissioner's Office, which assesses how we manage that information and what systems we use to manage it. Our use of those systems has all been signed off.

Once we have deleted information, it is not available for any officers to see. I think that the suggestion is that it would be there for somebody to see if we have not deleted it. However, it has been deleted, it is not there for Police Scotland to use and we certainly would not use the back-up systems to try to find data that we had previously deleted.

**Stewart Stevenson:** I understand that and that is quite clear. However, the reason that back-up systems and back-up data files exist is so that, in certain operational circumstances, they can be restored.

**Assistant Chief Constable Johnson:** Yes.

**Stewart Stevenson:** How do you prevent the restoration of data from back-up undoing the process of deletion that you had undertaken?

**Assistant Chief Constable Johnson:** That is, again, very technical. I do not have that technical detail—

**Stewart Stevenson:** Perhaps you might answer after the committee meeting.

**The Convener:** We can certainly reflect on that; if there is anything that Assistant Chief Constable Johnson wants to add to his evidence today, we would be happy to hear it. He has been given quite a forensic questioning on that particular subject.

10:30

**Oliver Mundell (Dumfriesshire) (Con):** Is it possible to have some general information on your data retention policy, such as how long you keep things and how you see that being changed by the Investigatory Powers Bill?

**Assistant Chief Constable Johnson:** There is no simple answer to that. In simple terms, if we acquire the data by lawful interception it is converted into a usable intelligence product; when

it is deleted from our systems we have no other access to it.

Intelligence stays on our system—the Scottish intelligence database—for a period of time in line with that policy, which is for six years. However, that is not to say that it will be deleted at six years. If the data relates to a case that has been closed and completely dealt with, it is reviewed at that six-year point; if we can delete it, we do so. If the data relates to a cold case or a case that we have not solved, it is entirely appropriate that, at that six-year point, we take that review and say that we need to retain the data for a lawful purpose. We hold the data legitimately, but it would be wrong to delete it; if we did, it would not be available to the detectives who conduct the cold case reviews some years hence.

At the six-year point, we do those regular reviews and we extend for a period of time that the investigating officer feels is fit for purpose. We keep some things for life, but that depends on the appeals process for the whole life of that data. That is for very specific offences.

**The Convener:** I remind members that in considering the LCM we are looking not at the whole provisions of the bill, but at the devolved aspects.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I want to ask about the warrant question regarding the interference of property. Where the police think that there is an urgent need for a warrant, under what circumstances would you consider not asking for judicial permission?

**Assistant Chief Constable Johnson:** Very often we deal with situations—kidnapping or extortion is a good example—in which there are quickly collapsing timescales. In such situations, we would seek authority to try to preserve life under our article 2 responsibilities. Such circumstances—in which there is an immediate and imminent threat to life—are the only circumstances that I can see in which perhaps, rather than slow down to go through the whole judicial authority process, we would seek that activity to get the information and intelligence first-hand and then get the judicial oversight afterwards.

That is similar to what happens now. From the operational perspective, if a life is imminently under threat, I would seek to preserve that life. Those are the circumstances in which I would seek to use that power, but I would always want it checked up by judicial authority.

**Douglas Ross (Highlands and Islands) (Con):** What is the timescale for informing the judicial commissioner that you have issued an emergency or urgent warrant?

**Detective Superintendent Smith:** Do you mean under the bill?

**Douglas Ross:** Yes.

**Detective Superintendent Smith:** The bill says as soon as possible, within three days.

**Douglas Ross:** My understanding is that the bill says that the judicial commissioner has to give his view on it within three days. I am asking how quickly you have to inform the judicial commissioner that you have issued an urgent warrant.

**Detective Superintendent Smith:** Obviously, that will be a new process between Scottish ministers, ourselves and the judicial commissioners; that is still to be determined at this point. They will be busy with other stuff; I would imagine that we would try to tell them as soon as possible.

**Assistant Chief Constable Johnson:** From an operational perspective, as someone who will provide that authority as the authorising officer, I will seek that judicial approval as quickly as I can. We have a compelling reason to ask for that information—we have a life that is at risk. We will try very quickly to preserve that life, but the officers will have to put in the intelligence, about necessity and proportionality and due consideration, in order to meet that requirement. I will not try to stretch that out for the three days to see what data we can get. It is in my interest to get that information and intelligence as quickly as I can, while also lawfully holding the information and intelligence that I need.

**Douglas Ross:** How long do you envisage that taking? Minutes? Hours? Days?

**Assistant Chief Constable Johnson:** I would love to think that if, at 2 o'clock in the morning, I am told that someone has been kidnapped and is being held at gunpoint in a house somewhere in Scotland, a judge would be available at half past 2, but that will probably not be the case. In that situation, I could see it taking hours before we got hold of a judge.

We would expect the judicial process to kick off within the first few hours. If it is during office hours, things can progress quickly. However, again, if it is 2 o'clock on a Saturday morning, it might be more difficult. From the perspective of Police Scotland, we will seek that authority as quickly as we can get it. What will slow the process down is the availability of a judge and the ability to carry out that second process.

**Douglas Ross:** Does the fact that the issue must be scrutinised within a three-day period lead you to think that you would look for more information before asking for approval for the

urgent warrant, rather than just presenting it to a judicial commissioner?

**Assistant Chief Constable Johnson:** I do not think that we would be asking for any more information than we already gather. We already have a thorough and in-depth process that involves reviews by an authorising officer and the cabinet secretary. These applications are already dealt with as the most serious intrusions that we can make into somebody's privacy. I suggest that, for Police Scotland, little will change in relation to the process, particularly for an urgent application for a warrant. We might have limited information and intelligence, but we would still try to build the case in exactly the same way as we would over a longer period.

**Mary Fee (West Scotland) (Lab):** I want to ask a follow-up question on that point. If approval is not given for a warrant, given that you have already said that you cannot unknow what you know, is all the information that you have collected immediately and completely destroyed?

**Detective Superintendent Smith:** That data will have been lawfully obtained, and we would seek guidance from the new judicial commissioners about whether they wanted us to retain that data for inspection by them or delete the data there and then.

**Mary Fee:** Could there ever be an instance in which information that you gather, even though the warrant has not been approved, could lead to another warrant being issued for something else?

**Detective Superintendent Smith:** It would depend on the circumstances. Intelligence is fluid, and you might obtain intelligence during that period that is relevant to something else. We are absolutely duty-bound to ensure the safety of the public, so we would react to that.

**Mary Fee:** Would you need to go through the same process again of asking for judicial permission?

**Detective Superintendent Smith:** Yes.

**Assistant Chief Constable Johnson:** There would have to be a second application based on the new intelligence. However, once an application is turned down or refused, everything stops at that point.

**Detective Superintendent Smith:** The judicial process in the bill will be new for us. Just now, the process involves the Scottish ministers. A lot of policy and process will have to be evened out.

**Mary Fee:** You say that there will be a lot of new policy and a lot of changes. How confident are you that all the regulations surrounding the new policy will be properly fed down to the officers who will be using them?

**Detective Superintendent Smith:** I am absolutely confident. There is no issue with that. The officers who need to know about the regulations in order to do the job will be informed straight away, as soon as the regulations have been resolved.

**Assistant Chief Constable Johnson:** Part of the problem that we have is that we are not dealing with the complete bill. Brenda Smith and I sit on the UK national groups—I am on the gold group, which will cascade the information down to all the officers and staff who are involved once the bill is complete. That group is chaired by Chief Constable Mick Creedon of the Derbyshire Constabulary. Brenda Smith sits on the tactical group, which will ensure that, in relation to the discrete areas of business—lawful interception, equipment interference and communications data—we can deliver the appropriate training to our officers, to ensure that their knowledge is up to date.

Part of the problem that we have at the moment is that we are all planning for something, but we do not know what the final version will look like. However, once we get to that point, we have systems in place to communicate the necessary information to the officers who are involved, starting from the acute end—those officers who normally apply for the data—and going right through the broader population of the police service in Scotland.

**The Convener:** That is encouraging, given that communication is a perpetual problem in Police Scotland.

Liam McArthur has the next question.

**Liam McArthur (Orkney Islands) (LD):** As Mary Fee has covered the point that I was going to ask about, concerning the modification of warrants and the role of the judicial commissioners, I wanted to ask about something that Oliver Mundell raised earlier. However, I think that Mairi Evans wanted to comment on the back of the current line of questioning so it might be better if she has the next question.

**Mairi Evans (Angus North and Mearns) (SNP):** No, it is fine. Mary Fee asked the question that I was going to ask.

**Liam McArthur:** I will go back to the area that Oliver Mundell explored, which related to the retention of data generally and the six-year timeframe that Assistant Chief Constable Johnson set out. Clearly, some cases, even complex ones, will be resolved well within that period. Towards the end of the informal briefing that we had a few weeks ago, we covered concerns about why the data is retained until that six-year point, even when a case has been closed. The concern is that data could be used as part of a fishing expedition

for subsequent cases. I seek reassurance on that. Where cases have been resolved—perhaps the data has proved instrumental in leading to their conclusion—why does Police Scotland hold on to that data to the six-year point when there is no real reason for doing so?

**Assistant Chief Constable Johnson:** Interestingly, we keep other information for those time periods—there is one policy for that. Even if the judicial process has been gone through, there is potential for appeal, so there is no hard-and-fast rule.

We do not carry out speculative searches relating to some point in the past—the data is held in relation to the case file.

In relation to LI, all the data is deleted and all that we have is, if you like, an interpretation of the data that is put on the Scottish intelligence database. The actual data that we get through the product—so the most sensitive area—is all deleted at that point. Communications data is linked with the case file and is subject to that review. Therefore, it will not be speculatively searched; it remains with the individual case. We take exactly the same approach to other information that we hold in relation to a case file, whether that is paper files or other traditional types of information that we hold.

**Liam McArthur:** From recollection, you talked about information that might be relevant to another case being subject to a separate application and drawn from that.

**Assistant Chief Constable Johnson:** Oh, right.

**Liam McArthur:** I think that you understand why there is concern about contamination across different processes when information that has been gathered for one reason is deployed for other reasons in another case. The fairly arbitrary timeframe of six years is not proportionate to the case that was used to back up the original application. The data is simply held because six years is the arbitrary timeframe that you have agreed you are going to operate with, which does not seem entirely satisfactory.

**Assistant Chief Constable Johnson:** I am not sure that the retention period is entirely arbitrary. History tells us that we are often asked for information relating to a case or that people, not just within Police Scotland, can review the case for other reasons beyond those dates. I can have a look at the retention policies and ensure that they meet scrutiny, but our retention policies are part of the inspection that is done by IOCCO, which is content with the policies at this stage. That is a separate view.

The way in which we retain the information could be something for the judicial commissioner to comment on in future. However, there is no nefarious activity by Police Scotland in relation to the data that we hold.

**The Convener:** To follow that up, we have had a submission from the Equality and Human Rights Commission, which rightly points out that

“Intrusion into the privacy of persons who are not suspected of wrongdoing is unlawful unless absolutely necessary and proportionate”.

What specific tests are undertaken to ensure that such interception is “absolutely necessary and proportionate”?

**Assistant Chief Constable Johnson:** The first test is necessity. There should be a legitimate aim, which is the prevention and detection of serious crime. Once that criterion is met, the authorising officer has responsibility for balancing that and considering the proportionality of the intrusion into the person’s private life given the legitimate aim that we are seeking to achieve of the prevention and detection of crime.

10:45

Striking that balance is not a quick process; after all, each subject has different needs and elements that might impact on them. The size of the family is one issue—you asked about collateral intrusion. If we have a very focused and individual application in which there is little collateral intrusion—and we must remember that we are talking about a subject who is engaging in serious and organised crime, and potentially the most serious offences that we have, including human trafficking—the activity will be focused on those individuals and will provide intelligence on them. Therefore, the opportunity for collateral damage is minimised. You have already heard about the processes that we can put in place to ensure that, if collateral intrusion occurs, that information is deleted and is not held any longer.

Right from the point at which the application is made, we focus on the individuals in question, and I will decide the balance to strike between the intrusion into their rights and their private and family life and looking at the sort of on-going criminal activity in which they are engaged and the harm that they are causing the community. In the vast majority of cases, it is all about striking a balance between an individual’s article 8 rights and my article 2 duties with regard to preservation of life. The sad fact is that a lot of these applications relate to people who are involved in human trafficking, the importation and supply of class A drugs and so on. On average, there are two drugs-related deaths a day in Scotland. I have to balance that consideration against the intrusion

into the rights of people who we know are, to some degree, importing class A drugs and new psychoactive substances; in other words, I have to balance the intrusion into their article 8 rights to privacy with trying to keep safe the people of Scotland, two of whom are, on average, dying drugs-related deaths each day.

That balancing picture and the information for it are there: I do not use old data to balance the competing demands. I use current data and I understand that it will come under scrutiny by the Scottish Government and the judiciary. Indeed, I welcome that scrutiny, because it is not right for me to have carte blanche in intruding on people's privacy. I take that work seriously.

**The Convener:** I understand the point about competing rights and hear the clear message that the necessary and proportionate test is always carried out before a warrant is granted.

That concludes our questions. I thank ACC Johnson and Detective Superintendent Smith for attending this morning, and I suspend the meeting to allow the cabinet secretary and the other witnesses to take their places.

10:47

*Meeting suspended.*

10:49

*On resuming—*

**The Convener:** I welcome Michael Matheson, the Cabinet Secretary for Justice. This is the cabinet secretary's first formal appearance before the committee—he has met us privately. He is accompanied by officials from the Scottish Government: Graeme Waugh is from the defence, security and cyber resilience division; and Lauri Mitchell is from the directorate for legal services. For the record, Lauri is my niece—I have not seen her for months; she never writes, she never calls. [*Laughter.*] You are doubly welcome, Lauri.

In the past few days, the committee has received two letters from the cabinet secretary that address recent developments in relation to the Investigatory Powers Bill. We have published those letters on the committee's web pages.

Cabinet secretary, do you want to make opening remarks on the LCM?

**The Cabinet Secretary for Justice (Michael Matheson):** Thank you. I promise to keep my remarks brief.

The Scottish Government has made it clear that we fully support law enforcement agencies and the security and intelligence agencies having access to the powers that they require, as long as those

powers are proportionate and are subject to the appropriate safeguards and oversight.

The areas of the bill that are subject to the LCM are about maintaining the status quo, clarifying the existing law and putting in place an enhanced oversight regime in the form of an investigatory powers commissioner, supported by a number of judicial commissioners, who will all be serving or retired senior judges.

I am aware that concerns have been expressed about aspects of bulk powers. I share some of those concerns. However, those are reserved powers and are matters for the UK Government and the UK Parliament; they are not matters that the Scottish ministers or the Scottish Parliament can determine.

I provided further information to the committee yesterday on the technical advisory panel, provision for which is being included in the bill to implement the recommendation that David Anderson QC made in his review of the bill's bulk powers.

It is unfortunate that UK Government amendments on matters that extend to Scotland continue to come forward at this late stage of the bill's progress, but I am sure that the committee appreciates that the bill is complex. Despite the timing issues, which are beyond our control, I have been keen to ensure that committee members have all the information that they require to aid their understanding of the matters that are subject to the LCM.

I am happy to answer questions from members.

**John Finnie:** Cabinet secretary, I share the concerns about bulk powers that you expressed in your letter. I know that that is not what we are addressing today, but the powers will have an operational effect in Scotland.

David Anderson concluded:

"there is a distinct (though not yet proven) operational case for bulk equipment interference".

Is that where your reservations come from?

**Michael Matheson:** In part. That is why we reserved our position until David Anderson had carried out his review. His specific recommendation was that a technical advisory panel be established, to advise and inform the new commissioner on action that can be taken and to address on-going technological advances that will reduce some of the potential risks associated with bulk powers.

It was right to reserve our position until David Anderson's review had been carried out, and his recommendation is welcome. As I said in my letter, I am keen that the technical advisory panel should be able to advise the Scottish ministers on

the matters that I described, and the engagement that we have had so far with the Home Office on taking such an approach forward has been productive and helpful.

**John Finnie:** Thank you.

I asked Assistant Chief Constable Johnson, who was on the previous panel of witnesses, about the potential for UK-wide organisations, the security services and others such as the National Crime Agency to be involved in operations in Scotland that Police Scotland was unaware of. He talked about the level of co-operation and acknowledged that it could be the same. Do you have any concerns about the roles or functions that those bodies might fulfil in Scotland? Are you concerned that you or the Lord Advocate could be bypassed?

**Michael Matheson:** In relation to the security and intelligence services?

**John Finnie:** And the National Crime Agency.

**Michael Matheson:** In order to be directly involved in operational matters in Scotland, the National Crime Agency requires consent from the Lord Advocate. There is a clear process for its role in Scotland. Given the nature of the National Crime Agency's jurisdiction, it requires the express consent of the Lord Advocate to its engagement in relation to criminal activities in Scotland.

As you will appreciate, the vast majority of the work that is undertaken by the security and intelligence services is primarily focused on issues of national security. As a result, any authorisations that they require for their work in that area, including within Scotland, would be matters for the Home Secretary. However, where they are engaged in work with Police Scotland to prevent or detect serious crime, they require the authorisation of Scottish ministers when it comes to interception. The additional measures around bulk powers and the way in which information can be interrogated will also require authorisation from Scottish ministers. I think that extending some of the responsibilities of Scottish ministers in that area will helpfully provide us with greater oversight of some of the activity that the security and intelligence services could be involved in relating to the prevention and detection of serious crime.

**John Finnie:** Do you see any benefit in UK oversight rather than specifically Scottish oversight?

**Michael Matheson:** Do you mean in relation to national security matters?

**John Finnie:** No—I mean in relation to the investigatory powers commissioner and their UK-wide remit.

**Michael Matheson:** We have a three-commissioner system at the moment, so moving

to a single commissioner is the logical step in drawing together all that expertise into a single body. I think that that is the right approach, and operating on a UK basis at present is probably the best approach, given the nature of the reserved matters that are dealt with in the Investigatory Powers Bill.

**Stewart Stevenson:** I probed the police witnesses on the previous panel about some of the technological issues around how they deal with data that comes to their notice but which is outwith what they are allowed to have and keep. I was satisfied—although I could not say whether my committee colleagues were—that the police had appropriate procedures in place to ensure that that data did not enter into consideration in criminal files and so forth.

However, I was left with one technical issue that perhaps might be for Mr Waugh to deal with, or perhaps even to take away. Most computer managers undertake whole-system back-ups to ensure that they can restore whole systems in the case of destruction. What about the unwinding of deletions, so that data becomes available again? What processes will be in place to ensure that that does not happen?

I will ask a second question, just to get it out of the way. The technological advisory panel will clearly be a source of considerable expertise on a whole range of issues. Will the deliberations and knowledge that come out of that panel be made more widely available to Government departments that are involved in legal enforcement in a range of areas in relation to which, quite outside the Regulation of Investigatory Powers Act 2000, similar issues arise? Is there an opportunity that arises from what is happening with RIPA?

**Michael Matheson:** On the first point, I bow to your IT knowledge, which is greater than mine and, I suspect, greater even than Graeme Waugh's. I understand the point that you make about the potential to unwind deleted details on the system. Graeme Waugh may wish to say something about that, but it may be something on which we would have to come back to the committee with further technical information, if that would be helpful.

**Graeme Waugh (Scottish Government):** If I have given you the impression that I know anything about such technical matters, I can only apologise. We can certainly look into the matter further with Police Scotland and come back to the committee on that point.

11:00

**The Convener:** I do not think that we will get too much further on that.

**Stewart Stevenson:** I am not trying to be technical—I am looking for procedural issues.

**Michael Matheson:** We will come back to you on that specific point.

Your second point was about the technological advisory panel. The potential that you described exists. We have RIPA and the Regulation of Investigatory Powers (Scotland) Act 2000, which a range of bodies in Scotland use to exercise powers. For example, the 2000 act can be applied to tackle environmental crimes through the use of covert means for the purposes of building up intelligence and evidence. It can also be used by local authorities to deal with various issues, including domestic disturbances. Those aspects are governed by the regulations around that process.

It would be helpful for the technological advisory panel to be able to advise Scottish ministers. It has a very specific remit, part of which is to look at whether, as technology advances and develops, there are ways in which Police Scotland can undertake the type of work that we have discussed while minimising even further the risks of unintended or unnecessary intrusion. Having access to that information could assist us in informing public bodies in Scotland, along with Police Scotland, about some of those alternative technologies as they develop and come forward.

The simple answer to your question is yes, and that is one of the primary reasons why I would like the panel's remit to extend to advising Scottish ministers.

**Liam McArthur:** Good morning, cabinet secretary. As you—and John Finnie—did earlier, I put on record my serious misgivings about aspects of the bill, particularly in relation to bulk data. However, I will focus on the areas that we are required to look at with regard to the LCM.

There has been a fair bit of discussion about the collateral impact of such surveillance. What reassurances can you give the committee that the impact on those who are not the target of any investigation but who may be affected by some of the provisions in the bill will be minimised, and that, where information or data is gathered, that will be dealt with appropriately, presumably by deletion in whatever form Stewart Stevenson thinks is appropriate and final?

**Michael Matheson:** That leads into the concerns that we have around some aspects of the bill's powers and how they may operate. Scottish ministers will deal with the aspects regarding information that has been obtained through the use of the bill's powers. If Police Scotland wishes to examine some of the information relating to a targeted individual, it will

require authorisation from Scottish ministers and judicial oversight. We will deal with that element.

At present, the issue of collateral intrusion is considered at the time of an application for an interception warrant—we will look at how the impact can be minimised. You have heard from Police Scotland about the procedures that it has in place. If it obtains information during any type of interception activity that does not relate to the subject of the warrant, it has a process in place for dealing with that information and for deleting and discarding it. That aspect is considered at the very outset when Police Scotland applies for the warrant in the first place.

We will consider the issue when an application comes to the Scottish Government officials who deal with such matters, and it will be presented to me. Actions will have been taken in order to minimise the risks. Trying to minimise the effect is already part of the existing process.

I go back to my point about the technological advisory panel. As technology develops and advances, there might be scope to reduce this sort of thing even more, and it would be useful to have access to that advice as and when it develops.

**Liam McArthur:** With regard to the judicial approval of warrants or, I suppose, the modification of warrants, an issue that has been raised with us is that there might well be instances, as at present, in which Police Scotland feels that it has to act very speedily and there is limited opportunity to gain prior approval. We all understand why such circumstances might arise, but what is not entirely clear is the length of time that is likely to be necessary to gain that approval and, in those instances in which approval is not subsequently granted, either in whole or in part, for the actions, what the consequences are for the investigation and any data that has already been accumulated as a result of Police Scotland's actions.

**Michael Matheson:** It depends on the type of warrant that has been applied for. Let us say that Police Scotland were to apply for an interception warrant, which requires to come to Scottish ministers—and which, under the new system, will also have to be considered by a judicial commissioner—on an urgent matter such as a threat to life in which swift action needs to be taken; Police Scotland would still require ministerial authorisation before that could be taken forward, and we have a process whereby if, at 2 o'clock in the morning, the police required an interception warrant to deal with an urgent incident that was developing, they could contact a senior Scottish Government official, who would then come to me for authorisation. The paper trail that goes with that request catches up with it as quickly as possible. There is a process for dealing with

urgent applications, but they still require ministerial authorisation.

The new element is the judicial commissioner's role. As you will be aware, the legislation stipulates a three-day period for the judicial commissioner to consider the matter. This is a new process that has been created, and some practical measures will need to be taken to ensure that with any urgent requests we are able to get access to one of the judicial commissioners in Scotland as quickly as that can happen. The three-day period is almost a backstop, because the principle is that things will operate as quickly as possible. Nevertheless, notwithstanding the ability to access a judicial commissioner within a couple of hours, ministerial authorisation is still required on interception matters.

Other types of warrants such as those dealing with equipment or property interference do not require ministerial authorisation. Equipment interference requires authorisation from the judicial commissioner after consideration by a senior officer, very often the chief constable or, I believe, at least someone above the rank of superintendent who is authorised to consider these matters. After that, the judicial commissioner's authorisation would have to be sought, too. As for matters relating to property interference, they are dealt with by senior officers in the police service, and there is no—and never has been any—judicial authorisation element in that respect. Such matters have always been dealt with internally.

Picking up on the concern raised by Mr McArthur, I think that if the police had to urgently exercise some form of equipment interference, they would have to seek judicial authorisation. If they were not able to get it in the timeframe that they needed to get it in, they would have to get it retrospectively. Again, though, we would be talking about instances in which there was a threat to life—say, the abduction of a child or individual—in which events might be very fast moving and the police had to move quickly to get information that could be followed up. Afterwards, the judicial commissioner would consider the information that the police had gained. If they have approved the warrant, that is fine; if they have not, they have a role in determining what happens to the information. Therefore, there is a safeguard.

It is about trying to create a system that is agile enough to respond to rapidly developing operational matters and which can also provide us with the right type of oversight to pick up on certain matters when necessary.

**Liam McArthur:** That is helpful. Clearly, given what ACC Johnson said earlier in evidence, there is concern about activities happening at 2 o'clock in the morning, which I hope both Police Scotland

and the Scottish Government are staffed to deal with.

**Michael Matheson:** We have an on-call system.

**Liam McArthur:** I am sure that you do.

I suspect that the process that you described covers the vast majority of those instances where, as you said, there needs to be agility to respond to fast-moving events. The concern is that it begins to look almost like a rubber-stamping exercise. The process of ministerial approval and/or judicial oversight is about putting in place a challenge function; ACC Johnson was very candid in saying that that is as it should be and that there should not be a carte blanche. Even in a fast-moving situation and even when Police Scotland assesses a risk as severe, whether life threatening or whatever else, there still needs to be the reassurance that where either ministers or those exercising judicial oversight have concerns about actions taken by Police Scotland, that will have an effect and there will be consequences for the actions that were taken leading up to that point of decision by ministers or those exercising judicial oversight.

**Michael Matheson:** It is worth keeping in mind that the process also has oversight from the investigatory powers commissioner, who will be able to come in and inspect matters. The commissioner will be able to look at the process in a way that is a bit like the way in which IOCCO inspects Police Scotland's processes and those of the Government, and how we handle them. I meet IOCCO to discuss our approach and it reports on those issues.

There is also a retrospective aspect to inspection and ensuring that, where authorisations have been given, no one can view that as a rubber-stamping process. I assure you that I do not act as a rubber stamp when warrants come before me. The legislation is very clear that the tests of necessity and proportionality have to be met in order to justify any form of interception, because it involves considerable intrusion into someone's private life. The bill is very clear about that as well.

From our perspective, an application for authorisation that comes to the Government team will be considered carefully and, if we do not think that it has been undertaken properly and there is sufficient information to justify a decision that it meets the tests of necessity and proportionality, it will be refused on that basis and sent back. When my officials have considered an application, it is then put to me for consideration as well. If I am not satisfied with it, it will be refused. I have no doubt that the additional measure of judicial oversight

will involve the information being considered in the same way.

The authorisation process for dealing with what are incredibly serious matters should in no way be viewed as a rubber-stamping exercise, because it involves a very detailed process. When it comes to dealing with urgent matters, the process is more rapid; nevertheless, the tests of necessity and proportionality as set out in the legislation still have to be met in those circumstances. We should remember that the interception of communications can be illegal and a criminal act under the present legislation, and that will remain the case under the bill.

I offer the reassurance that it is a robust process that is applied rigorously. We seek to make sure that the safeguards in the existing legislation are properly and fully met, and that will also be the case with the new legislation. Additional reassurance is provided by the role that IOCCO has, and the role that the new investigatory powers commissioner will have, in having oversight of how such matters are handled.

11:15

**Douglas Ross:** I want to ask about the letter that you sent to the committee yesterday about the amendments to the bill that are to be tabled by the UK Government. I understand that you and your officials are involved in dialogue on that. In your letter, you say:

“In the unlikely event that the amendment were drafted in such a way that contradicted the information that the Government are giving to the Parliament then we would reject such an amendment”.

Is that just a catch-all that is always put in, or are there genuine concerns about contradictions to which that amendment could give rise that the committee should be aware of?

**Michael Matheson:** We have seen the drafting instructions to parliamentary counsel on the amendment that the UK Government intends to table, but we have not seen the finalised amendment.

We have gone back to the UK Government with the suggestion that the technology advisory panel should be able to advise the Scottish ministers. If it is to advise the Scottish ministers, the Scottish ministers would have to be consulted on the appointment of the panel. We are having those discussions with the Home Office at the moment. It is possible that the Home Office could decide not to implement David Anderson's recommendation. Given that the issue was one of those that we had concerns about and on which we had reserved our position, it would seem reasonable for us to say that we are happy with how things are progressing but that we will be in a

position to give our consent only once we have seen the final amendment. If the Home Office were to change its position, it would seem reasonable for me to come back to the committee to advise it of that change in approach.

**Douglas Ross:** What would the contradiction involve? Would it arise if David Anderson's recommendation were not taken forward en bloc, or would you reject the amendment only if the Scottish ministers were not involved?

**Michael Matheson:** No. The issue is just to do with the technology advisory panel.

**Douglas Ross:** The whole thing.

**Michael Matheson:** Yes. It is about the recommendation on the advisory role of the panel.

**Douglas Ross:** That would be unlikely to happen, given that the UK Government is lodging amendments on that subject.

**Michael Matheson:** It is highly unlikely. In addition, the UK Government has expressed publicly its position on the matter. We are being cautious purely because we have not seen the final draft of the amendment in question. If the position were to change, we would have a view on that. We want to have the opportunity to come back to the committee in the event that there is a change in the position.

**The Convener:** That concludes our questioning. I thank the cabinet secretary and his officials for attending.

I suspend the meeting to allow the cabinet secretary and his officials to leave.

11:17

*Meeting suspended.*

11:23

*On resuming—*

## Petitions

**The Convener:** The final agenda item is on public petitions. I refer members to paper 6. If members wish to keep a petition open, they should say how they would like the committee to take it forward. If members wish to close a petition, they should set out the reasons for that. I propose to consider the petitions in the order in which they are set out in paper 6.

### Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)

#### Fatalities (Investigations) (PE1567)

**The Convener:** The first petitions are PE1501 and PE1567, which are on investigating unascertained deaths, suicides and fatal accidents. The petitions are discussed on pages 2 and 3 of paper 6.

The committee is asked to consider and agree what, if any, action it wishes to take in relation to the petitions. The options include closing the petitions on the basis that the Scottish Government and the Crown Office and Procurator Fiscal Service have made their position clear. Alternatively, in view of the change in leadership of the COPFS, the committee could keep the petitions open in order to ascertain whether there is any difference in the new leadership's view. I seek members' views.

**Liam McArthur:** The clerk's paper is helpful. I confess that I have been able only to dip into some of the background, but I was struck by the additional information that one of the petitioners—Stuart Graham—provided that shows relative figures for such inquests in a range of jurisdictions. Scotland, along with some territories in Canada, appears to be markedly out of step with other parts of the United Kingdom, the Republic of Ireland and some states in Australia. I am interested in understanding why there is that marked discrepancy.

The minister's letter is helpful in setting out the background and the objective of such inquests, which relates to the public interest, but I presume that there is a public interest in inquests in the territories and jurisdictions that I just mentioned. Before we decide whether to finally close the petitions, we should seek from the Scottish Government a better understanding of the reason for the differences in the numbers.

**Stewart Stevenson:** I take a different view. In particular, I refer to the letter from Frank Mulholland of 25 November 2015, which

addresses precisely the point that has been raised. The letter, which is at annex A on page 8 of paper 6, acknowledges that there is a difference and describes precisely why.

I have, unfortunately, had limited personal experience of the process, although in fairness that was in relatively straightforward circumstances of investigation and legality. I felt that the process worked for me and my relatives. On the basis that the information that Liam McArthur seeks is in the letter from Frank Mulholland, I suggest that the Government's position is clear and that we should close the petitions.

**Douglas Ross:** I take a different view from Stewart Stevenson, as I would like further information. I am looking at the paper online, so I am not sure exactly which page this is on, but it mentions a member's bill in the House of Commons that addresses some of the concerns—to which Stewart Stevenson perhaps refers—about the high number of inquests elsewhere in the UK. I wonder what the outcome of that bill was. Do we have any information on that?

**The Convener:** Is that Patricia Ferguson's member's bill here or a bill in the House of Commons?

**Douglas Ross:** I understand that it was in the House of Commons.

**The Convener:** I am not aware of that.

**Douglas Ross:** It would be interesting to know whether the position has changed down south as a result of that bill.

I want a bit more information on full disclosure. I am dealing with an extremely complex constituency case that involves Police Scotland, in which there are significant concerns about the disclosure of information. From reading the former Lord Advocate's letter, which Stewart Stevenson is happy to support, one would think that families were entitled to pretty much everything. However, from my experience, that is not the case. We therefore need more information about full disclosure.

If the new Lord Advocate is of the same opinion as his predecessor, I would be interested to know how often relatives are not given full disclosure. Full disclosure is a way to resolve an issue but, if we do not have it, families will continue to come to us with such petitions.

I am keen to get more information on those aspects before we decide how to deal with the petitions.

**John Finnie:** Frank Mulholland's letter is comprehensive. It will not be easy to satisfy the petitioners. Every case must be considered on its

merits, which is why it is not too easy to deal with the statistics.

Given that one of the consequences of the work of the previous Justice Committee and Patricia Ferguson was the charter for bereaved families, is there an opportunity to leave the petitions open to see what response, if any, there is to the charter? That will not deal with the specific concerns that the petitions raise, but it might give us pointers as to whether there are continuing issues.

**Mary Fee:** I share Liam McArthur's view and I would like more information about the discrepancy between the number of fatal accident inquiries that are carried out in Scotland and the number that are carried out in other countries. Having read Frank Mulholland's letter a couple of times, I think that it seems to give us the bare facts—he does not go into enough detail. I would like more information so that we have a better understanding before we make a final decision.

11:30

**Rona Mackay:** I am minded to go down the route that Stewart Stevenson suggested. However, given that there is a new broom, it would be useful to ask the Crown Office for its views on the petitions. We should do that before considering whether to close the petitions.

**The Convener:** I think that the committee is minded to keep the petitions open. I must admit that I shared Stewart Stevenson's view to begin with, given the existence of the charter, which John Finnie mentioned. However, valid points have been raised and there is merit in keeping the petitions open. Do we agree to continue the petitions and to seek the information that has been asked for?

*Members indicated agreement.*

### **Justice for Megrahi (PE1370)**

**The Convener:** The next petition is PE1370, which is on an independent inquiry into the Megrahi conviction. It is discussed on pages 3 to 5 of the clerk's paper.

The clerks have ascertained from Police Scotland that the timetable in relation to operation Sandwood has slipped since the letter of 11 March that is referred to in paragraph 23 of the clerk's paper. Police Scotland recently informed the clerks by telephone that, because of complex live issues, the investigation report has not yet been completed and passed to the relevant deputy chief constable. The previous committee was informed in March that the report was expected to reach the DCC by around mid-May.

The committee is asked to consider and agree what, if any, action it wishes to take in relation to

the petition. The options are to close the petition on the ground that the Scottish Government has made its position clear or to keep it open, in which case the committee might wish to write to Police Scotland to seek clarity on the timetable for completing operation Sandwood.

**Stewart Stevenson:** I do not think that we can close the petition until Sandwood is complete.

**The Convener:** Are there any other comments? That seems to be the majority view of the committee. I wonder just how far Sandwood will take us, given that the petition asks the Government to hold an inquiry and the Government has made its position clear.

**Stewart Stevenson:** I do not expect us to wish to keep the petition open after we hear about Sandwood. To be blunt, I am reluctant for politicians of any character to interfere in the independence of the judiciary. However, in all fairness, there is a case for keeping the petition open until we see what Sandwood comes up with.

**John Finnie:** I agree with a lot of what Stewart Stevenson said. The reality is that this is a unique set of circumstances. The convener has heard me say many times that we should forget the individual whose name is on the petition, because the issue is about process. There is a unique inquiry that involves complex and live issues, and we need to understand how it will continue.

I take some reassurance from the change of personnel, certainly at Lord Advocate level, and I imagine that the Justice for Megrahi people do, too. However, we need to understand the process when an aggrieved party has issues with those who were charged with making important decisions about a criminal prosecution. We might need to look at such a model for the future.

**The Convener:** The mood of the committee appears to be to keep the petition open until we hear from operation Sandwood. Are we agreed?

*Members indicated agreement.*

### **Emergency and Non-emergency Services Call Centres (PE1510)**

#### **Inverness Fire Service Control Room (PE1511)**

**The Convener:** The final two petitions are PE1510 and PE1511, which are on police and fire service control rooms. The petitions are discussed on pages 6 and 7 of the clerk's paper, and annexes G and H provide the latest information in relation to proposals for north of Scotland control rooms.

The committee is asked to consider and agree what, if any, action it wishes to take in relation to the petitions. What are members' views?

**Liam McArthur:** On police control rooms, I think that assurances were given—not least because of the controversies and difficulties in relation to other control rooms—that any transfer of staff and operations from Inverness and Aberdeen would take place only once the new premises and operations were open and functioning in Dundee. However, I do not think that that has been the case. I have been led to believe that there are interim provisions for housing some staff from Aberdeen and Inverness, and at the very least I want some understanding of what Police Scotland is doing and why the earlier undertakings not to give effect to the transfer until things had been set up and robustly tested do not appear to have been fulfilled.

**John Finnie:** Call handling is going to come up as a result of the M9 incident, and we need to understand the relationship with that. Additional tasks were going to be allocated to Inverness and it might be helpful to clarify whether those tasks have been allocated there. Resilience certainly seems to be an issue, so I suggest that we keep the petitions open in the meantime.

**Stewart Stevenson:** If there are issues that are still to be resolved, the petitions should be kept open.

**The Convener:** I think that other information is being sought about the robustness of the process, if I understand Liam McArthur's comments right.

**Liam McArthur:** I certainly agree with John Finnie's comments. We can probably pursue additional issues, but I understand that, after the transfer of call handling elsewhere, Police Scotland gave an undertaking that the transfer would not happen until the new set-up was fully and robustly tested. That was one of the concerns that emerged in relation to the M9 incident.

**The Convener:** Does the committee agree to keep the petitions open pending the additional information that will be sought?

**Members** *indicated agreement.*

**The Convener:** That concludes business for today. The committee's next meeting will be on 4 October.

*Meeting closed at 11:37.*

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

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