



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 7 February 2017**

**Session 5**



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**Tuesday 7 February 2017**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>2</b>
Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017 [Draft] .....	2
Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2017 (SSI 2017/7) .....	16
<b>JUSTICE SUB-COMMITTEE ON POLICING (REPORT BACK).....</b>	<b>17</b>

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**JUSTICE COMMITTEE**

**5<sup>th</sup> Meeting 2017, 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:**

Michael Matheson (Cabinet Secretary for Justice)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

*Tuesday 7 February 2017*

*[The Convener opened the meeting at 10:38]*

### Decision on Taking Business in Private

**The Convener (Margaret Mitchell):** Good morning and welcome to the Justice Committee's fifth meeting of 2017. Agenda item 1 is a decision on whether to take in private items 6 and 7. Item 6 is a paper on the future scrutiny of the Railway Policing (Scotland) Bill and item 7 is consideration of a discussion paper on our inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service. I also ask members whether they are content to take in private all future draft reports on that inquiry. Do we agree to take those items in private?

**Members** *indicated agreement.*

## Subordinate Legislation

### Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017 [Draft]

10:39

**The Convener:** The second agenda item is consideration of an affirmative instrument—the draft Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017. I welcome from the Scottish Government Michael Matheson, the Cabinet Secretary for Justice; Stephen Jones, the head of police powers; and Craig French, from the directorate for legal services. I remind members that officials are permitted to give evidence under this item but may not participate in the formal debate on the instrument under agenda item 3.

I refer members to paper 1, which is a note by the clerk. The cabinet secretary will make an opening statement.

**The Cabinet Secretary for Justice (Michael Matheson):** Thank you for the invitation to appear before the committee today to discuss the stop and search code of practice. Members will be aware that the Justice Sub-Committee on Policing took evidence on 26 January from John Scott QC and others, and the sub-committee has already considered issues that were raised in written evidence. I thought that it would be helpful to make some brief opening remarks before taking questions.

Stop and search is at the heart of the delicate balance that we need to strike between the need to protect people and keep them safe and the need to safeguard the rights of the individual. I have therefore been keen to achieve consensus on the issue. I have also been keen to ensure that any changes to stop and search are evidence based and that we use legislation to effect change where it is necessary.

I thank committee members past and present for their interest in the area and for their constructive engagement with me during the passage of the Criminal Justice (Scotland) Act 2016. I was keen to continue that collaborative and evidence-based approach when revising the draft code after the public consultation. That is why I established the stop and search advisory group, which was chaired by John Scott QC. I place on record my sincere thanks to John Scott and the group for their significant contribution to this work.

I recognise that Police Scotland has already made significant improvements on stop and search in advance of the code coming into force.

Police Scotland has engaged willingly, positively and constructively with the advisory group and with the Government in the production of the code. I know that John Scott and the group greatly appreciate that.

It is important to note that there is consensus among advisory group members about all the changes that have been made to the draft code as a result of the consultation responses. It is also important to note that the code will be kept under regular review and that any further changes to the code will be made on the basis of evidence.

I have asked the advisory group to continue to play a role in helping the Government to assess evidence after the code has been in force for 12 months, with an interim assessment after six months. If the evidence points to the need for a change in the code or changes to legislation, we will consider that in due course.

In summary, we have taken an evidence-based, collaborative approach to drafting the code. The code gives us a sound framework to record and monitor how stop and search is being used and to gather further evidence. I will continue to work with the advisory group, key stakeholders and the committee to assess and act on that evidence as it emerges.

I am happy to take any questions.

**Liam McArthur (Orkney Islands) (LD):** Thank you very much, cabinet secretary. As you said, the sub-committee had a very useful session with John Scott and others a week or so ago, and it was encouraging to hear the level of consensus among Police Scotland and members of the advisory group on where we have got to.

One area of dispute and disagreement among those from whom we heard evidence at that meeting was the figures. I quoted figures in the public domain that showed a reduction—in a very short space of time—of about 93.5 per cent in stop and search as a whole and a reduction of 99.5 per cent in consensual stop and search, which seemed to back up the arguments about it being a tactic that is inappropriately used. However, those figures were called into question.

Do you have a view on whether the baseline figures for the use of stop and search generally and for unregulated stop and search were robust? If they were not, are you aware of figures that would give a clearer and more accurate picture of the change that we have seen in the use of the tactic in the past year or so?

10:45

**Michael Matheson:** It is fair to say that the historical figures were not robust, as Her Majesty's inspectorate of constabulary in Scotland

recognised in its report. That is partly down to the recording methods of the legacy forces and how some of them followed into Police Scotland as a single force.

The evidence that the sub-committee received from Assistant Chief Constable Williams the week before last showed that Police Scotland has a much more robust system in place for recording stop and search. The information is now collected and analysed at a national level, so the more up-to-date figures, particularly those for last year, are a more accurate reflection of the use of stop and search by Police Scotland. However, there is no doubt from the report that HMICS conducted into stop and search data that there were significant flaws in the collation and handling of the information.

The code allows us to move into a much better place by having a clearer set of rules for the use of stop and search, how officers should record it and how the service will collate that data and publish it annually. As you will be aware, the Criminal Justice (Scotland) Act 2016 requires that an annual set of data be published. The act also sets out the categories that must be used in that annual publication, from age, through gender to national origin.

**Liam McArthur:** The week before last, ACC Williams appeared to say that officers and parts of the force had got into the habit of using the tactic almost as a first resort rather than a last resort and that, over the past year or so, other techniques had been deployed to ensure that policing remained effective, which left stop and search as the last option unless there was a suspicion that merited a search under regulated terms. Does that concur with your impression?

**Michael Matheson:** The Scottish Police Authority carried out a piece of work on stop and search. HMICS then carried out follow-up work on the data collection on stop and search, and it made the suggestion that there should be a presumption against the use of consensual stop and search. Police Scotland has been operating on that basis and, since March 2015, the force has been reducing the use of consensual stop and search. Over that time, it has made a concerted effort to record stop and search more accurately and to phase out consensual stop and search.

As a result of that and the fact that Police Scotland now has a national unit on stop and search, we can be more confident about the information that we have. However, the code will set the framework in a much clearer fashion so that there are no doubts about what has to be recorded, how it should be conducted and when it should be conducted. We will place it all on a statutory footing.

The issues that you raise highlight the uncertainty about how stop and search has been used, the various approaches that there were to stop and searches in the previous legacy forces and how some of those were taken into Police Scotland. The code will put us into a much better place and give us greater clarity than we have had historically. It will also give the committee and others a much clearer insight into exactly how and when Police Scotland is using stop and search as well as ensuring that the police are using it as an effective tool to prevent and tackle crime. It is an effective tool when it is used appropriately, and the code aims to support and assist the police in doing that.

**Liam McArthur:** The point that you make about stop and search being an effective tool is often lost in the wider debate about how it has been used in the past. However, in spite of the dramatic fall that we have seen in the use of stop and search—I am speaking not only of the removal of consensual stop and search as an option but the significant drop in the use of stop and search overall—there is no evidence at this stage that policing has been less effective, either in general or in particular areas, as a result of the reduction in the use of that tactic.

**Michael Matheson:** No, there is no evidence of that. There have been suggestions that the loss of consensual stop and search could result in particular types of crime increasing. In particular, reference has been made to the possibility of an increase in knife crime. However, in the evidence that we and the advisory group have considered, there is nothing to indicate a correlation between the two.

It is worth keeping in mind that stop and search has been on a statutory footing in England and Wales for almost 30 years. There were issues around how stop and search was being used within the Metropolitan Police division, and at the time they looked at whether there was a correlation between some forms of violent crime that were taking place and stop and search. However, the Home Office came up with the same view as we have: there is no evidence that links the two.

Does a greater level of stop and search result in a reduction in the number of those crimes, or does a reduction in the use of stop and search result in an increase in particular types of crime? There is no evidence to support a correlation between the two. Having said that, I think that we need to keep the area under very careful review. We must continue to monitor it and, if new or emerging evidence suggests that there are issues that need to be considered in relation to how stop and search is being used by the police, it is the responsibility of us all to consider those. That is

why the code has been drafted in such a way as to allow others to revisit it at any point in the future, as and when there is any new evidence that suggests that we need to change or alter it.

I also think that, if the police believe that they require powers for particular purposes, it is incumbent on them to produce evidence to support a justification for those powers. In that way, the powers that we provide to the police are based on clear evidence that demonstrates that they will have a beneficial effect in keeping our communities safe and preventing crime.

On the issue of consensual stop and search, there is no evidence that I or the advisory group have been made aware of that demonstrates what you describe. In the evidence that the sub-committee received, although there were those who felt that the loss of consensual stop and search could potentially lead to an increase in some types of crime, they accepted that there was a lack of evidence to support that proposition at this point.

**John Finnie (Highlands and Islands) (Green):** Good morning, cabinet secretary. I do not think that anyone would dispute that stop and search is an important tool in the police armoury, but only when it is used appropriately. To my mind, “appropriately” would mean to use it very sparingly.

I quote:

“The impact assessments and the consultation ... highlighted the need for an easy to understand guide to the Code aimed at members of the public.”

It is important that we have well-informed citizens—especially young people. I am aware that you are going to post the guide on your website, but you will understand that that will not be the first port of call for young people. Can you advise how the Scottish Government will get the information out, so that people fully understand their rights, and also their responsibilities?

**Michael Matheson:** You are correct that the guide will be placed online for individuals to access; it will be made available at all police stations, as well. We are working with the advisory group to produce a plain English version, which will be available to members of the public.

I know that John Finnie—as Mr McArthur does—has a long-standing interest in the impact that the policy has on young people and children. We are also working to develop a children and young people’s guide to stop and search, which will be appropriate for that age group.

Therefore, we will have the combination of having the guide available online and in police stations, and there will be a plain English version and a children and young people’s version, to

support individuals in understanding what their rights are and how stop and search should be applied.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** The code of practice removes some options that the police previously had and formalises the process. Notwithstanding the existence of the code of practice and the restrictions that it places, can the cabinet secretary confirm that the police can, in whatever circumstances they find themselves, address overriding issues of safety and do whatever is necessary to preserve life?

**Michael Matheson:** There was an issue of concern relating to section 3 of the code and its application in respect of officers being in a private place and dealing with someone they think represents a threat to themselves—someone who is potentially suicidal, for example. The question was whether they would be able to search that individual for items that might result in their being able to harm themselves. Following the consultation on the draft code, section 3.4 was introduced by the advisory group. In effect, section 3.4 gives the police additional comfort by reminding them that they have an overall duty to protect life and that, in such an instance, they would be able to search the individual for items that might cause them harm.

In evidence to the Justice Sub-Committee on Policing, John Scott explained what has been provided in the code to address that concern. It would be fair to say that Police Scotland is also comforted by that provision in the code. We should also keep in mind that the Police and Fire Reform (Scotland) Act 2012 contains an explicit responsibility on constables to protect life. Together with article 2 of the European convention on human rights, on the need to preserve life, that gives comfort that there is legislation that supports the police, when they are in private places, to search a person they think is at risk—in particular, of suicide—and who may have something on them with which they could cause themselves harm. That issue was picked up during the consultation exercise. We will monitor how the provision is applied. However, Police Scotland feels that it gives them enough comfort, as things stand. If we need to consider further legislative changes to address that issue, we can do so in due course.

**Douglas Ross (Highlands and Islands) (Con):** Just to follow on from Mr Stevenson's point, do you have any intention at the moment to legislate for that element?

**Michael Matheson:** No—we do not, at present.

**Douglas Ross:** What timescale will you allow for a review of the code? Can Police Scotland come back to you at any point? Will you review the

code in six months or a year? I know that Dr Scott's group is reviewing it at intervals. Will any review be done on the basis of a further recommendation from him? He has included in his evidence to the Justice Sub-Committee on Policing that he believes that a legislative solution may be required. How would you view the competing demands to legislate in this area?

**Michael Matheson:** Over the course of the next year we will review how the code has been implemented. There will be the six-month interim review and then the complete review at the end of the year. Following on from what we have in the code at present, if there is a feeling from Police Scotland and the advisory group that we should bring forward some form of legislative change, we will look for an opportunity to consider that. We will be in a better place to make a decision once we have completed the first full year under the code.

**Douglas Ross:** What is your response to the comment by Calum Steele, on behalf of the Scottish Police Federation, that the bureaucracy might turn some officers away from using the powers? Liam McArthur started off asking about such issues.

11:00

**Michael Matheson:** I am not entirely sure that that will be the case. There is a need to ensure that we have a robust and effective system that allows effective recording of use of stop and search that is balanced with the rights of the public around stop and search. Providing evidence on behalf of Police Scotland, Assistant Chief Constable Williams was quite clear that any additional bureaucracy would be balanced out by the increase in public trust and confidence resulting from having the code in place. We are trying to get the balance right; by and large, the code will achieve that.

If, after six months to a year of the code's being applied, issues that are particular problems for Police Scotland are being highlighted, there will be an opportunity to revisit it. However, Police Scotland has been heavily engaged in the whole process to ensure that we get it as near right as possible. The small amount of additional bureaucracy that is attached to application of the code is outweighed by the benefits that we get in public trust and assurance about how stop and search is being used by the police.

**Douglas Ross:** Do you think that Calum Steele is incorrect in his assumptions?

**Michael Matheson:** No—but I do not agree with his view on that particular matter. The code will probably get it broadly right and we will monitor that over the course of the year.



**Douglas Ross:** Do you anticipate that the number of stop and searches will increase in any areas of Scotland as a result of the changes?

**Michael Matheson:** We do not anticipate that, at the present time.

**Douglas Ross:** Following the additional training, is there a possibility, in areas that did not take the approach that what was then Strathclyde Police took, and which resisted some of the demands of the previous Police Scotland leadership, that some officers who were not familiar with carrying out stop and search under the old procedures will now have new awareness, which would mean that we may see a spike in the number of stop and searches, for a period?

**Michael Matheson:** No—that will not necessarily happen. The significant increase in some areas was a result of the use of consensual stop and search, to which the code will bring an end, which means that all stop and search will have to be conducted on a statutory basis. As part of the code, data from local command areas on how stop and search has been used will go to local commanders and they will be able to consider that at a localised level to make sure that its use is appropriate and complies with the code. The data will then be applied at national level.

If you look back at the history of the issue, the big numbers were to do with consensual stop and search, rather than with statutory stop and search.

**Douglas Ross:** I put that same question to Dr Scott—as you said, the work that Dr Scott and the advisory group have done has been excellent. I welcome the opportunity that he gave party spokespersons to meet and discuss it. He accepted that in some parts of Scotland that had previously not really used stop and search powers at all, and had not gone down the route that we saw in central Scotland and the west of Scotland, officers might go along to a training session, get the information about stop and search and then go out and use it more readily. He accepted that that could happen, but you seem to be suggesting that it will not.

**Michael Matheson:** We will find out over the course of next year, but there is no evidence to suggest that that will happen. Statutory stop and search has always existed, so what you suggest would not happen unless there were to be a change in tactics and in the way stop and search is used in a local command area. We are not providing any additional powers.

Statutory stop and search is a provision that has always been there and police officers are trained in its use. The training that the officers are now going through is a result of the application of the new code, and to ensure that they are familiar with it. All officers go through training and so will be

familiar with consensual and non-consensual stop and search.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I was encouraged by the evidence from the Children and Young People's Commissioner Scotland, who said that the early consultation of children and young people had been particularly useful. I am also encouraged by the fact that you are producing a children and young people's guide. Are you content that the child protection provisions in the code are robust?

**Michael Matheson:** There was a significant and concerted attempt to ensure that we captured the views of young people on use of stop and search, given that there had been such a significant level of concern about how consensual stop and search was being used with young people. It is a credit to my officials and the way in which they have taken the work forward that they ensured that young people were fully involved in the process.

I am content that the code gets the balance right, and that we have ensured that the views and issues of young people have fed into and shaped the process. As you will be aware, the code includes a specific part to deal with children. We need to monitor that to ensure that the balance is right and to address issues of concern or areas for improvement. It is reasonable to say that, over the next six months to a year, as we review the situation, we will be able to identify where any further work needs to be undertaken.

Once the code is introduced, the level of clarity that we will have on the issues will be way beyond anything that we have had before on stop and search and how it will be applied to children and young people. I am confident that we will have much greater clarity on and understanding of that. We will also have much clearer data on the use of stop and search.

Rona Mackay will be aware that one of the issues that was raised during the consultation exercise was whether there is a legislative gap around the ability to search young people for alcohol. I was open minded about whether there is a legislative gap that needed to be closed in order to give the police a specific power to search young people for alcohol. In considering the matter, the advisory group has not been able to come up with evidence or data to support provision of such a specific statutory power for the police.

We will review the situation over the next year, during which Police Scotland will be collating data specifically on that matter. It will share that information with the advisory group, which will provide an interim report to me after six months. A report will then be made after a year. If, after that, there is evidence that demonstrates that there is a legislative gap, we can consider that then. If,

however, there is no evidence to support the need for any further statutory powers in that area, it would not be justified for us to consider providing a particular statutory power.

**Mary Fee (West Scotland) (Lab):** I wish to ask you for a bit more detail on the review and assessment process. The new chapters that have been included in the guide on situations involving a child are particularly welcome, especially chapter 7. Pauline McIntyre was very pleased to see the new items covered in that chapter. Chapter 8, on vulnerable people, is also very welcome. I am thinking specifically about adults with mental health problems. That new chapter marks a huge improvement in the code.

On the interim review that will be done after six months, you will not know, until the code is actually used, how good it is or whether it is working effectively. Will you be able to drill down sufficiently at the six-month review to see whether new chapters 7 and 8 and the new guidelines are working effectively? If you find gaps or if any concerns are raised, will you be able to change the guidelines at that point, or will you have to wait until the year is up?

**Michael Matheson:** My only note of caution is that six months may be too early to give us a true understanding of how the code is operating overall. I have asked for a six-month interim report that will, if trends emerge, allow us to consider whether we need to do some further work over the subsequent six months in order to understand the information more fully. By the time we get to the end of the year, we will be able to supplement any information that has been gathered over the course of that year by Police Scotland with any additional work that we might wish to do if trends emerge.

If, at six months, there are issues around how the code is being applied to vulnerable individuals—people with a learning disability or with mental illness—we would need to consider them. At that point, we could consider whether we need to do anything further to understand the matter more fully, so that by the time we get to the end of the year, we should be in a better place to understand the full extent and nature of the issue. A year is probably a reasonable timeframe to give us a broader understanding, but at six months there will be a health check that will allow us to identify any emerging trends and, if there are emerging trends, whether we need to do further work to understand them more fully so that we can consider the issues in the overall review after a year.

**Mary Fee:** That is helpful. Thank you.

**The Convener:** The code is very welcome and it has been well thought out. Everyone is relieved

that there will be a review and that the use of stop and search will be monitored as it goes along. Will you comment on some of the reports in the press about the cost of implementing the training, which was mooted to be £3 million at a time when police budgets are under quite a bit of pressure?

**Michael Matheson:** The figures are nothing new in that they are part of the business and regulatory impact assessment that went alongside the drafting of the code, so we have already calculated and provided the information. The training is being managed through Police Scotland's on-going training provision for constables. We calculated the cost on the basis of some of the information technology changes that had to be made and some of the work on the training of officers.

**Liam McArthur:** I was going to ask about the separate powers to stop and search young people for alcohol, but you have probably given as much of an answer on that as you can. Douglas Ross asked about the potential for an increase in the use of stop and search in areas where its use has historically been lower. I quoted the figures of a reduction of 99.5 per cent in consensual stop and search and a reduction of 93 and a bit per cent in stop and searches as a whole. What is the figure for the use of statutory stop and search over the same period? As you said, consensual stop and search made up the vast bulk of the figures until that reduction.

**Michael Matheson:** I do not have those figures to hand, but I can get you the most up-to-date figures for the use of statutory stop and search if that would be helpful.

**Liam McArthur:** That would be helpful. Has the trend over the 12 months to which those figures refer remained largely static and is that 93.5 per cent reduction made up principally by the numbers of consensual stop and searches falling off a cliff or has there been a reduction in statutory stop and searches as well?

**Michael Matheson:** The more up-to-date figures will show that consensual stop and search has declined even further. That is all in preparation for the introduction of the code, after which consensual stop and search will no longer be used. I can come back to you with accurate details on the most up-to-date figure from Police Scotland for the use of statutory stop and search.

**Liam McArthur:** You made a point on the additional bureaucracy. Douglas Ross rightly highlighted the concerns that Calum Steele raised. As well as talking about the increase in public confidence and transparency, ACC Williams made a point of saying that transparency was in the interest of police officers because it afforded them some protection from allegations of using stop and

search inappropriately. Therefore, the benefit of the code is not simply to do with public confidence and the relationship between the public and police officers. To an extent, the code presents additional protection to police officers because their use of stop and search will be far more transparent and, therefore, the opportunity for allegations of misuse will be much reduced. Do you recognise that view?

11:15

**Michael Matheson:** Yes, I do. You can see that from the evidence that you received from ACC Williams in response to the issue that Douglas Ross raised. Stop and search is only one way for officers to gather information and intelligence. They can do that in a range of ways. ACC Williams was also keen to impress on the sub-committee the point that stop and search is being used in a legitimate and accountable way in which the public can have confidence. Our responsibility, in the Government and in the Parliament, is to set the framework within which the police can operate and to give the police clarity on what their role is and how they should fulfil their duties, so that we are doing everything possible to support them in the very important and good job that they do for us.

Some of the amendments that have been made to the code at the draft stage are reflections of views that were expressed by constables, who called for greater clarity around some points, especially on the ability to search someone who may be a vulnerable individual who is at risk of committing suicide. It is a matter of providing officers with additional assurance and clarity. It helps them to have an understanding of the rules and of how they should be applied in a way that has not been possible previously.

As regards some of the historical issues that you raised earlier on the collection and reliability of data, there are a considerable number of interpretations of how stop and search should be applied, when it should be used and how it should be recorded. The code will remove all of that uncertainty. It will provide the police with clarity, and it will provide the public with clarity in a way that ensures the legitimacy of stop and search as a valuable tool as and when necessary, as well as ensuring appropriate accountability around how it is used, given its invasive nature. Stop and search is an invasive tactic, as it invades an individual's personal privacy, so we need to ensure that we get the checks and balances right. By and large, the code probably does that, but we will continue to assess that over the next year.

**Liam McArthur:** More broadly, we have all accepted the place that we are now at with the code of practice, which is welcome. It has also

been acknowledged that we have come a long distance from the time when my colleague Alison McInnes and, to be fair, John Finnie were raising the matter routinely in committee and in Parliament.

Has the work on the issue prompted the Government to consider other areas where established practice may need a bit of challenge function exerted? I appreciate that that is our role as members of the committee, but has the Government asked Police Scotland to consider other tactics and approaches that the police use in carrying out their duties?

**The Convener:** You are probably straying a bit, but it is up to the cabinet secretary whether to respond to that.

**Michael Matheson:** I established the advisory group in recognition of the concerns about the use of stop and search. I had concerns when I became cabinet secretary about the data and its quality, and about the information that was available to us and how it was being used.

If an appropriate tactic is used incorrectly or inappropriately, there is a danger that that can undermine public confidence in the validity of its use. The code of practice provides assurance, and it will support public confidence in how the practice is being applied. As I mentioned earlier, the code helps to give the police legitimacy and accountability in how the tactic is being used. It also gives public confidence in the way in which it will be used and in the rights that individuals have in relation to its application.

Turning to some of the broader issues, it is important that the police can use a range of tactics and approaches that help to make our communities as safe as possible. I know that the member is interested in the use of biometrics, which is growing considerably. Its application in tackling crime is an important element in meeting some of the challenges of new and emerging crime. As that technology develops, it is important that we have in place appropriate safeguards on how biometrics will be used and what the oversight outwith the police will be on that. HMICS has raised that matter, which I welcomed at the time, and it is an issue that I am giving a considerable amount of consideration to now.

The reason why it is important to address the issue is not because I do not want the police to be able to use such things. I want them to be able to use them, but I want a structure in place that provides accountability and legitimacy so that the public can be assured about how those measures are being applied. As that area develops, it is important that we support the police and can use those things appropriately and legitimately, as and when that is necessary. One of the most effective

ways that we can do that is by providing the right type of oversight structures—ones that can provide that level of public reassurance and accountability.

From the Government's perspective, that may be an example of where it is trying to support the police but in a way that gives the public confidence in how the police are using those new and emerging technologies.

**John Finnie:** I would like the cabinet secretary to pick up on something that Liam McArthur said. To paraphrase or to give one interpretation of it, he said that the code is righting a historic wrong. The reality is that there are common-law powers of search and statutory powers in relation to drugs and offensive weapons, such as firearms, and those were applied largely without incident for decades on end. That legislation goes back over half a century. The aberration was the nonsense of so-called consensual search, which the draft code now addresses. Rather than bringing in some brave new world, the code is reinforcing something that was being properly carried out in the past. Do you agree with that characterisation?

**Michael Matheson:** I agree with that. There is a whole range of different statutes that provide search powers in different situations. The code of practice deals only with the powers to search individuals who have not been arrested. There are obviously other search powers, which are dealt with under standard operating procedures, for anyone who has been arrested.

My view is that the code will get us into a much better place and provides much greater clarity around these matters, for officers and the public. It will allow Parliament to have oversight of the rules and how the procedure should be applied. It will also provide us with greater data so that there can be much greater transparency on the matter. Also, if we are minded to consider amending the code at some point in the future, and if the Government brings forward amendments or changes that might be necessary, Parliament will be the body that will decide on those. The code will get us to a much better place and it will give Parliament a much clearer role in setting down that framework for what is one of our most important public services—the police service. It also balances that against the rights of individuals to go about their daily life.

**The Convener:** Do you want to make any closing remarks, cabinet secretary?

**Michael Matheson:** No.

**The Convener:** The third item on the agenda is formal consideration of motion S5M-03459, which relates to the affirmative instrument.

*Motion moved,*

That the Justice Committee recommends that the Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017 [draft] be approved.—[*Michael Matheson*]

*Motion agreed to.*

**The Convener:** That concludes consideration of the affirmative instrument. The committee's report will note and confirm the outcome of the debate.

Are members content to delegate to me as convener authority to clear the final draft report?

**Members indicated agreement.**

11:24

*Meeting suspended.*

11:24

*On resuming—*

### **Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2017 (SSI 2017/7)**

**The Convener:** The next item on the agenda is consideration of a negative Scottish statutory instrument. I refer members to paper 2. If members have no comments, does the committee agree that we have no recommendations to make in relation to the instrument?

**Members indicated agreement.**

## Justice Sub-Committee on Policing (Report Back)

11:25

**The Convener:** Our next agenda item is verbal feedback from the convener of the Justice Sub-Committee on Policing on its meeting of 12 January 2017. I refer members to paper 3. I invite Mary Fee to provide that feedback, after which there will be an opportunity for members to make comments or ask questions.

**Mary Fee:** The Justice Sub-Committee on Policing met last week to agree its findings on the draft stop and search code of practice and its forward work programme. A letter outlining the sub-committee's views and an updated work programme are included in paper 3. I am happy to answer any questions or listen to comments.

**The Convener:** If there are no comments or questions, we will move on to the next item, which we have agreed to take in private.

The next committee meeting will be on 21 February, when we will take evidence on the Limitation (Childhood Abuse) (Scotland) Bill and consider our draft report on the Crown Office and Procurator Fiscal Service inquiry.

11:26

*Meeting continued in private until 12:11.*



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

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