OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 12 December 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 12 December 2017

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JUSTICE COMMITTEE
36th Meeting 2017, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Maurice Corry (West Scotland) (Con)
*Mary Fee (West Scotland) (Lab)
*John Finnie (Highlands and Islands) (Green)
*Mairi Gougeon (Angus North and Mearns) (SNP)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Liam McArthur (Orkney Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Claire Baker (Mid Scotland and Fife) (Lab)
Annabelle Ewing (Minister for Community Safety and Legal Affairs)
Aileen Grimmer (Scottish Government)
James Kelly (Glasgow) (Lab)
Michael Matheson (Cabinet Secretary for Justice)
Stephen Tidy (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 12 December 2017

[The Convener opened the meeting at 09:47]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 36th meeting in 2017. We have received no apologies. There are two declarations of interests to be made.

Liam Kerr (North East Scotland) (Con): I declare an interest as a current solicitor who is registered with the Law Society of England and Wales and with the Law Society of Scotland.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I refer members to my entry under the voluntary heading in the register of members' interests: I am a registered solicitor on the roll of Scottish solicitors.

The Convener: Agenda item 1 is to decide whether to take in private agenda item 9, on agreeing the themes for our stage 1 report on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. Do members agree to take agenda item 9 in private?

Members *indicated agreement.*

Subordinate Legislation

Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017 [Draft]

09:48

The Convener: Agenda item 2 is consideration of the draft Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017, which are subject to affirmative procedure.

I welcome the Minister for Community Safety and Legal Affairs, Annabelle Ewing, and her Scottish Government officials. Stephen Tidy is from the police division, Aileen Grimmer is from the civil law and legal system division, and Sadif Ashraf is from the directorate for legal services.

The committee has received quite a number of submissions on the regulations from various legal bodies, for which we are extremely grateful.

The agenda item is members' chance to put to the minister and her officials any points seeking clarification on the instrument before we formally dispose of it. I refer members to paper 1, which is a note by the clerk, and invite the minister to make a short opening statement.

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): I, too, draw members' attention to my entry in the register of members' interests, wherein they will find that I am a member of the Law Society of Scotland and hold a current practising certificate, albeit that I am not currently practising.

The regulations will ensure that legal aid continues to be available following commencement of part 1 of the Criminal Justice (Scotland) Act 2016, which will deliver key changes to police custody processes. They will also introduce investigative liberation, changes to police liberation, post-charge questioning, and the self-contained court procedures that can arise in relation to those processes.

The 2016 act provides that persons who are in police custody have a statutory right to a private consultation with a solicitor at any time. The regulations will ensure that the consultation is provided free to everyone who is in police custody.

To reflect the additional considerations that might arise when dealing with a person who is considered to be vulnerable, solicitors will be paid a higher rate for such consultations. The decision as to whether an individual is considered to be vulnerable will be for the custody officer.

Investigative liberation will allow the police to release a suspect from custody with conditions. The person who is subject to the conditions can apply to the sheriff to have them reviewed. A person who is in custody and is charged with an offence may be released from custody with an undertaking. In both cases, the person can apply to the sheriff to have the conditions reviewed. Legal aid will be available for representation before the sheriff.

The 2016 act will also allow the police to apply to the court to question a person after the person has been charged. That will be known as post-charge questioning. When an application is made by the prosecutor for post-charge questioning, legal aid will be available for representation before the sheriff.

The commencement of part 1 of the 2016 act, and the need to change legal aid provision to support it, provided us with the opportunity to implement changes on wider fee reform for police station advice. The Law Society of Scotland had previously recommended that a system of block fees for police station advice be introduced. The regulations will implement that recommendation, as well as significantly simplifying the process for solicitors who are claiming fees for police station advice, which simplification was also requested by the Law Society.

There was significant stakeholder engagement on the regulations: we engaged with stakeholders and we listened to the concerns of the Law Society of Scotland. From an original proposal of approximately £2.46 million per annum, we increased our offer by increasing the level of block fees, by extending the times when the unsocial hours premium will be paid, and by providing that the unsocial hours premium will be applied to travelling time and telephone calls. Our offer to pay the unsocial hours premium for travelling time was not one that the Law Society had formally sought, but we felt that it was justifiable to make that application.

Our current spend on police station advice is in the region of £520,000 per annum. The regulations will increase the spend to an estimated £3.2 million per annum. That is an updated figure that has been provided by officials. The figure includes the new court and custody work that is available to solicitors as a consequence of implementation of the 2016 act. Eight stakeholder events were held across Scotland to seek the views of the wider profession, and 50 local faculties and practices were consulted on the draft regulations.

The Scottish Government has moved its position considerably on the amount to be paid for police station advice fees, but we could not, given budgetary constraints, meet every request of the Law Society. The Scottish Government remains committed to maintaining legal aid for those who need it most. We believe that this is a good offer to the profession. Implementation of the regulations will enable us to meet our European convention on human rights obligations when part 1 of the Criminal Justice (Scotland) Act 2016 is implemented.

The Convener: Thank you, minister. At the outset, I want to express concern about the time that the committee has to consider the regulations. You have said that there had been a number of submissions and that they are detailed and concerning in content. The regulations are a Scottish statutory instrument and are, therefore, secondary legislation. We have had one week—literally a few days—to look at the instrument, so I am putting it on the record that I think that that is inadequate.

Before we go any further, I would like to hear from other members.

John Finnie (Highlands and Islands) (Green): The committee has had a number of submissions from various barristers and a very detailed submission from the Scottish Legal Aid Board. In the paragraph in which SLAB talks about the consultation events, it says:

"No fundamental concerns with the working of the new regulations were raised at these engagement events or during the SG consultation exercise."

That does not seem to be the case with all the submissions that we have received. How did the Scottish Legal Aid Board form that opinion? Obviously, we do not have it here to answer directly.

Annabelle Ewing: My understanding is that that statement was probably intended to reflect the view that the general approach of having a block fee and there being simplification and streamlining of processes was not at issue. Of course, some responses have referred to the level of fees, but I guess that the Scottish Legal Aid Board was trying to convey that the general approach was not deemed to be unworkable or to raise fundamental problems of principle. However, as with all such things, the level of fees was, and is, an issue for some members of the profession.

John Finnie: I know that other members have questions about fees, but I want to ask about two practical issues. First, we have received a submission about on-going work that the Justice Sub-Committee on Policing has been doing on location of custodies. A person might be called out to represent a custody but, as the submission points out,

"Police operational requirements and centralisation of custody units may well mean that a suspect is moved from Edinburgh to Greenock for example."

Are the proposals sufficiently encompassing to ensure, first and foremost, that people can get the representation that they need, and that the lawyer who provides that representation is not disadvantaged financially or in terms of time?

Annabelle Ewing: I will ask Stephen Tidy to respond on the practicalities of the scenario that John Finnie has highlighted, of suspects being moved from Greenock to Edinburgh, or vice versa. However, as far as legal aid cover is concerned, payments for travel time would be made at half the attendance rate, and if that travel happened wholly or partly during unsocial hours, the uplift—the 33 per cent unsocial hours premium—would apply, as would a mileage allowance. With the simplified online processes, such claims can be made automatically if the travel time is over, I think, two hours. Of course, authorisation would need to be sought from SLAB, but that facility would be available 24/7. Moreover, where it could be shown that a certain distance was required to be travelled—or, indeed, where local road works or weather conditions had come into play—that would be taken into consideration with regard to any extension of the automatic travel time being granted. That is how the legal aid fee regime would deal with the travel issue.

Perhaps Mr Tidy will address Mr Finnie's first question.

Stephen Tidy (Scottish Government): A person who still has the status of suspect would be taken to and interviewed at the closest custody facility. Long-distance travel would not be involved in that, because it would be counterproductive for the police to have to go back to take witness names and so on. As a result, the suspect would be taken to the closest custody facility to be interviewed.

John Finnie: So, the scenario that was outlined by the Law Society of Scotland of a solicitor being called out to represent someone in Edinburgh only to find that they had been transferred to, say, Greenock, could not happen.

Stephen Tidy: There might be exceptional circumstances in which, after the initial inquiry had been dealt with and the person had been interviewed about the crime, another crime that they were suspected of committing was discovered during their custody and after they had been transferred. However, that would be an exception.

John Finnie: Thank you.

Other submissions that we have received allude to the Working Time Regulations 1998 and article 8 of the European convention on human rights. Do you believe that the existing scheme is compliant in both respects?

Annabelle Ewing: Yes. We should recall at the outset that participating in the police station duty scheme is not mandatory, and that those who participate in the scheme can make themselves unavailable. It is important to bear those basic rules in mind.

John Finnie: That will not change with the new scheme: the previous scheme was compliant, as is this one.

Annabelle Ewing: The police station duty scheme remains an option for solicitors. Even if they participate in the duty scheme, solicitors are not required to make themselves available at all times. I do not know whether we will get on to the code of practice that has been discussed by the Law Society and which was issued in its final form just yesterday.

The Convener: We have a lot of questions to get through, minister.

Annabelle Ewing: Okay. I will hold fire on that.

The Convener: If the minister has finished, before we leave questions on travel, I mention that perhaps Stephen Tidy was not aware of the evidence that was heard by the Justice Sub-Committee on Policing. Police are routinely—or very frequently—having to travel long distances to access custody suites, which has a time implication.

10:00

Some evidence that has been presented to members says that travel time is not the only issue; for example, a doctor may not be available to do necessary tests. One submission was about a solicitor leaving at 10 to 11 to attend a police station where they were required to be, and left the station at something like 6 o'clock in the morning and was in court at 10 o'clock on the same day. It seems to me that there are most certainly working time directive implications. Has the minister looked at those implications?

Annabelle Ewing: I am sorry that I missed that submission. I do not know all the facts or circumstances; if we knew those, we could look at them in detail. The submission had a paragraph about a set of circumstances, but I do not know all the ins and outs. I will be very happy to have the case looked at but, absent the detailed information of the specific facts of that instant case, it is difficult to make a detailed response.

The Convener: The broad point that I took from the submission was that a solicitor can appear at a station ready to represent a client, and can wait there many hours if other people are involved—for example, a police surgeon. Without looking at the specific instant case, the general point needs to be addressed.

Annabelle Ewing: Your citing of an instant case without giving all the details makes it a wee bit difficult to make a detailed comment, when we do not have all the information. I return to what I have said: it is not mandatory for solicitors to apply to the duty scheme and it is not mandatory for participants to be available at all times. Those are two fundamental issues to bear in mind.

The discussions on the code of practice included the issues of availability and of being on call 24/7. Language to the effect that a solicitor could leave a voicemail message to say that they are unavailable was unacceptable to the profession, for whatever reason. In the interest of reaching a compromise, the Scottish Legal Aid Board agreed to delete that language. Therefore, a solicitor is not even required to leave a message on their answering machine to say that they are unavailable. Such voicemail messages would have been helpful, because they would reduce delays. Otherwise, SLAB's solicitor contact line has to assume from silence, after a time, that the solicitor is not rocking up.

However, we are where we are—that is what the legal profession wanted to secure in the code of practice, which was agreed with some reluctance by the Scottish Legal Aid Board. The code of practice has been issued without the requirement for a message to be left on the solicitor's voicemail, so delays such as members and the convener have spoken about may not be eradicated.

The Convener: There will be other questions on availability.

Liam McArthur (Orkney Islands) (LD): Good morning, minister. On a similar theme, you have referred to the fact that it is not a requirement for solicitors to make themselves available for duty. A number of the submissions, including those from the Society of Solicitors and Procurators of Stirling, the Society of Solicitors in the Supreme Courts of Scotland and the Dunfermline District Society of Solicitors, make points about expectations that the regulations, if implemented, are likely to exacerbate a situation in which there is already often difficulty in getting solicitors to attend. The Dunfermline district society confirmed at a faculty meeting that "the unanimous view" of those present was that

"if the regulations are laid in the present form then no firm will participate in the Police Duty Scheme."

Similar points were made in the other submissions that I referred to.

The practical implications appear to be very serious and, as the convener has already indicated, we have limited time to take further evidence. How do you respond to the suggestion that the regulations are likely to make the situation worse in an area that does not appear to have an overabundance of provision?

Annabelle Ewing: I will try to respond to the member's question as fully as I can. I will mention a few different issues. It is important to recall that there were eight stakeholder events, which were held in Glasgow, Edinburgh, Aberdeen, Dundee, Inverness, Falkirk, Kilmarnock and Dunfermline. In addition, the consultation on the draft regulations commenced in August and although it was initially intended to run for four weeks, the Law Society requested an extension, which was agreed to. The consultation closed on 15 September and 50 faculties and member practices were consulted. We received responses from the Law Society of Scotland, the Edinburgh Bar Association and the Dunfermline District Society of Solicitors. In summary, after consulting 50 bodies, we received three responses from the legal profession.

I have had several meetings with the Law Society of Scotland and its legal aid negotiating team, headed by Mr Ian Moir and other officials from the Law Society. At the end of the day, although we were able to address several of the Law Society's requests, the key ask that we could not meet was an increase in the block fee itself. We looked to see whether there was any room in the legal aid budget to do that, but as we explained to Mr Moir, it was not possible.

When we reached that stage of discussions—on 28 or 29 June 2017—the only outstanding issue was the increase in block fees. We had already increased the block fee rate in response to concerns and we had already extended the definition of unsocial hours to include not just from 10 pm to 7 am—as at present—but from 7 pm to 7 am, all day on Saturdays and Sundays and on eight specified national holidays. We also applied that to telephone calls made wholly or partly during those unsocial hours, as well as to travel—notwithstanding the fact that the Law Society had not initially requested that that be included. We moved considerably, to the extent that that was possible given the budgetary constraints.

The last issue on the table was the increase in block fees. We explained to Mr Moir why we could not move any further on that. That was the position with the Law Society legal aid negotiating team at the end of June. I was to go away and examine the issue. We wrote to the Law Society on 30 July after I had had the chance to do so and we then proceeded to consultation.

That is the background. I note some of the representations that have been made to the committee in the past few days, but that is not the position that I had in my dealings with the Law Society at the end of June.

Liam McArthur: The Dunfermline District Society of Solicitors could hardly be clearer about its expectations of the consequences of passing the regulations. What assessment has been made of the likely availability of solicitors on the basis of the regulations? As you say, there is no requirement placed on solicitors, but the committee needs to be reassured that there is sufficient availability of solicitors to satisfy access to justice and other considerations. What assessment has been made of the problems that might arise on either a national or regional level because of a lack of available solicitors?

Annabelle Ewing: I will explain the process briefly. The duty scheme for both police station and court is in place until the end of March 2018. To withdraw from the duty scheme, a firm would have to give one month's notice. The Scottish Legal Aid Board plans to request interest in the new duty scheme for police station and court from March 2018 onwards by the end of December 2017, with a view to seeking intimations of interest in the new duty scheme by 26 January 2018.

That is the process that would normally apply. It allows us to be apprised of instances in which a solicitor was seeking to withdraw from the duty scheme and to put the arrangements in place. Obviously it is a matter for each solicitor whether they wish to participate in the police station duty scheme or indeed the court duty scheme. If there was not take-up to the extent that it would change the status quo in terms of numbers, the Scottish Legal Aid Board would seek to make alternative arrangements. Consideration has been given to that scenario.

Liam McArthur: Can you say what those alternative arrangements will be? We are being told that even the status quo is leaving things very tight in certain areas. A suggestion that the regulations would exacerbate that situation has to be a concern.

Annabelle Ewing: An example would be having additional solicitors in place to deal with police station duty; the Public Defence Solicitor's Office and the Legal Aid Board could pursue that possibility.

We have not received any mass intimations of withdrawal from the duty scheme. I am very happy to keep the committee apprised of any developments in that regard. As I said, there is a one-month notice period for any withdrawal, and we continue to monitor the situation very closely.

We have to remember that this is about the rights that are to be introduced by the Criminal Justice (Scotland) Act 2016, which was voted on by this Parliament. Those are very important rights that meet our ECHR obligations. It is about ensuring that we can extend free legal provision at police stations to all those who are detained there, as was foreseen during the legislative passage of the 2016 act. We will ensure that that happens, because it is our obligation under the ECHR.

We hope that solicitors will feel that it is a good deal, as I do, because it deals with a lot of the issues that have been raised. It also provides a simplified process for solicitors claiming their fee, which is important because at the moment that is a cumbersome two-stage process that involves getting a hard-copy signature from the client. Bearing in mind that consultation can be done by telephone, solicitors feel that, frankly, going through the procedure for doing that is too much of a hassle, so many telephone calls are simply not claimed for. We do not want that to be the case—we want people to be paid for the work that they do. We hope that this new package, by addressing the level of fees, the simplified procedure, the application of an antisocial hours premium to travel and the wider definition of antisocial hours, will make the scheme a more attractive option for the solicitor profession.

Liam McArthur: I will finish with a process point. You mentioned the engagement with the Edinburgh Bar Association, among a couple of others. In its submission to the committee, it says:

> "The Association would like to make clear to the Committee that these policy developments have become known to us by virtue of having been told of them by individual police officers. It is a grave concern that they have not been the subject of official communication. The concerns which this Association has had about the imminent introduction of these statutory provisions have been well known to all relevant bodies for several months. That we have not been made aware of these policy positions which serve to confirm our suspicions is indicative of utmost bad faith."

Thinking of John Finnie's point about the evidence that we received from the Scottish Legal Aid Board, it is hard to square those two conclusions with what you have said. Can you shed light on that?

Annabelle Ewing: Let me separate what I think are two separate issues. First, on the general fee regime, in our consultation we engaged in eight stakeholder events and we targeted 50 firms and faculties. The Edinburgh Bar Association was one of three respondents from the legal profession. That is on the fee side of things.

On the criminal justice provision side of things, perhaps Mr Tidy can explain exactly the nature and level of engagement on the part of the Scottish Government police division and others with not just the Edinburgh Bar Association but the legal profession as a whole, as he was involved in it.

10:15

Stephen Tidy: Mr Matheson made a number of commitments during the bill's progress to engage with stakeholders about the new provisions of investigative liberation in post-charging questioning. We held a number of stakeholder events with the legal profession and victims groups. We held two events on investigative liberation and two events on children's provisions, both of which were attended by the legal profession. A Police Scotland officer and I delivered individual presentations to the Glasgow Bar Association and the Falkirk Bar Association. We held a webinar event with the Law Society of Scotland, we held an event with John Scott QC on part 1 provisions and we attended the legal aid conference to deliver a presentation on part 1 provisions. In addition, back in August, I made an offer to the Edinburgh Bar Association to deliver a similar presentation on part 1 provisions to its members, which was not taken up.

Mary Fee (West Scotland) (Lab): Good morning, minister. Liam McArthur has touched on a number of the areas that I wanted to ask about, so I will not go over those issues again.

I will raise a concern that was raised by the Dunfermline District Society of Solicitors. Its submission mentions the duty of care that employers have to their staff. It also raises concerns about sex and equality discrimination. It refers to

"The effect of the lack of remuneration for those ... on call".

I accept that it is not mandatory that solicitors be on call, but no provision is available

"to fund childcare nor to provide care for ill or infirm dependents."

The society says that those are serious concerns.

The society's submission also says:

"Concerns have been raised that firms in the future"—

could—

"be drawn to recruiting only those who do not have children"

or caring responsibilities.

Those, too, are serious concerns. What thought has the minister given to those issues?

Annabelle Ewing: I noted that those points had been raised. I return to the point that there is no mandatory obligation to participate. The nature of police station duty is such that the hours of operation are outwith anyone's control. Inherent in that work will be instances of unsocial hours. That, of course, involves a whole series of issues for the individuals concerned, including issues relating to childcare, caring for elderly relatives and caring for infirm family members. Those issues are recognised and, as I say, the system is not mandatory. Even if a duty solicitor hopes to make themselves available—they are on the roster; that is their plan—they can be unavailable. That is also accepted within the duty scheme. Therefore, the scheme directly recognises the circumstances that Mary Fee talks about.

At the end of the day, the duty system at police stations is such that it will inevitably involve hours that make it difficult for people to plan their lives, but it is recognised that duty solicitors can make themselves unavailable, including in the circumstances that Mary Fee rightly raises.

Mary Fee: The society makes the point, particularly in relation to small firms that have a small core team of solicitors, that if a firm's solicitors have participated in the scheme in the past and it is recruiting new solicitors, it might be minded to recruit people who do not have the responsibilities that we have discussed. That is a very serious avenue to start going down.

Annabelle Ewing: I absolutely agree with the member—that would be very serious indeed. I would find it rather disturbing that members of the legal profession would consider acting in such a way, because to do so would clearly be discriminatory.

There are various ways to seek to solve matters. The very last—and unacceptable—way would be to do so in a discriminatory fashion. I really do not accept that that is what people would be required to do, not least because the duty system is not mandatory. The deal on offer is a good one—it is certainly much better than what solicitors have participated in until now.

I will make a final point on looking for practical solutions. I understand that the timescale within which a legal trainee can appear in the criminal courts is being shortened to reflect a number of issues, including the issues that the member has raised.

The Convener: Has the minister done an assessment of the increased number of people who will be eligible for legal advice?

Annabelle Ewing: There was a figure in the financial memorandum to the Criminal Justice (Scotland) Bill.

Aileen Grimmer (Scottish Government): Yes, there were figures there on the number of cases that we anticipated. We have no idea what the new court practices will mean. I think that there was a figure of 1,600-odd—

The Convener: The financial memorandum said 163,360 people.

Aileen Grimmer: Yes—sorry.

The Convener: So while the minister says, quite confidently, that people can opt out, there could be huge demand. There will be a real problem if many people decide to opt out, for the reasons that we have already discussed. I ask the minister to take that on board.

Liam Kerr: I would like to follow up on a few of the points that the minister made, if I may. Am I right in thinking that no equality impact assessment has been done at this stage, or has that now been done?

Annabelle Ewing: An equality impact screening was done. As no issues were identified as having been raised with regard to groups with protected characteristics, a full EqIA was not proceeded with, on the basis that no such groups were affected. The people who were listed as being affected were lawyers.

Liam Kerr: Yes. However, just to be clear, when the Law Society says that, as at the start of November, there was no equality impact assessment, that remains the case, does it not?

Annabelle Ewing: There is no full equality impact assessment. A screening was done that identified no groups with protected characteristics as being affected and therefore the process did not mean proceeding with a full EqIA.

Liam Kerr: I want to press you on Liam McArthur's points. Various representations that have been made to us suggest that, overall, the scheme could make it less attractive for people to enter the profession. The convener made the point that there could be less resource to dispose of such matters. If that is true, we cannot meet the ECHR rights that you alluded to earlier. Do you accept that, or are the representations that we have had not correct in some way?

Annabelle Ewing: First, as of this moment, the position is that we have not received any mass intimation of withdrawal from the police station duty scheme. Obviously, we do not know what the future—

Liam Kerr: Forgive me, minister. I understand why you went down that route, but I am asking about the attractiveness of the profession in general. By the sound of it, we will need a lot more resource in future, which will require people to enter the profession. There is a suggestion that the scheme will make the profession significantly less attractive and that there will be a resource problem as we go forward. My question is not about people dropping out of the duty system; it is about their not entering it in the first place. We have had representations about that. Do you think that those representations are reasonable, and that that will come to pass, or do you disagree with them?

Annabelle Ewing: It is all quite speculative. I have no evidence to suggest that, in and of themselves, the regulation, the proposing of a fee regime and the simplified accounting process will lead to a mass decline in people seeking to do police station duty across Scotland.

Going back to Mr Finnie's first point, it is important to remember that, in the stakeholder engagements that were held, the issues that were raised had more to do with the level of fees—which were a particular feature of central belt participation—than with other considerations. People were not coming to say, "This whole thing is unworkable. Go back to the table." They were raising their concerns about fees and, as I have said, those concerns tended to be more prevalent in areas outwith the Highlands and Aberdeen.

It has to be borne in mind that there was not a big outcry about the scheme per se. Its aim was to pick up on the existing scheme but to seek to make it better. In my negotiations with the Law Society of Scotland's legal aid negotiating team, the discussion was not about the nuts and bolts of the scheme but about the fee compensation. Indeed, at the very end of the day, it was about only one aspect of that—the level of block fees—and nothing else. That was because, by that point, it appeared that the team had reached a deal that it felt was reasonable in all the circumstances.

Liam Kerr: You mentioned the existing scheme. As the convener has said, we have not had a lot of time to consider this issue, so forgive me if I am going off at a tangent, but it appears to me that if the proposal does not go through, there will be some kind of lacuna in January—the present system does not carry on; it will disappear and, almost by default, we will go back to an even less favourable system. Will you explain that? I feel that we are getting slightly bounced into something.

Annabelle Ewing: If the regulations are passed by the committee and the Parliament, they will come into force on 25 January 2018, the day on which the provisions in part 1 of the Criminal Justice (Scotland) Act 2016 enter into force. If the committee chooses not to pass the regulations, the scheme will not be in place and that, in turn, will have certain consequences. First, the wraparound fee regime will use the current definition for police station duty activity, which does not include the increased antisocial hours level—the current definition is more restrictive. Antisocial hours will not apply to travel and there will not be the increased block fee, which is far less attractive for solicitors than the new regime will be. The old position as regards billing will remain, which is much more cumbersome, to the point that many solicitors do not charge for telephone attendances. In addition, the provisions

regarding the fact that, at the moment, all de facto detention—although I do not like to use that word—at police stations is subject to no financial eligibility criteria would change.

Liam Kerr: That would change.

Annabelle Ewing: Yes, that would change.

Liam Kerr: I would like to clarify. If the regulations do not come into effect on 25 January, will the current arrangement that people understand continue indefinitely?

Annabelle Ewing: I am trying to break down the three areas that are coming into play here. The first is that the level of fees will be lower and less attractive to the profession.

Liam Kerr: Lower than today.

Annabelle Ewing: Sorry, I am talking about the status quo. Before the regulations come into force, it will be the level of fees that currently applies.

Liam Kerr: So, if the regulations do not pass, today's scheme carries on indefinitely into the future.

Annabelle Ewing: Yes, as regards the level of fees; there are different issues as regards the assessment of financial eligibility. Finally, we will need to consider having a system in place to cover the new provisions that are being introduced on 25 January 2018 by part 1 of the 2016 act regarding the reviews of investigative liberation conditions and undertaking conditions and the hearing of applications for the authorisation of post-charge questioning. Those new provisions are not covered by the provisions today. If necessary, that could be done by way of, for example, general determination by ministers.

The Convener: When the bill came before the previous committee—John Finnie is the only member of this committee that also dealt with it—I had huge reservations about the changes. At present, someone who is brought in for questioning is entitled to have a solicitor present at the point of interview and, following that interview, they can be charged or released without charge. Under the new system, there will be the concept of pre-charge arrest, which means that they must have a solicitor there as soon as they are brought to the police station, which obviously has huge cost implications.

Annabelle Ewing: There are two elements to that. First, the client will be entitled to have a solicitor present for the interview; and the client will be entitled to seek a consultation with a solicitor at any time—although that consultation can be by way of, for example, telephone.

The Convener: But they could be held in custody for quite some time without having to consult a solicitor. Under the new legislation, it will be absolutely essential that the solicitor attends—no ifs, no buts; it is mandatory.

Annabelle Ewing: For the interview, but not for the consultation.

The Convener: Under the new system?

Annabelle Ewing: Yes.

The Convener: Only when they are interviewed, or from the point of arrest?

Annabelle Ewing: The entitlement is to have a solicitor present at interview. There is also the entitlement to be able to consult a solicitor at any time, and that consultation can be by telephone.

10:30

The Convener: So the solicitor will be there at the point of arrest. That is where we are on to the 24/7—

Annabelle Ewing: Consultation can be by telephone.

Maurice Corry (West Scotland) (Con): I want to ask Mr Tidy a question. I come to the matter as a non-lawyer. Has any comparison been made with how antisocial hours, the work that is required by management and overtime requirements are dealt with by any other professions or industry? If not, why not?

Annabelle Ewing: I am not sure to what extent there has been a detailed analysis of other professions. We are talking not about a compulsory part of the contract of employment but about an optional opportunity for individual solicitors or solicitor firms. As I have said, even if a person participates in the duty scheme, they are not required to make themselves available 100 per cent of the time, so I am not sure that a direct analogy would stack up. It is not an obligatory part of a person's employment contract.

Maurice Corry: So the work has not been done.

Annabelle Ewing: No, but I do not know whether the analogy is directly relevant because the duty scheme is optional and, once a person is signed up to it, their participation is not required 100 per cent of the time.

Maurice Corry: I understand that but, in trying to market the approach to the legal profession, it is surely useful to have a baseline of what goes on in other professions and, indeed, industry. In industry, there are very clear guidelines about time over normal working hours—overtime—and employers take childcare and care of the elderly into consideration. That does not seem to have been applied in your research.

Annabelle Ewing: In many cases, lawyers already work beyond 9 to 5. It is up to individual

firms to make appropriate arrangements, and I am sure that they all do that. In my discussions with the legal aid negotiating team and Mr Ian Moir, who headed that up, it was taken as read that that was what the duty scheme involved and that the team was trying to achieve the best deal that it could get for its members on fees and the recompense available for participation. As I have said, the conversations were very much rooted in the context of the police station duty scheme, with which the team was well acquainted.

Mary Fee: I want to ask a small follow-up question to Maurice Corry's question. Can you give us any figures for the number of solicitors who are currently signed up to the scheme and for how many of them, when they are asked to come out, say that they cannot come out and make themselves unavailable?

Aileen Grimmer: I would have to get those statistics from SLAB.

Mary Fee: It would be interesting to see how many solicitors are signed up and how many refuse to cover.

Annabelle Ewing: As I mentioned earlier, in SLAB's discussions with the profession about the code of practice and in the various stakeholder engagement events, a last-minute sticking point was language that would have suggested that a lawyer had to make a statement on their answering machine to the effect that they were unavailable and that the person should contact the solicitor contact line. That was a no-no for the profession, which refused to countenance that. I am not entirely sure why it suggested that that would give an idea of 24/7 availability; others could perhaps view it just as leaving a message on an answering machine to say that the person was unavailable. However, that suggests that there are already instances in which people can be called out for a particular kind of case but decide not to be called out for another kind of case. The freedom to engage or not engage is already very much a feature of the system.

Mary Fee: It would be helpful to see the numbers.

Annabelle Ewing: We can try to seek that information.

The Convener: That concludes the points of clarification, minister.

You have made quite a lot of the fact that you think that a lot of the concerns that have been raised around the table were not raised in June, but the point is that they have now been raised. To recap, some of the issues raised were: the increase in police station attendance; the required change in employment contracts; the duty of care implications; sleep issues; disruption to family life; sex equality and discrimination for carers or people with caring obligations; Police Scotland policy; pre-charge arrest requiring a solicitor to attend; vulnerable adults with mental health and other issues; an increase of 163,360 in the number of people eligible for legal aid advice; and the fact that firms are downsizing and might find it impossible to meet the new obligations, even with the best will in the world.

There has been a lack of communication and a lot of those who made submissions to the committee said that they found out about the proposals from individual police officers; there was no official communication of some of the implications. Some firms have no idea whether they can provide the service that is expected of them. There are travel issues and concerns about the time taken for the movement of custodies around the country. The lack of custody suites can all add to the proposals impinging on a solicitor's time 24/7 and their right to a private life, which means that article 6 human rights concerns have been raised along with real concerns about the working time directive.

This morning, minister, you have made a written submission and have had 35 minutes to put your point of view together. I am asking you to withdraw the SSI to allow the committee to take evidence from some of the stakeholders before the regulations are passed.

Ben Macpherson: A number of us around the table note the concerns but are satisfied with the proposal given the current financial constraints. I did not ask questions on the basis—

The Convener: If that is the case, it will be reflected in any subsequent vote should the minister decide not to agree to what I think is an entirely fair and reasonable request. She has now had 37 minutes of giving what could be looked at as a very one-sided view of the implications. It is beyond doubt—not in question—that the implications are complex and go far beyond the monetary and financial.

Annabelle Ewing: A look back at the *Official Report* might be helpful in due course because I have sought to answer fully and comprehensively every single question that has been put to me, as have my officials.

With regard to the concerns that the committee has raised today, we did consult with the profession. We consulted 50 firms—

The Convener: With respect, minister, you have made that point time and again.

Annabelle Ewing: Yes, I know, but you have just suggested that there has been a lack of communication. I would just like to deal with that specific point. There has not been a lack of

communication. We got three responses to a consultation that was issued in August and finished by way of an extended deadline on 15 September—

The Convener: If you will forgive me, I will interrupt you there to explain that the lack of communication was specifically on the police policies and how they would then impact on solicitors—

Annabelle Ewing: Yes, but Mr Tidy—

The Convener: Allow me to finish, minister. Am I missing something here? I take fully on board the fact that, in June, you had done a full consultation and you thought that the concerns that have been raised today were not raised then. The point is that the committee must look at the concerns that have been submitted. The consultation point that I was making was that one of the submissions talked about the implications of police policy.

Annabelle Ewing: That was from the Edinburgh Bar Association and Mr Tidy explained that he had been in direct contact with the Edinburgh Bar Association in August to offer it a special wraparound session, as he did the Glasgow Bar Association. All the other events had been organised by the Scottish Government police division but the Edinburgh Bar Association did not take that up—

The Convener: Minister, you have had every opportunity in the debate so I put the question to you: will you withdraw the SSI?

Annabelle Ewing: No, I will not withdraw it.

The Convener: In that case, we move to formal consideration of the legislation.

John Finnie: On a point of order, convener.

The Convener: You cannot have a point of order. We have moved on. You will have an opportunity to comment during the debate if you have anything to say at that point. We are now moving into the formal debate.

The minister has explained that she is not going to withdraw the SSI, so the next part of the procedure is to move to the formal debate on the motion. The minister will make an opening statement, if she wants, and move the motion. Members will have a chance to put other points of view. Is that understood?

Members: Yes.

The Convener: Agenda item 3 is formal consideration of the motion in relation to the affirmative instrument. The Delegated Powers and Law Reform Committee has considered the instrument and reported that it had no comment on it. The motion will be moved and there will be an opportunity for a formal debate on it, if necessary.

I invite the minister to speak to and move the motion.

Annabelle Ewing: I just reiterate what I tried to express earlier, which is that we proceeded with a consultation and only three professional bodies responded: the Law Society of Scotland, the Edinburgh Bar Association and the Dunfermline District Society of Solicitors. There has been widespread engagement on the part of the Scottish Government police division on the Criminal Justice (Scotland) Act 2016 provisions, which included an offer to the Edinburgh Bar Association. However, the association failed to take up that offer, for whatever reason—that is a matter for it.

On the nature of the proposed scheme, a police station duty scheme has been in place for some time and we are seeking to improve that, not to make it more difficult. The right to consult a solicitor will include telephone attendances and, therefore, that should be factored into consideration of the displacement of people or otherwise.

On financial compensation for solicitors, the proposals represent a good deal within the current budgetary constraints. When we left the table following our discussions with the Law Society's negotiating team and Mr Ian Moir on 28 and 29 June this year, the only outstanding issue was whether we could further increase the block fee. Further to my deliberations and having looked at the figures, we decided that we just could not afford to do that. That was communicated to the Law Society on 30 July in a letter that I sent to Mr Moir.

We have worked very hard to come up with a scheme that is more attractive rather than less attractive and that means that, importantly, fees can be claimed—a very important part of a lawyer's daily activity—without jumping through hoops. We have simplified the fee structure, as requested by the Law Society of Scotland, and the fact that a hard-copy signature will not be needed and that claiming a fee will no longer be a two-stage process will ensure that lawyers are actually paid for the work that they do, which is something that we would all wish to see.

Finally, the important provisions of the Criminal Justice (Scotland) Act 2016 come into play on 25 January 2018. They are seen as very significant revisions that were voted on by the Scottish Parliament and will enhance the rights of individuals held at police stations. The Parliament should be proud of them. I am keen to ensure that nothing happens that would put those enhanced rights in jeopardy.

I move,

That the Justice Committee recommends that the Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] be approved.

The Convener: We can only comment at this stage, so do members have any comments?

Members: No.

The Convener: My only comment is that I have not been satisfied by the minister's explanation today. In all fairness, I think that the people who have raised very concerning and complex issues in relation to the SSI should have the opportunity to be heard by the committee, so that it can evaluate whether the concerns are genuine and can be resolved or have no foundation. For the smooth running and fairness of, and access to, justice, that should be the case.

Would the minister like to wind up?

Annabelle Ewing: No.

The Convener: The question is, that motion S5M-09233, in the name of Annabelle Ewing, be approved. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Green)
Gougeon, Mairi (Angus North and Mearns) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against

Corry, Maurice (West Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 8, Against 3, Abstentions 0.

Motion agreed to,

That the Justice Committee recommends that the Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft] be approved.

The Convener: I thank the minister and her officials for attending the meeting. There will be a report on the SSI and, given its controversial nature, I will ask the deputy convener to look at the report as well to ensure that she is satisfied with it. Is the committee content with that approach?

Members *indicated agreement.*

The Convener: Thank you for that. I suspend the meeting briefly to allow for a change of witnesses.

10:45

Meeting suspended.

10:48

On resuming—

Police Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) (Scotland) Order 2017 [Draft]

The Convener: Agenda item 4 is consideration of an instrument that is subject to affirmative procedure. I welcome Michael Matheson, the Cabinet Secretary for Justice, and his officials from the Scottish Government, who are George Dickson from the police division, and Louise Miller from the directorate of legal services.

I refer members to paper 2, which is a note by the clerk. I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice (Michael Matheson): It might be helpful if I briefly explain the purpose and effect of the order. Part 1 of the Criminal Justice (Scotland) Act 2016 represents a significant change to the system for arresting and holding people in custody. The new arrest and custody processes that are contained in part 1 of the act will provide a clear balance between proper investigation of offences and protection of suspects' rights while they are in police custody.

As the Police Investigations and Review Commissioner can be instructed by procurators fiscal to investigate criminal allegations against a police officer, part 1 of the 2016 act needs to be extended to cover criminal investigations that are undertaken by the PIRC. The order applies to a number of provisions in part 1 of the 2016 act and covers cases in which a member of staff of the PIRC exercises the powers and privileges of a constable when undertaking a criminal investigation on behalf of the commissioner. That will ensure that the PIRC investigative staff adhere to the provisions of the 2016 act and that any police officer who is arrested or detained by the PIRC receives the same legal protections as a member of the public who is arrested by the police would receive.

The order also makes modifications to ensure that where 2016 act functions rely on Police Scotland's rank structure, the PIRC's hierarchical structure, too, is reflected in the exercise of those functions—for example, when a senior investigator is required to authorise an extension to a detention in custody.

Where the order modifies the 2016 act to cover PIRC investigations, the practical working arrangements have also been considered. The PIRC and Police Scotland have agreed a framework that will include a memorandum of understanding to ensure that it is known how cases that require a criminal investigation by the PIRC, as directed by the Crown Office, will be dealt with. That is particularly important because the PIRC will need to make use of Police Scotland's custody facilities in the course of its work. All such investigations will be carried out under the direction of the Crown Office and Procurator Fiscal Service.

If approved, the order will come into force at the same time as part 1 of the Criminal Justice (Scotland) Act 2016 is being implemented. I am, of course, happy to answer the committee's questions.

John Finnie: Good morning, cabinet secretary. You said that PIRC staff will need to use Police Scotland facilities, but the policy note says that

"it is likely that PIRC investigative staff would use Police Service of Scotland custody facilities".

What other facilities would be used besides Police Scotland ones?

Michael Matheson: The reality is that Police Scotland facilities would be used, given that it holds all the custody facilities that we have. It is therefore difficult to envisage any other facility being used.

John Finnie: Thank you. The policy note also refers to

"A memorandum of understanding between the Police Service and the PIRC".

Can you confirm whether the staff associations and trade unions will be involved in discussions around that memorandum of understanding?

Michael Matheson: Police Scotland and the Crown Office are developing the protocols around the memorandum of understanding. The process that Police Scotland has in place for consulting the staff associations is through the Police Scotland programme board for implementation of the 2016 act, and any discussions on the memorandum of understanding between Police Scotland and the Crown Office will involve the police staff associations that are involved with that board.

John Finnie: What about the trade unions?

Michael Matheson: I do not know whether the trade unions are directly involved with the programme board process, but I can check that with Police Scotland and come back to you on the engagement that the board will have with the trade unions.

John Finnie: Thank you.

The Convener: As there are no more questions or comments, we move to formal consideration of motion S5M-09393, which is in the name of Michael Matheson.

Motion moved,

That the Justice Committee recommends that the Police Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) (Scotland) Order 2017 [draft] be approved.—[*Michael Matheson*]

Motion agreed to.

The Convener: I thank the cabinet secretary and his officials for attending. Are members content to delegate authority to me, as convener, to agree the draft report?

Members *indicated agreement.*

The Convener: I suspend briefly to allow a changeover of witnesses.

10:53

Meeting suspended.

10:55

On resuming—

Domestic Abuse (Scotland) Bill: Stage 2

The Convener: Agenda item 6 is consideration of the Domestic Abuse (Scotland) Bill at stage 2. I ask members to refer to their copy of the bill and to the marshalled list of amendments.

I welcome again the cabinet secretary, who has been joined by different officials.

After section 12

The Convener: Amendment 13, in the name of Mary Fee, in is a group on its own.

Mary Fee: The purpose of amendment 13 is to strengthen the bill by requiring the Scottish Government to produce an annual report

"as soon as practicable after 31 March each year".

The report would contain information on the offences that are created by section 1 of the bill and on aggravated offences under the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, including information on

"the types of support and assistance"

that victims were provided with,

"the average period of time during which support and assistance was provided,"

and the funding that was provided to secure that support. The report would also contain information about the number of relevant proceedings in relation to which special measures were applied for and authorised.

It is my intention that the new reporting mechanism will build an evidence base that could be used to improve services for victims, and to demonstrate that the bill is being properly implemented. The annual report would become a vehicle to ensure that support is provided to victims of domestic abuse, that there is appropriate funding for the voluntary and third sector organisations that support victims, and that special measures are provided for victims and witnesses who appear in court.

There is a significant level of consensus on the aims and objectives of the bill, as it stands. Amendment 13 would simply establish a reporting mechanism to ensure that the Government, the courts and public services deliver the ambitions for better victim support that we all share.

I move amendment 13.

The Convener: As members have no comments, I invite the cabinet secretary to respond.

Michael Matheson: As I understand it, amendment 13 is intended to address concerns about the need to ensure that effective support and assistance is in place to help victims of domestic abuse. I recognise that its intention is to collect information that would enable steps to be taken to monitor and improve how support is provided to victims of domestic abuse.

Although I sympathise with the intention behind amendment 13, I am concerned that it risks putting a significant burden on the organisations that provide support to victims of domestic abuse, which are mainly third sector bodies, and that that burden could mean that less of the funding that is given to those bodies would go directly to helping victims.

Many third sector groups that provide support to victims of domestic abuse receive funding from the Scottish Government, and it is a condition of that funding that they report on how the money is spent and on what support they provide to victims. I am concerned that the level of detailed information that amendment 13 would require third sector groups to collect and pass on to the Scottish Government would be disproportionate to the aim of effectively monitoring the support that is provided to victims of domestic abuse; indeed, it would mean that time and money could well be spent on reporting that would not provide insight into how services could be improved.

In order for the information that amendment 13 would require to be included in the annual report to be collected, third sector groups and other agencies that provide support to victims would have to record and transmit to the Scottish Government information about the length of time for which they provided support to each individual, the type of support that they provided and the manner in which it was provided.

In 2016-17, Police Scotland recorded 27,496 incidents of domestic abuse that resulted in the recording of at least one crime. If a significant proportion of the victims sought support and assistance from third sector bodies, the amount of data that they would be required to record and provide to the Scottish Government would be very large.

Given that each case will be quite different, any attempt to categorise the type of assistance and support that were provided or the manner in which they were provided would not necessarily provide the kind of detailed information that would enable decisions to be made on how services could be improved.

11:00

Amendment 13 is specifically concerned with cases involving the committing of an offence under section 1 of the bill, or an offence in which the domestic abuse aggravation in section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 applies. Many of the groups that provide support to people who experience abuse do so irrespective of whether the victim has reported the matter to the police, and will not necessarily know whether the victim has done so. Therefore, an additional specific burden would be placed on some third sector bodies in relation to the breakdown between help that is offered to people where an offence has been committed and where an offence has not been committed.

There might also be data protection issues with an approach that would require that information be shared between the police and third sector groups without the prior agreement of the subject of the data. That could add to third sector groups' difficulty in providing accurate information about the cases to which amendment 13 relates.

I have great sympathy with the thinking that lies behind amendment 13, and with the amendment that was lodged by Claire Baker relating to reporting on the operation of the new domestic abuse offence, which was debated on 21 November. However, we should not rush to specify in law the exact detail of what data should and should not be collected. There should be a process in which key interests are given the opportunity to offer views on what information would be proportionate and valuable to inform understanding of how the legislation is operating. That process should also be informed by the fact that information will be published on the operation of the legislation as part of the existing data that is routinely made available by the Scottish Government in our published surveys of criminal proceedings, recorded crime and crime and justice.

I also have concerns that parting from the normal approach to the collection of data for each new piece of legislation might not be the most appropriate approach.

I am happy to work with Mary Fee and Claire Baker ahead of stage 3 to consider whether additional steps are required to ensure that information relating to the provision of support and assistance to victims of domestic abuse is collected and made available. However, for the reasons that I have outlined, I am concerned that the approach that is proposed in amendment 13 would place too great a burden on the groups that provide support, and that they would have to meet the requirements of that burden from their existing resources, which would have the potential unintended consequence of reducing direct support to victims.

I therefore invite Mary Fee to seek to withdraw amendment 13.

Mary Fee: I thank the cabinet secretary for his remarks. During the committee's evidence sessions on the bill, members heard moving testimony and compelling evidence about forms of abuse that are not sufficiently addressed in the law. As I said earlier, there is consensus on the need to tackle domestic abuse and to close the gap, which is what the bill seeks to do. I believe that my amendment would strengthen the bill by placing a requirement on ministers to produce an annual report. The reporting provisions that I have proposed in my amendment resemble the provisions of the Human Trafficking and Exploitation (Scotland) Act 2015. I believe that including reporting provisions in the bill would help to ensure that victims are properly supported and that there is adequate funding. In my view, the reporting mechanism will deliver improvements in services, and for that reason I will press my amendment 13.

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

For

Corry, Maurice (West Scotland) (Con)
Fee, Mary (West Scotland) (Lab)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
Finnie, John (Highlands and Islands) (Green)
Gougeon, Mairi (Angus North and Mearns) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)

The Convener: The result of the division is: For 5, Against 6, Abstentions 0.

Amendment 13 disagreed to.

The Convener: Amendment 26, in the name of Maurice Corry, is in a group on its own.

Maurice Corry: I would like the Scottish ministers to take steps to allow for the bill's provisions to be properly conveyed and promoted to ensure that we have maximum awareness, understanding and clarity about the operation of the act among the public and Police Scotland and its team, including an understanding of

"the kind of conduct that constitutes abusive behaviour for the purposes of an offence under section 1(1)."

I move amendment 26.

The Convener: Are there any comments or questions?

John Finnie: Can Mr Corry outline the range of his suggestion—I see a lot of merit in such promotion—and how that would look? I presume that Police Scotland and the Crown Office and Procurator Fiscal Service would develop their own procedures, but how would Mr Corry envisage raising public awareness?

Maurice Corry: It should be done on social media and traditional media, including radio and television. I would ask for information to be put in public places, such as libraries, police stations and health centres—where it is likely that victims may go—and every government establishment that the public frequents.

Michael Matheson: Amendment 26 places a duty on the Scottish ministers to promote public awareness of the new offence of domestic abuse. I repeat what I told the Justice Committee when I gave evidence on the bill at stage 1 in June. The Scottish Government will take steps to promote awareness of the new offence ahead of it coming into force. That will include raising awareness as to the kind of behaviour that would amount to abusive behaviour as set out in the legislation.

It has always been our intention to raise public awareness prior to the implementation of the offence and so, as I advised the committee a few months ago, amendment 26 is unnecessary to achieve what Maurice Corry seeks, because that will happen anyway. In addition, such a requirement is not normally included in legislation. The statute book would become rather crowded if we were to include a provision in relation to publicity for every new offence or policy.

When a new offence is created or there is another significant policy change, the Scottish Government will always consider what steps are required to ensure that the public is made aware of it. Members may remember that, earlier this year, the Scottish Government ran a campaign to coincide with the commencement of the intimate images offence contained in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. When statutory jury directions concerning the way in which victims of certain sexual offences may react were commenced, we funded Rape Crisis Scotland to produce the "I just froze" campaign to change public understanding of why victims of rape do not always fight back or report the crime straight away.

On the basis of the commitment that I gave to the Justice Committee in June and which I have repeated today, I ask the member to withdraw amendment 26.

Maurice Corry: I intend to press the amendment. I am slightly surprised by the minister's response, because that is not the view that he took when we debated the subject in Parliament.

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Corry, Maurice (West Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Green)
Gougeon, Mairi (Angus North and Mearns) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 3, Against 8, Abstentions 0.

Amendment 26 disagreed to.

The Convener: Amendment 27 was debated with amendment 37 on day 1 of stage 2 proceedings.

Amendment 27 moved—[Claire Baker].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Green)

Against

Adam, George (Paisley) (SNP)
Gougeon, Mairi (Angus North and Mearns) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Abstentions

Corry, Maurice (West Scotland) (Con)
Kerr, Liam (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 3.

Amendment 27 disagreed to.

The Convener: Amendment 28 was debated with amendment 37 on day 1 of stage 2 proceedings.

Amendment 28 moved—[Claire Baker].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Corry, Maurice (West Scotland) (Con)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (Green)
Kerr, Liam (North East Scotland) (Con)
McArthur, Liam (Orkney Islands) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
Gougeon, Mairi (Angus North and Mearns) (SNP)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)

The Convener: The result of the division is: For 6, Against 5, Abstentions 0.

Amendment 28 agreed to.

The Convener: Amendment 38, in the name of Liam Kerr, is in a group on its own.

Liam Kerr: The purpose of amendment 38 is to strengthen the bill. Throughout the process, the committee heard extensive evidence about the requirement for emergency barring orders. Amendment 38 requires the Scottish ministers to carry out a review of legal measures that would have the effect of temporarily excluding a perpetrator or a suspected perpetrator of domestic abuse from the home of the person they have abused or potentially abused. The review would need to take place within one year of royal assent and the Scottish ministers would be required to consult with certain specified persons in carrying out the review. The results of the review would need to be published and laid before Parliament, and the Scottish ministers would be required to announce their intentions in respect of the results of the review.

I appreciate that the cabinet secretary made a public commitment in his letter of 6 November to the Justice Committee to formally consult on the introduction of new powers in this area, but I would prefer that commitment to be in the bill to obligate it.

I move amendment 38.

Michael Matheson: I thank members for considering the important issue of how people who are at risk of domestic abuse can be better protected. I understand that amendment 38 is directed at the issue of emergency barring orders and I am aware that the committee heard a range of opinion on the operation of emergency barring orders at its meeting on 31 October. Although a number of views were offered about the potential benefits of emergency barring orders, there was also a wide range of unanswered questions.

After that evidence session, I wrote to the committee to explain how the Scottish Government intends to consider the issues relating to emergency barring orders. I explained that a consultation would be published in early 2018 and that it would seek views on the many unanswered questions about how such legislation might operate. Those include, what exactly should be the basis or grounds on which orders may be sought or granted? Who is to apply for such orders and what court procedures are to be involved? Who should have the power to exclude someone from their home? Are there to be powers of arrest? What kind of funding would be needed to operate the scheme? Those are just a few of the many questions that will need to be explored and they will be explored carefully through the Scottish Government's consultation.

Today, therefore, I confirm that, as I advised in my recent letter to the committee, the Scottish Government will consult justice partners such as Police Scotland and the Crown Office, as well as other people and groups who have an interest in these issues.

Liam Kerr's amendment 38 is well-intentioned and it picks up on the committee's discussions. However, the Scottish Government has already committed to consulting on the issues, so the amendment is unnecessary to achieve what is being sought, as it will happen anyway. In addition, it is not best practice to clutter the bill with provisions that say nothing more than what the Government has already undertaken to do, especially as I have just now repeated that undertaking on the record. In light of my firm commitment, I ask Liam Kerr to withdraw amendment 38.

Liam Kerr: I thank the cabinet secretary for his remarks. I am comforted and reassured by those remarks and their strength. For that reason, I shall withdraw amendment 38.

Amendment 38, by agreement, withdrawn.

Sections 13 and 14 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. The committee will suspend briefly to allow a change of witnesses.

11:14

Meeting suspended.

11:16

On resuming—

Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill: Stage 1

The Convener: Agenda item 7 is our sixth evidence session on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. I refer members to paper 4, which is a note by the clerk, and paper 5, which is a private paper.

I welcome James Kelly MSP, the member in charge of the bill; Mary Dinsdale, from the non-Government bills unit of the Scottish Parliament; and Catriona McCallum, from the Scottish Parliament solicitor's office. I invite Mr Kelly to make a short opening statement.

James Kelly (Glasgow) (Lab): I thank the convener, members of the committee and the clerks for the efficient and professional way in which evidence has been taken from members of the public and various experts. The evidence sessions have been very helpful indeed.

I have come to this morning's committee meeting to submit evidence and to speak in support of my bill to repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. The evidence that has been received by the committee has overwhelmingly supported repeal. More than three quarters of the written submissions from individuals supported full repeal, as did more than half of those from organisations. The evidence sessions have been very instructive. We have heard that football supporters feel that they have been unfairly targeted and do not support the existing legislation, which they have shown to be ineffective. One witness gave the example of a league one play-off match between Partick Thistle and St Johnstone at which supporters who were doing the conga were subject to the attention of and warned by the police.

The legal representations from the Law Society of Scotland and the Glasgow Bar Association have demonstrated that the law is not fit for purpose. The Law Society has established that all prosecutions brought forward in 2016-17 could have been captured by pre-existing legislation. It is concerned that the scope is too wide and that the legislation is potentially open to further legal challenge; that concern has been reinforced by the Scottish Human Rights Commission, which said that the act is potentially in breach of the European convention on human rights—that is a serious concern for the committee.

We have heard from academics about how freedom of speech has been impinged and how the 2012 act has not been effective in achieving its original objective.

In summary, the act has been discredited. It unfairly targets football fans, it is not an effective piece of legislation and it is not achieving the outcomes that it set out to achieve. I submit to the committee my full support for repeal of the act.

The Convener: Thank you for that statement. We move to questions from members, starting with George Adam.

George Adam (Paisley) (SNP): Good morning, Mr Kelly. As you will no doubt be aware, I have been following a particular line of questioning during consideration of the bill. There is an urban myth that this matter was brought to a head by the shame game and two managers going toe to toe. It might have brought it to a head, but there had been a steady and systematic worsening of behaviour at games both on and off the field. Indeed, things took on a more sinister tone around the same time, with Trish Godman, who at the time was the Parliament's Deputy Presiding Officer, and the late Paul McBride getting parcel bombs in the post. Neil Lennon was targeted in the same way, with bullets as well as a bomb. When you think back over that timeline, surely you agree that the Scottish Government was right to introduce this legislation.

James Kelly: I do not agree with your proposition. To put this in context, I have been a football supporter for more than 40 years now—I attended my first football match in 1969—and I can well remember a time, particularly around the late 1970s and early 1980s, when there was a lot of public disorder at football matches. There were a lot of offensive songs being sung by both sets of supporters at games, clashes inside and outside grounds and a tense atmosphere at matches. I am not seeking to sugarcoat any incidents that have happened over the past five or six years or to downplay the incidents that you have described of people being threatened with bullets in the post, but the fact is that, although at the game in March 2011 that you are referring to there were 34 arrests, they were mainly for public order offences, not for what people would term sectarian singing. There was a clash between two coaches at the end of the game, and that became the image that dominated media coverage in the coming days and which caused such a reaction.

It is also fair to point out that the incident happened in the run-up to the 2011 election—

George Adam: Mr Kelly, do you—

James Kelly: Please let me answer the question.

The Convener: Let Mr Kelly answer, Mr Adam, and then you can come in.

James Kelly: It happened in the run-up to the 2011 election; the Scottish National Party captured the issue and, in the aftermath of the election, it rushed through the legislation against the will of all the Opposition parties in the Scottish Parliament.

George Adam: So are you discounting the fact that Neil Lennon was sent bullets in the post and that the Deputy Presiding Officer and Paul McBride QC, who had specific Celtic connections, were sent parcel bombs? Are you saying that things were not so bad then and that I am exaggerating how things were back in that period?

James Kelly: No. If you had listened to me, you would have heard that I said that I was not discounting those very serious incidents, which were quite correctly dealt with by the police and prosecutors at the time. What I was trying to do was put behaviour at football in a 40-year context, and I believe that the situation with behaviour was much more serious in the 1970s and 1980s. Things have dramatically improved since the Hillsborough disaster in 1989, the advent of the Taylor report and the introduction of all-seater stadiums. I am not downplaying any misbehaviour at football matches in recent times—I think that it must be treated seriously—but we need to put things in context, and what we saw was a complete overreaction by the SNP Government in pushing through the legislation against the will of all the Opposition parties.

George Adam: Do you believe that it is correct for anyone at football to sing a song that supports active terrorism?

James Kelly: I go to football as a supporter and I sing football songs. I believe that that is what everyone should do. If anyone sings in a hateful manner at a religious grouping or in terms of race or sex, that is totally unacceptable, and those people should be brought to justice. However, I also believe that people have the right to freedom of political expression, within limits.

Mr Adam, I must say that you advance that point of view with some lack of credibility. In 2015, you signed a motion lodged in this Parliament by Kenny MacAskill celebrating the Easter rising. If you went along to a football match and you took part in songs commemorating the Easter rising, you might find yourself spending time in a police cell.

George Adam: I was talking about specific acts of terrorism.

James Kelly: I have made my position clear: people at football should sing football songs. If people sing or demonstrate in a hateful manner, whether out in the street, in a club, in a local community or at a football ground, that is unacceptable, and those people should be prosecuted under section 74 of the Criminal Justice (Scotland) Act 2003 in relation to religious aggravation. However, people have the right to freedom of expression, as long as they are not participating in a hateful manner.

Last week, I used the example of the Palestinian display at Celtic park, which the minister was not able to deal with. That display is a legitimate right to political expression; it should be allowed.

George Adam: With that in mind, is it acceptable to sing the famine song or "The Roll of Honour" at a football match?

James Kelly: I am not going to run through a—

George Adam: I am just asking about those two songs.

James Kelly: No, I am not going to run through a song book, particularly as—

The Convener: I will stop you there. We now have an hour and a half, more or less, to cover a lot of areas. George Adam indicated that he has areas of interest—as do other members—that he wants to question James Kelly about. In fairness to Mr Kelly, and to the other members, I would be grateful if all members got on with the line of questioning that they indicated that they had an interest in.

George Adam: Okay. I will finish with one more question. James Kelly mentioned the academics who came along to the committee. Dr Stuart Waiton says that it is a football fan's right to be offensive at football. Do you agree with that?

James Kelly: No. As I have made clear, people should sing football songs at the football ground. I recognise that people have the right to political expression, but they do not have the right to be hateful towards religious groups, or to be hateful because of a person's sex or race—

George Adam: Do you disagree with Dr Waiton?

James Kelly: I am laying out my position. I have made it clear throughout that people should sing football songs. I support the right to legitimate political expression, but I do not support hateful songs or hateful actions, whether that be in a football ground, in the street, in a local community or outside a religious venue.

The Convener: I bring in Fulton MacGregor briefly. If it is not a brief matter, we will have to move on.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Welcome, Mr Kelly. You said that people should sing football songs at football

matches. What do you say to people who do not go to matches who find those songs offensive?

James Kelly: Are you asking about people finding football songs offensive?

Fulton MacGregor: Yes.

James Kelly: I would hope that, if people were singing football songs, they were getting behind their club on the pitch. I do not see what point you are making.

Fulton MacGregor: You are declaring that some songs are football songs. If other people find those songs offensive, is that just tough luck for them?

James Kelly: With all due respect, I do not think that you understand the position that I am outlining. I am saying that, as a football supporter, I go to the football to support my club. I do that by singing football songs that get behind the team on the park. I do not understand how that is offensive.

Liam Kerr: The committee has heard a lot about the message that repealing the 2012 act would send not only to the general public but to football fans. It has been suggested to the committee that repeal could lead some supporters to believe that certain behaviours are being decriminalised. How do you respond to that?

James Kelly: There has been a lot of discussion about the message—and a lot of simplification and generalisation about it. The message around the legislation is quite a weak one. The legislation had the support of only one political party at the time that the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was passed. That continues to be the case—the 2012 act has the support of only one political party in this Parliament. The legislation has also been called into question by legal groups such as the Law Society. It is bad law. There are serious issues about the overreach of the law.

11:30

What we have with the legislation is a disjointed approach. We do not have full support from political parties. We do not have full support from legal organisations. We do not have full support from football supporters and football clubs. The legislation has been called into question by human rights groups. One commentator described it as the worst piece of legislation that has ever been passed by the Scottish Parliament. The fact that opinions on the legislation are so divided reinforces that view. We are not, therefore, sending a strong message.

On the issue of moving forward with the decriminalisation of certain actions, what is needed is a more unified approach. For example, the singing of hateful songs against religious groupings can be prosecuted under section 74 of the Criminal Justice (Scotland) Act 2003. I think that that is something that everyone would agree on. Getting all the different groups behind the one message that those hateful songs are not appropriate and that there is legislation to deal with that, and tying that into education and better collaboration between fans, police and clubs, would be a much more effective way of going forward.

Liam Kerr: I want to press you on the message. Are you aware of what message is actually being heard by football fans? Has anyone adduced any evidence or data on that? If we accept that we can isolate who is singing the songs, to within a reasonable population, has anyone gathered any data on what those people understood when the legislation was brought in—what message was heard by those groups—and what message those groups would hear if that legislation were taken away?

James Kelly: I do not have data directly about that. I would say that the message that those who support this legislation have sought to send is that it is about tackling sectarian behaviour. That is despite the fact that that is not stated in the act and that that behaviour is not defined in the act. I think that the act has failed in that regard. The latest statistics on religious hate crime, which have been provided to the committee, show that there were 719 charges relating to religious hate crime in 2016-17. That is the highest that the figure has been in the past four years, which shows that there is a serious problem. However, only 46 of those charges were under the 2012 act, so less than 7 per cent of the charges related to football. That demonstrates that we have a serious problem with religious hate crime in Scotland, which is something that should concern all of us, but the idea that it all carries on around football has been blown out of the water by the fact that only 7 per cent of those charges relate to football.

I think that confusing messages are being sent to those who are at the football. As some people have said to you in evidence, the issue of what counts as criminal activity and what will and will not be captured under the act is confusing.

My opening position is that people should sing football songs. However, I recognise that people sing a range of songs, and people are not clear about what is and what is not criminal under the act. That point is reinforced by what the Law Society said about the confusing definitions about what constitutes offensive behaviour.

Mairi Gougeon (Angus North and Mearns) (SNP): You mentioned football songs in your reply to George Adam, and you mentioned football

songs again just there. You say that you have been clear in what you have been trying to say, but George Adam asked specifically about the famine song and "Roll of Honour". I have to admit that I do not regularly frequent football matches—when I do, it tends to be Brechin City matches—so I would like you to clarify what, to you, is a football song. Do those two songs count as football songs?

The Convener: I will stop you there. The clerks advise me that we need to stick to the provisions of the bill. We have already covered this ground and I do not think that we are going to move much further on it.

Mairi Gougeon, is there anything else that you want to ask?

Mairi Gougeon: There are some things that I would like to ask, but I think it would be an important clarification if we were to understand what the member means by a football song. It is important to get that in the *Official Report*.

James Kelly: I am quite happy to answer, although I have already been clear. A football song is a song relating to football that gets behind the football team on the pitch. I have also said that hateful songs that are abusive towards religious groups or are based on race or gender are totally unacceptable, but I understand and accept that, leaving aside hateful demonstrations or songs, there should be freedom of expression.

For example, at the 1988 Scottish cup final, I took part in a political demonstration against the Conservative Prime Minister Margaret Thatcher, who was presenting the trophy that day. There was a red card display. That is a legitimate act of political expression within a football ground. Some might argue that that kind of act might be criminalised under the 2012 act.

I believe in the right to freedom of political expression. I do not believe that that should include hateful songs or demonstrations, and I support the idea that people should concentrate on getting behind their football teams.

Mairi Gougeon: I want to follow on from Liam Kerr's questions about the overall message that we send out. We received evidence from a number of different groups. In its submission, the Church of Scotland said:

> "repealing the Act without replacement would be a symbol that our elected representatives do not think that behaving offensively or sending threatening communications is problematic. At a time of rising levels of Anti-Semitism and Islamophobia and where Sectarianism remains a reality of life in Scotland, the wider implications for repeal should be taken into account."

The Church of Scotland was by no means alone in that point. Stonewall Scotland and the Scottish Council of Jewish Communities expressed similar concerns. How do you respond to those concerns?

James Kelly: I do not favour keeping in place legislation that targets football fans and, as I said to Mr Kerr, has quite a weak message.

In terms of protections for particular groups, as the Law Society of Scotland and the Scottish Human Rights Commission have reiterated, sections 1 to 5 of the 2012 act mean that the legislation could be open to legal challenge. It is weak in that regard. The police also told us that section 6 is too tightly drafted and is not used much at all, except in the context of threatening communications.

I do not believe that keeping weak legislation in place is effective in offering either a message or protection. The way forward is to reinforce the credible existing laws, to do more with education to get across the message of tolerance in society, and for clubs, the police and fans to work together, as was suggested by the Scottish Football Supporters Association. That is the way forward.

Mairi Gougeon: I do not think that it is fair to pick out some of the evidence that we have heard and some of the people who gave evidence. By doing that, you are suggesting that other groups who gave evidence are somehow less legitimate. This committee has reviewed a lot of legislation and everybody is entitled to express their opinion, and all those views are legitimate. You do not just pick and choose the ones that agree with your own point of view.

I have another question about the questions that you put to the minister last week. We have heard a lot about the rights of football fans and their views of the legislation. Your line of questioning to the minister suggested that if someone does not attend football regularly, they cannot really have an opinion on the legislation. However, the behaviour of fans at football has a wider impact, for example on people who are commuting on trains. We heard about incidents that have happened on trains, for example. What about the rights of those people? Are they factored into your thinking at all? Do you not agree that pushing the repeal of the act ignores the rights of people more widely in the community, such as those who are just commuting on a train?

The Convener: Could members please stick to the line of questioning, more or less? There is some latitude, but you are being most selfish and unfair to other members when you go off at a tangent when we have so much to cover. I will allow as much latitude as possible, but please bear that in mind.

James Kelly: I take seriously all the evidence that has been submitted. I do not know where Mairi Gougeon is coming from in saying that I am

picking particular bits of evidence, because I obviously look at the evidence very seriously. Last week, Ms Gougeon referred to a statistic that there has been a 50 per cent rise in the number of football-related incidents on public transport. I was not able to source that evidence, but the statistics that have been provided to the committee show that incidents on public transport have gone down by half. It is important to be accurate.

On the general point, people will be offered better protection and will feel safer if effective legislation is in place, but the act is not effective or credible legislation. Only when we have legislation that takes a more unified approach and looks at the wider issue of religious hate crime will we start to move forward credibly.

Liam McArthur: I want to follow on from Mairi Gougeon's questions. She fairly articulated the concerns that have been raised with us about the message that would be sent if we repeal the act. We all accept that legislation can send a strong message, but is there not a risk that we raise false confidence and false expectations about the protections that are provided if we indulge the view that the 2012 act provides protection when, from all the statistics that we have seen, it patently does not? Is that not an equal risk when it comes to the message that we send out?

James Kelly: It is important to understand that the issue is not just about the legislation on its own. As I said in answer to previous questions, when I looked at the statistics, I was shocked to see that the religious hate crime figure is higher now than in each of the three previous years. That is a real issue. Some people who supported the bill in 2012 did so on the well-founded basis that they wanted to try to tackle religious intolerance. However, the situation shows that we need a much wider discussion. In the information that has been provided to the committee, there is no analysis as to why there has been that increase to 719 charges. We need an assessment of that and proper action through Scottish Government justice policy, not just legislation.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I want to ask about the feedback that you have had from fans who support the repeal. I am a bit confused as to what they actually want to do when they go to a football match. How is the act impeding their enjoyment of a football match?

James Kelly: First and foremost, the main objection is that we have a piece of legislation that targets football fans. One of the witnesses said in evidence that there is no legislation in place in countries across Europe such as Poland and Turkey, where there are serious crowd disorder problems. People fundamentally object to the idea of having a piece of legislation that specifically targets football fans.

A linked issue is the way in which the legislation has been policed. Interestingly, we see this morning that the former justice secretary Kenny MacAskill has said that the police are "run ragged" and do not have time to investigate low-level crime. People will therefore find it staggering that we spend £2 million supporting the police unit that films supporters going into grounds and closed-circuit television recording, as they have been told that we might not have the resources to deal with antisocial behaviour or acts of vandalism in their streets. In summary, football supporters do not like the fact that they are being specifically targeted with legislation that is pretty unique in Europe and that they are filmed going into football grounds. That has resulted in their relationship with the police deteriorating.

11:45

Rona Mackay: You referred to what some people would term sectarian singing. I have been to football matches and heard what I would term sectarian singing. Do you deny that sectarian singing happens at football matches?

James Kelly: No. I never said that.

Rona Mackay: You referred to what some people would term sectarian singing. I just want to know what you think sectarian singing is.

James Kelly: With all due respect, I have made it clear throughout the evidence session that I regard the singing of hateful songs against religious groups, whether that takes place in a football ground, outside a religious venue, in a club or in a pub as totally unacceptable and that it should be prosecuted. Section 74 of the Criminal Justice (Scotland) Act 2003 exists in order to do that. I cannot be any clearer that I do not find that behaviour acceptable.

Rona Mackay: If the repeal bill is passed, what should happen to the cases that are currently going through the system?

James Kelly: As I have outlined in the transitional arrangements, any cases that are currently going through the system should fall at the date of royal assent.

Rona Mackay: Have you had any contact with the Lord Advocate about that?

James Kelly: No, I have not. Obviously, I have run a consultation on the bill, but there has not been any feedback on that from the Lord Advocate.

Rona Mackay: You have said quite a few times that the 2012 act is not needed because crimes that are committed under it are covered by other legislation.

James Kelly: Yes.

Rona Mackay: Is it your intention that cases that are currently going through the courts should be tried under the existing legislation? Is there any precedent for that happening?

James Kelly: That is really a matter for the legal authorities to consider as the bill makes its way through Parliament. My point of view, which the Law Society of Scotland has backed up, is that pre-existing legislation could capture all the cases that came through in 2016-17 and certainly any on-going cases.

Rona Mackay: I still struggle with the fact that you say that songs of hate and discrimination should be legislated against, but you want to repeal an act that specifically does that. I do not get that. If that is what you believe, why do you object to the 2012 act?

James Kelly: It is about good law. I believe that, if someone commits a hateful act outside a religious venue or in a club, a pub, a local community or a football ground, that is unacceptable and it can be prosecuted under section 74 of the Criminal Justice (Scotland) Act 2003. I believe that one piece of legislation is more effective than two pieces of legislation, and I do not understand why we need different pieces of legislation to prosecute unacceptable behaviour in different venues.

Rona Mackay: I do not understand why you should care about that.

James Kelly: I care because I care about good law and good practice. Having one law that covers the offences in all those places would be more effective than having two laws, particularly when one of the laws—the 2012 act—is so discredited.

Ben Macpherson: Good morning. You have highlighted issues with section 1 of the act. Have you received any representations from fans regarding the Lord Advocate's guidelines?

James Kelly: Obviously the Lord Advocate's guidelines are only guidelines; they are not legislation. It is the legislation that courts give primary priority to, and fans are concerned about interpretation of that legislation and the power that it gives individual police officers. As we heard in a previous evidence session, police officers have had to be trained in what might or might not be offensive behaviour, and under the 2012 act, if people begin to sing a song, the police officer is required to get into a particular mindset, ask himself, "Is this offensive? Would a reasonable person be offended by it? Is it likely to incite public disorder?" and to consider what his training manual says. I do not think that such law is effective, and supporters are concerned about the lack of clarity about what, under the act, is and is not criminal activity.

Ben Macpherson: I have the Lord Advocate's guidelines in front of me but, because of the time, I will not read them out. However, your policy memorandum suggests that the bill will

"reduce fear for some people of attending football matches",

but the Lord Advocate's guidelines make it very clear that hateful behaviour, threatening behaviour and other offensive behaviour in relation to race, colour, nationality, ethnic origin, sexual orientation, transgender identity or disability are criminalised under the act. What I am interested in finding out is how, in removing those protections, your bill can

"reduce fear for some people of attending football matches",

other than the fear of people who want to indulge in such behaviour of being caught.

James Kelly: The bill will reduce fear because it will remove legislation that is not working effectively and is targeting football fans. I do not think that a law that is as much contested as the 2012 act is, is effective in giving people proper protection. A more credible way of moving forward would be to reinforce the existing and more credible legislation.

There continues to be confusion about what is and is not legitimate under the 2012 act: indeed, we have heard from BEMIS (Scotland) on that very issue. I have reiterated throughout the process that hateful behaviour is unacceptable and should be captured under legislation; however, there are times when people are participating in acts of political expression or are celebrating their culture or particular dates, and there is a lot of confusion as to whether such activities are criminal under the 2012 act.

Ben Macpherson: That is an interesting and important point. What behaviours do you believe the 2012 act prevents fans from displaying? I know that the question has been asked several times, but I still find the behaviours that you say cannot be displayed to be very vague and ambiguous.

James Kelly: I have made it very clear that any hateful action towards groups or individuals is unacceptable and can be captured under legislation that existed prior to this act.

Ben Macpherson: Cannot that behaviour be captured under the 2012 act? That is the question that we are all interested in.

The Convener: Perhaps I can help a little bit here. Does not it depend on context? Something that could be hateful in one situation might not be hateful in another.

James Kelly: That is a point that the Law Society and a number of legal representatives

have made. However, let me go back to the example that I highlighted last week to the minister, about a political demonstration in support of—

Ben Macpherson: Are you aware of any arrests that were made last week under the act?

James Kelly: I am sorry: are you talking about the Palestine demonstration?

Ben Macpherson: Yes.

James Kelly: As I said to the minister—

Ben Macpherson: I do not think that there were any arrests.

James Kelly: That is the point that I was going to make. As I said at the time, the police concluded that there was no action to be taken under the 2012 act. People see that, and then they see what happens with displays of support for Irish nationalism, Scottish nationalism and so on. I gave the example of someone with a Catalan flag being removed from Ibrox. There is confusion as to what is a legitimate expression of political support and what might be criminal under the act.

The Convener: We have several technical questions to get to on the provisions of the bill.

Ben Macpherson: I will move on to the next point that you have asked me to probe, convener.

The Convener: Now would be helpful, Mr Macpherson.

Ben Macpherson: The point about confusion is interesting. As Mr Kelly knows, the Scottish Government remains open to changing the legislation based on evidence. The Minister for Community Safety and Legal Affairs has made that point, but has also said that no suggestions for amendment have been forthcoming.

You have stated that you disagree with hateful behaviour at football matches, which view is shared by the minister and the Government. Why was a constructive process not undertaken to try to amend the 2012 act? Why did you take the fundamental approach of repeal? Surely we can work together as legislators in Parliament, with the Government, to try responsibly to improve the current legislation?

James Kelly: The fundamental difference between me and you, Mr Macpherson, and between me and the Government is that I disagree with the principle of having legislation that targets football fans. I have never been convinced of that case. In addition, as I have outlined, the legislation does not work well in practice.

Ben Macpherson: Am I right to say that you are against offensive behaviour and threatening communications, but it is the football part that you have a real issue with? Why, then, do you not suggest constructive amendments to engage in a wider process?

James Kelly: As I have said, I fundamentally disagree with the idea that football fans should be targeted by legislation. I accept that hateful behaviour in the street around a football ground should be tackled. However, that can be tackled more effectively through legislation that pre-dates the 2012 act. That would send a more unified message than the one that comes out of the controversies that surround the 2012 act.

Ben Macpherson: I say with respect, Mr Kelly, that the gaps in your argument are significant.

The Convener: We really must move on. Mr Kelly has made it clear that he does not agree with specific legislation tackling football fans.

Ben Macpherson: I am about to come on to my final point, convener.

The Convener: Thank you.

Ben Macpherson: One of the significant criticisms that we have heard from witnesses is that "no alternative"—their words, not mine—is proposed in respect of tackling offensive behaviour at football matches if you are successful in repealing the current legislation. Is it a fair criticism to say that there is "no alternative"?

James Kelly: That is not a fair criticism. As I have consistently outlined this morning, it is not the intention that we repeal the act and that is the end of the matter. As I have said, we then need a more unified approach. I am quite prepared to work with other political parties. We need to bring the football clubs, fans and police together.

Three strands are needed in the subsequent approach. First, we need to reinforce the more credible pre-existing legislation. Secondly, we need a more unified message—one that comes not just from Parliament but from others who are interested in tackling religious hate crime. We need a message of tolerance in our education system. I would take the cameras off the police vans and use the money to invest in anti-sectarian education in schools. Thirdly, as the Scottish Football Supporters Association outlined, we need a more collaborative approach between supporters, police and the clubs. That relationship has deteriorated in recent years and we need to bring them back together. Those three strands are the alternative.

Ben Macpherson: In support of the entire 2012 act or parts of it, Police Scotland, the Procurator Fiscal Service, Stonewall Scotland, the Equality Network, the Scottish Women's Convention, Victim Support Scotland, the Church of Scotland, the Scottish Council of Jewish Communities and the Equality and Human Rights Commission all

think that we should be looking for and collaborating on alternatives, and waiting until after the Bracadale review, rather than taking such a fundamental approach of repealing the act. Is it your assessment that they are all wrong?

12:00

The Convener: That question is on the Bracadale review; we will move on to that later. I think that James Kelly is aware of the evidence against his bill. That question is not moving us forward.

Maurice Corry: How would your proposed repeal of section 1 of the 2012 act provide legal certainty for football fans as to what is and what is not an offence in the context of a football match? How can greater clarity for fans be achieved?

James Kelly: I point you to the Law Society's submission, which states quite clearly that all 377 charges under the 2012 act in 2016 could have been captured by pre-existing legislation. As I have said in answer to Mr Macpherson and others, I do not believe that it is good or effective law to have one set of legislation for inappropriate behaviour in a football ground and another for out in the street. I believe that the existing laws are more credible and will provide legal certainty.

As the Scottish Human Rights Commission pointed out, there would be potential ECHR breaches were the 2012 legislation to continue. Legal certainty is one of the issues that it highlighted as potentially making the law open to challenge. I believe that by taking the 2012 legislation off the stocks and using the more credible pre-existing legislation, we will be able to establish greater legal certainty.

Mary Fee: Good afternoon, Mr Kelly. The Government has referred to the distinctiveness of football culture and the problems that arise as a result of that culture. Has that characterisation had any impact on how the bill has been perceived by fans? Has isolating fans in that way added to the belief that they are being unfairly targeted?

James Kelly: With regard to football culture, I reiterate the point that I made at the start of this meeting that there has been a dramatic improvement in crowd behaviour and the atmosphere around football in the 40 years during which I have been attending games. We do not see the same degree of public disorder, drunken behaviour and fights inside and outside stadiums that we saw perhaps 30 years ago.

I am not trying in any way to sugarcoat this and say that there is no bad behaviour or public disorder, but it has to be seen in context, and in that context, football supporters cannot really understand why they have been targeted for legislation. For example, over the period that T in the Park was taking place, there were 3,600 incidents, including some serious instances of sexual assault and attempted murder, but no specific legislation has targeted concertgoers. When football fans see that, they question the validity of the legislation.

Mary Fee: The Government is also of the view that the offensive and threatening behaviour that is displayed by football fans occurs only in football and that no other sport attracts that element of sectarian and abusive behaviour. Do you agree with that position?

James Kelly: I would say that offensive or threatening behaviour—whether it takes place outside in the street, in a pub or a club, or at a football ground—is totally unacceptable, and we need effective and consistent legislation to target it. I fail to understand why we need a particular piece of legislation that focuses on what goes on in and around the football stadium. I do not think that that is effective and I do not think that it is fair to target football fans.

Mary Fee: The evidence that we have had from BEMIS suggests that the 2012 act has had a negligible effect on tackling hate crime. I note the comments in your earlier response about the figures that relate to religious hate crime. Do you think that the 2012 act has been successful in tackling that type of behaviour? If it has not, what do you think should be put in place?

James Kelly: I think that the 2012 act has not been successful. As I said earlier, there have been 719 religious hate crime incidents, less than 7 per cent of which took place in and around football stadiums. The scale of that shows that religious intolerance is still a big issue.

To look at it another way, if the purpose of the 2012 act was to reduce the number of non-football songs being sung, the reality is, as we have heard from a number of witnesses, that the legislation has not been effective in that regard and has not achieved its objective, given that, in some instances, fans are singing more and more non-football songs.

Mary Fee: Who should be responsible for tackling that behaviour?

James Kelly: As I said in a previous answer, we need more emphasis in the education system on promoting tolerance and respect. If we had a properly collaborative approach between fans, the police and football clubs, that could get the message across to fans much more directly where inappropriate songs are being sung. In discussions between fans and clubs, the clubs can be very frank in a way that is maybe not possible for police representatives in any discussions.

The Convener: Some people have suggested that it might make sense to wait for the outcome of the Bracadale review of hate crime before considering whether to repeal the 2012 act. It has been suggested that the review might increase clarity around the act. Can you address that point and say why you think that it is necessary to repeal the 2012 act now?

James Kelly: The Bracadale review has a very important job to do to make hate crime legislation more streamlined and efficient, and to offer people the protections that committee members have spoken about. I regard the review as a very important piece of work. However, Liam McArthur made the excellent point, when the issue was being discussed at last week's meeting, that the committee is currently looking at the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill, which was driven by the Taylor report that was produced in 2013. There has been a big time gap between the production of that report and the introduction of a bill. I simply do not think that it is acceptable to leave in place, until the outcome of the Bracadale review and the work that it will drive, what I believe to be a fundamentally unfair piece of legislation that is not working properly.

Fulton MacGregor: You have consistently said that the legislation targets football fans, but others might say that it uniquely protects football fans and others from what is a serious issue in the Scottish context and that it recognises the important role that the game of football has in our country. I offer that point for comment.

Way back at the beginning of our evidence sessions, the committee heard a quite powerful statement from the Crown Office and Procurator Fiscal Service to the effect that repeal of the 2012 act would leave

"a gap in the law."—[*Official Report, Justice Committee*, 6 October 2017; c 6.]

Have you had time to reflect on that point?

James Kelly: Can you elaborate on what you mean by "a gap in the law"?

Fulton MacGregor: The Crown Office and Procurator Fiscal Service said that there are powers in the 2012 act that allow it to prosecute certain offences that it would otherwise not be able to prosecute. The Crown Office stated quite strongly that repeal of the 2012 act would lead to a gap in the law. I want to know what your view of that point is.

James Kelly: My position has been consistent throughout in that I do not believe that there would be a gap in the law following repeal of the 2012 act. In terms of the offence in sections 1 to 5, the Law Society of Scotland has made it clear that all offences in relation to that could be captured under pre-existing legislation such as section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and section 74 of the Criminal Justice (Scotland) Act 2003.

There was a reasonable objective behind the provisions in section 6 of the 2012 act but, because of the way in which they were drafted and the fact that the threshold is too high, the reality is that, as the police have told us, cases of threatening communications have been prosecuted using section 127 of the Communications Act 2003 rather than section 6 of the 2012 act.

Fulton MacGregor: I want to move on to policing. The policy memorandum to your bill suggests—you have mentioned this already—that the relationship between fans and the police has deteriorated because of the 2012 act. However, you will be aware that the act makes no provision in relation to policing and that Police Scotland has told the committee in evidence that policing will not change if the act is repealed. Therefore, how would repealing the act improve the relationship between the police and fans?

James Kelly: As I have said a number of times, some serious work needs to be done to rebuild the relationship between fans, the police and clubs, and I believe that forums should be set up so that they can work together, as the Scottish Football Supporters Association has suggested.

In addition, serious consideration needs to be given to how matches are policed. Given that a former Cabinet Secretary for Justice has said that police officers are "run ragged" and will not be able to investigate low-level crime—which is a serious issue in itself—the public will wonder why resources are being wasted on filming football supporters inside and outside stadiums.

The key point is that serious work needs to be done by all concerned—the supporters, the clubs and the police—to rebuild the relationship between them.

Fulton MacGregor: You have mentioned the need to rebuild the relationship between fans and the police several times. Are you referring to all fans or just certain groups of fans? If you are referring to certain groups of fans, will you expand on which groups you mean?

James Kelly: Supporters have representatives who will liaise with the clubs and the police, but it is important that all fans are involved in the process. They need to have an avenue of communication through their representatives or directly to the police. For the policing of football to work, everybody needs to be involved in and committed to the process.

Fulton MacGregor: Do you think that all fans who go to football games have difficulties in their relationship with the police?

James Kelly: No, I am not saying that all fans have such difficulties. As the committee has heard in evidence, there are always on-going discussions with the police. I am not saying that there is no communication whatever, but it is quite clear that, as a result of the 2012 act and the way in which matches have been policed, there is more friction between the police and fans than there was previously. If we are to improve the atmosphere, we need to rebuild those relationships.

The Convener: Before you move on, Fulton, Mary Fee has a brief supplementary question.

Mary Fee: It is on the gap in the law, but Mr MacGregor might want to finish his current line of questioning.

Fulton MacGregor: Yes—I have not finished asking about policing.

Mr Kelly, you have talked about how the police have managed games—I think that you have referred to it as "disproportionate policing". Can you give any examples of that and explain why you think that it was disproportionate? Why do you think that the police officers concerned did not respond appropriately, in the best way that they could, to the circumstances?

James Kelly: I will give two examples. I have seen cases in which the police have spent a good bit of the game filming supporters. I do not understand what that is for. I have also seen photographs of a police officer at a football game in Perth, who had photographs in front of him of fans who the police might regard as needing more of their attention. That sort of policing is at odds with the policing that we usually see in Scotland.

Fulton MacGregor: If the policing of football is such an important issue for you and such a fundamental driver of the approach that you have taken, why did you decide to seek repeal of the act instead of calling for a review of the policing of football? As I have said, repealing the act will not change the policing of football.

12:15

James Kelly: I have said consistently that I seek repeal of the act because it is unfair that football fans are being targeted. The legislation is not working.

Separately, work is needed with supporters, police and clubs to build a better relationship in order to get more effective policing. In addition, when a former justice secretary has told us that low-level crime cannot be investigated because police officers are "run ragged", we need to have a serious look at the resources that we put in to police football games.

Fulton MacGregor: If you had taken your concerns about policing to the justice secretary, could you not have worked with him and the Scottish Government to find a better solution that may not have been as politically emotive as going for repeal of the act?

The Convener: That issue has already been covered. We will move on to the rest of the policing questions.

Maurice Corry: Do you concede that police officers must carry out their duties regardless of how unpopular a piece of legislation is?

James Kelly: I accept that the police need to take forward the law of the land that has been agreed to by Parliament, and, although I opposed the 2012 act and believe that it is deeply flawed, it is the current law. It puts the police in a difficult position. As I said earlier, offensive behaviour has such a wide definition within the bill that police officers have had to be trained to interpret what behaviour might be offensive.

Maurice Corry: I agree. Do you believe that repeal of the 2012 act would automatically repair the perceived loss of trust between police and fans?

James Kelly: Repeal of the act would not be the end of the matter, as I said in answer to Fulton MacGregor's question. All of us would have the job of putting out the message that religious intolerance is unacceptable and pointing to effective legislation to deal with it. There is a big job to be done with both police and supporters—it is a two-way street—working together to build trust. A programme of work would be required following repeal of the act.

Maurice Corry: Do you agree that behavioural problems for policing occur only when certain teams play each other?

James Kelly: The police understandably target resources at games with bigger attendances or games at which there has been trouble previously. I understand how resources are allocated and games are prioritised.

Liam McArthur: From the evidence that we have heard, most of the criticism of the act relates to section 1, and we have covered the issue of whether you believe there would be a gap in the existing law in relation to section 1 if the 2012 act was repealed. In relation to section 6, the arguments from those who have given evidence seem to be more nuanced. What is your view on whether repeal would leave a gap in the law in relation to the offences that are covered by section 6?

James Kelly: In 2011, although I had disagreed fundamentally with sections 1 to 5, I could see the point in section 6, which deals with threatening communications. In the intervening five-year period, there has been an increase in internet usage and, sadly, online abuse, so we can see the case for that section.

However, the reality is that section 6 has not been widely used: there have been only 17 cases in those five years. As we heard from the police, the threshold is too high and prosecutors and the police tend to use section 127 of the Communications Act 2003.

I accept that, in relation to evidence that we have heard about cases that have been brought forward for indictment, the potential penalties under the 2012 act are greater than they would be under the Communications Act 2003. The Glasgow Bar Association indicated that one way forward might be to strengthen the powers under section 127 of the 2003 act. I recognise that as an issue and I am prepared to enter discussions with interested parties about it. I will actively consider it prior to the stage 1 vote.

Liam McArthur: That is helpful. A point was made earlier about the message that would be sent out by repeal. From what you are saying about the motivations that gave rise to the 2012 act, there might be more legitimate concerns about the message that would be sent out if section 6 were to be repealed. Is that fair?

James Kelly: I do not regard section 6 as fit for purpose. If the police and prosecutors are not using it, it is not effective. I accept that threatening communications and online abuse are major issues, and, as the person who is proposing repeal of the 2012 act, I need to be confident that appropriate measures and protections are in place to deal with those.

Mary Fee: I have a brief supplementary question on the potential gap in the law and the point that Fulton MacGregor raised with you. The 2012 act is used if someone is on the way to, at or watching a football match and they sing an offensive song or use offensive or abusive language. If an individual was to stand in the middle of a busy shopping centre or in the street on a random afternoon and sing such a song or use abusive or offensive language that caused offence, would the police be able to prosecute them for that?

James Kelly: Yes. If somebody stood in the middle of a shopping centre on a Tuesday afternoon when no football was being played and they were hateful and abusive towards somebody's religion, they could be prosecuted under section 74 of the Criminal Justice (Scotland) Act 2003.

Mary Fee: Could they be prosecuted if they used sectarian language?

James Kelly: Yes, under that same provision.

The Convener: That concludes our questioning. Can I—

Rona Mackay: Convener, can I correct something that Mr Kelly said earlier?

The Convener: By all means, but Mr Kelly will have a right of reply.

Rona Mackay: It is on his comments about the 2012 act being incompatible with the ECHR. The appeal court considered a challenge under the ECHR and it was rejected. The Government, the Presiding Officer and the Parliament passed the 2012 act as being compatible with the ECHR. I just wanted to correct that. I believe that Mr Kelly said that it was incompatible.

James Kelly: No. That is not what I said, and I apologise if I misled you in any way. I said that the Scottish Human Rights Commission's submission to the committee, which was based on hearing the evidence that the committee had taken in relation to the bill, expressed concern that there could be a breach of the ECHR, particularly in relation to legal certainty. The SHRC said that that is a serious issue and that there could be a future challenge.

Rona Mackay: That concern was not upheld—it was not accepted.

James Kelly: No. I understand that, when the legislation was originally laid before the Parliament, it required a compatibility certificate from the Presiding Officer, which it got. However, once legislation has been enacted and is in place, somebody can make a challenge, saying that the ECHR has been compromised or undermined, which is the Scottish Human Rights Commission's point.

Rona Mackay: There was a challenge, but it was rejected in the appeal court.

James Kelly: That was one case, but it does not prevent other people from making challenges, as both the Scottish Human Rights Commission and the Law Society of Scotland have pointed out. The point that I am making is that there continues to be uncertainty about the legislation, which could be open to further challenge. I accept what you say about previous challenges, but that does not prevent someone from making a further challenge.

The Convener: That clarification was helpful. If there are definitely no other questions, that concludes our questioning. I thank James Kelly and the officials for attending.

Justice Sub-Committee on Policing (Report Back)

12:25

The Convener: Agenda item 8 is feedback from the Justice Sub-Committee on Policing on its meeting of 7 December 2017. Following the verbal report, there will be an opportunity for brief comments or questions. I refer members to paper 6, which is a note by the clerk.

I will give the verbal report, as the convener of the sub-committee, Mary Fee, was unable to attend that meeting. The report is as follows:

"The Justice Sub-Committee on Policing met on 7 December 2017 when it held an evidence session on Police Scotland's custody provision.

The Sub-Committee took evidence from Police Scotland, the Scottish Police Federation, UNISON Scotland, and Positive Prisons? Positive Futures.

The Sub-Committee heard about the role and work of the custody division, which was established when Police Scotland was formed.

During a previous evidence session on the police service's financial planning for 2018-19, the Sub-Committee heard that due to a reduction in the geographical locations in which prisoners can be held, prisoners were routinely conveyed over longer distances than would seem acceptable.

The Sub-Committee scheduled this evidence session to consider custody provision in more detail, specifically the impact on the welfare and care of prisoners in custody and during transportation.

The Sub-Committee will next meet on 18 January 2018, when it intends to hold an evidence session on HM Inspectorate of Constabulary's report on undercover policing."

Do members have any comments or questions?

Members: No.

The Convener: Our next meeting will be on Tuesday 19 December, when we will consider petitions and undertake scrutiny of the Scottish Government's draft budget for 2018-19.

12:27

Meeting continued in private until 13:02.

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