JUSTICE 1 COMMITTEE

Tuesday 27 November 2001
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE
32nd Meeting 2001, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Lord James Douglas-Hamilton (Lothians) (Con)
*Donald Gorrie (Central Scotland) (Liberal Democrats)
*Maureen Macmillan (Highlands and Islands) (Lab)
Paul Martin (Glasgow Springburn) (Lab)
*Michael Matheson (Central Scotland) (SNP)

*attended

WITNESSES

Kevin Dunion (Friends of the Earth Scotland)
Maurice Frankel (Campaign for Freedom of Information)
David Goldberg (Campaign for Freedom of Information in Scotland)
Councillor Corrie McChord (Convention of Scottish Local Authorities)
Lorna McGregor (Convention of Scottish Local Authorities)
Iain Matheson (Fife Council)
Kirstie Shirra (Friends of the Earth Scotland)
Karen Williams (Association of Chief Police Officers in Scotland)
Chief Constable Peter Wilson (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Chamber

Scottish Parliament

Justice 1 Committee

Tuesday 27 November 2001

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:37*]

Freedom of Information (Scotland) Bill: Stage 1

The Convener (Christine Grahame): Good afternoon. I open the 32nd meeting this year of the Justice 1 Committee. I remind all members to turn off their mobile phones and pagers. I have received no apologies.

Item 1 is further evidence on the Freedom of Information (Scotland) Bill. I welcome Councillor Corrie McChord, the Convention of Scottish Local Authorities spokesperson on modern governance; Lorna McGregor, COSLA's legal consultant; and Iain Matheson, head of legal services for Fife Council. I understand that the witnesses do not wish to make an opening statement. I refer members to freedom of information paper 27, which is COSLA's full submission.

Donald Gorrie (Central Scotland) (LD): I will explore the financing, training and existing staff structures that may or may not be available to councils to deal with the provision of information under the bill. In their usual cheerful way, the powers that be seem to be saying that any additional costs should be capable of being borne within planned resources. Apart from smiling ruefully, how would you comment on that?

Councillor Corrie McChord (Convention of Scottish Local Authorities): There is a theme of change in local government at the moment, with implementation of the Data Protection Act 1998, new information technology and open access programmes. Local government is having to adapt systems to make them more open and accountable. We support that and will continue to support it. The question will be one of resources. Some councils will need additional resources. Smaller councils might be able to deal with the issue more practically than larger councils. How complaints against the withholding of information may be taken up remains to be seen.

Donald Gorrie: Will councils have to make significant changes in the way in which they store their information, some of which may go back a bit? Will making that stored information more accessible have an effect on costs?

Councillor McChord: Councils are in a state of flux at the moment because of issues of access and e-governance.

Iain Matheson (Fife Council): In the recent past, local government has perhaps not devoted time to maintaining its records in a way that would be most suitable to service a freedom of information regime. There is no doubt that considerable staff time will have to be devoted to locating files, especially as the bill is retrospective and people will be able to ask for material that is many years old. It remains to be seen whether there will be time to put records into better order before the bill is implemented. Mr Gorrie is right to identify the staffing implications, which will be significant.

Lorna McGregor (Convention of Scottish Local Authorities): There will be significant staffing and resourcing implications to do with training. It is imperative that proper training takes place throughout the organisation—at strategic level, at practitioner level and at the general awareness level. Because of the way in which the bill is framed, requests may be received that are not immediately recognised as FOI requests. General awareness training will be required, together with detailed training on the guidance and codes of practice to be used in the implementation of the legislation. That will have resourcing implications for local authorities. Additional resourcing costs will arise because of the time that staff spend in retrieving information and in determining and applying the public interest test and the harm test, as set out in the bill.

Donald Gorrie: That has answered most of my next question. I understand that people will have to write for information, but there will often be personal contact. I will have to choose my words carefully but, in the nature of such activity, some of the citizens who are asking for information may be difficult to deal with, as they will be very focused on their particular issue. Are you planning to offer training in tact for officials who will deal with such cases?

Iain Matheson: Requests for information can come into the organisation at any level. It is therefore important that requests are made in writing so that whichever officer receives the request has something tangible to pass on. Almost certainly, that officer will not be the person who is best placed to deal with the request, which will be referred to someone else in the system. A level of training will be required, even if it is only so that every employee knows what action to take when they receive a request under the bill.

Michael Matheson (Central Scotland) (SNP): Disabled people may not be able to put a request for information in writing. Their only option may be to make a call. I appreciate that the person on the

other end of the line may not know that the caller is disabled, but we must have flexibility that will allow people who are disabled—or people who may speak another language and be unable to make a request in English or in writing—to access information.

Councillor McChord: That will be a problem for local government, but I think that we should make it as easy as possible for people to get in touch with their councils. Iain Matheson has identified difficulties. There is no codification of whether the information is sought under the freedom of information provisions or whether the request is just a simple one such as local government deals with every day. If we now have to ensure that staff are vigilant and can determine whether a request is made under freedom of information legislation, that will be a big task. However, I agree that we should make it as easy as possible for people to communicate with the council to get the information that they require.

Lorna McGregor: The duty to assist is set out in the bill. We hope that councils will apply that to ensure that people with disabilities or people whose circumstances make it difficult for them to submit requests in writing receive support from within the organisation.

Michael Matheson: As the bill stands, the request has to be made in writing. We have to find a mechanism that allows us to accommodate those who may have difficulty in doing that. How do you think that that could be done? If the bill is to be changed, we should take into account the problems that local government may encounter in dealing with any changes.

13:45

Iain Matheson: Local authorities want to be certain that they have understood the question that is being asked. As Lorna McGregor said, the bill places an obligation on local authorities to assist people in making a request. If one was dealing with someone who had difficulty in putting a request into writing, it would not be too onerous for the authority to put something down in writing and ask the individual to confirm that that represented what they were looking for.

From the authorities' point of view, it is important to know exactly what people are looking for. The person who gets the request in the first instance will probably not be the person who is best placed to find the information. If the information has to be passed through two or three pairs of hands, there is a risk that the question will get distorted or that part of it will get dropped along the way. It is important to have a baseline position, but I am sure that local authorities will be willing to assist people in establishing the baseline position and then acting to obtain the relevant information.

The Convener: When someone requests information, should not there be a presumption that they are making that request under the freedom of information legislation and that the onus is on local authorities to respond to that request?

Councillor McChord: Absolutely. That is what will happen from now on. That is the sort of culture change that we have to get right, even in our own heads.

The Convener: So whatever the bill eventually settles for on how applications are to be made, you do not foresee any problems, such as time limits.

Councillor McChord: That is right.

The Convener: The National Consumer Council has suggested that a freedom of information officer would be a good idea. That must have resource implications for local authorities. What is your view on having one point of contact for a public authority?

Lorna McGregor: We have considered that. We think that it would be helpful for each local authority to have a nominated officer, but not necessarily a dedicated officer. As much flexibility as possible should be afforded to individual local authorities to determine the best way in which to implement the legislation. Having a nominated officer would certainly help authorities to focus on changing the culture, but we feel that that should be left to individual authorities. The bill relates to a number of public authorities of different shapes, sizes and forms. It would be difficult to legislate for a nominated or dedicated officer, given the spectrum of bodies that the bill will cover. However, we would certainly expect the code of practice to recommend that organisations nominate a freedom of information officer.

Maureen Macmillan (Highlands and Islands) (Lab): You talked about the time that it might take to process requests. Obviously, time is money and there could be implications for staffing costs. The bill sets out various time limits governing application and appeal processes. It includes a power allowing Scottish ministers to alter those time limits by regulation. Executive officials have stated that that power was introduced in response to comments received during consultation. What are your views on the time limits set out in the bill and on the power to alter them?

Lorna McGregor: We feel that 20 days is too tight a time span and may initially result in poorer-quality decisions, as officials who do not have sufficient time to apply the fairly rigorous, if not complicated, tests that are contained in the bill may err on the side of caution. That would not help the effective implementation of the new regime. In relation to requests for information, it is fairly

commonplace to see a 40-day time limit initially afforded to a public authority. For that reason, we want an initial 40-day period to be set out in the bill. If, in due course, such systems are in place and changes have been made within organisations, there will be a facility to review the position once the culture is bedded in better. At a later stage, it may be possible to reduce the time scales if they are considered too lengthy.

Maureen Macmillan: It has been suggested that, if public authorities face problems in getting the information together in a quality way within the time scale, an application could be made to the information commissioner for an extension to the deadline. Would that be a helpful approach?

Lorna McGregor: That would make the process unduly cumbersome. The information commissioner would be flooded with requests, which could mean that they were unable effectively to carry out the other duties of their office. If a realistic time scale were introduced at the outset, that would be helpful. If it were thought at a future date that the time scale could be shortened, the period could be reviewed.

Michael Matheson: In your evidence on the part of the bill that deals with exempt information, you refer to the fact that the areas of exemption that cover the Scottish Executive are much broader than those for the other public bodies. You say that local government should be treated in the same way as the Scottish Executive. Why do you believe that?

Iain Matheson: Section 29(1) comes under the heading

"Formulation of Scottish Administration policy etc.",

although there are four legs to it. Paragraph (a) relates to the formulation of policy. However, paragraph (b) relates to "Ministerial communications" and paragraph (d) refers to

"the operation of any Ministerial private office."

Those two provisions appear to take the class exemption considerably beyond anything that would be required purely for policy considerations. It could be argued that content exemption would be sufficient for paragraphs (b) and (d).

Just like the Executive, other public sector bodies—local authorities, enterprise companies and the health service—are required to make policy decisions. If the Executive reserves for itself significant protection on policy considerations that is not extended to other public sector bodies, that could be seen as a lack of parity of esteem.

Councillor McChord: We should not, by getting lost in the minutiae of exemptions—which seem to take up quite a lot of the bill—lose sight of the fact that the bill is about providing broader information to our citizens. It is important that the current European debate on governance and on Governments being closer to their citizens and communities is embedded in the bill. If the issue gets bogged down in exemptions, that detracts from the whole point of the bill.

Michael Matheson: Some may argue that we should reduce the number of exemptions available to the Scottish Executive to bring it in line with local government. That may be the solution, rather than taking authorities up to the level of exemptions that the Scottish Executive has. That would fit in more with what you are saying.

Councillor McChord: It would certainly fit in with my personal philosophy.

Michael Matheson: Are you of the view that the Scottish Executive and local government should be brought to a similar level?

Councillor McChord: COSLA's current position on the issue, which reflects the McIntosh recommendations, is parity of esteem.

Iain Matheson: It is difficult to tell from the bill whether the exemptions are absolute exemptions, class exemptions or content exemptions. It is not possible to tell the difference between an absolute exemption and a class exemption without referring back to, I think, section 2.

One argument says that the regime would be easier for people to understand and assimilate if some of the elements of the class exemptions were moved into the absolute exemption category and other elements were moved into the content exemption category. That would simplify the test that had to be applied.

Michael Matheson: My inclination is to open the issue up further. I propose that, rather than taking the local authorities up to the Executive's level of exemptions, we should bring down the level of exemptions for the Executive. That would give the parity of esteem that Councillor McChord is looking for.

Councillor McChord: If that can be achieved, COSLA would be happy to respond at the appropriate time.

The Convener: That is also the position of the Campaign for Freedom of Information, which made a rather sweeping assertion that such an exemption would be called a class exemption, although, as I read it, it is an absolute exemption. If the exemption included ministerial communications, people are not going to get to know about them, even if information attached to those communications is, for the purposes of the bill, within the factual domain. Is that the case?

Iain Matheson: I have examined the issue from the practical point of view of section 30, which is

the section to which local authorities might refer if they felt that there was a case for not disclosing a piece of information. Section 30 relates to the conduct of public affairs. If the local authority took the view that disclosure might inhibit substantially

"the free and frank provision of advice"

and wanted to withhold information, it is difficult to see what other factors would need to be brought to bear once the public interest test had been applied. Is the answer not likely to be the same?

The Convener: If I follow you correctly, I think that you are saying that, in section 29, we should be looking at including a substantial prejudice test, as under section 30.

Iain Matheson: There seems to be a strong argument to support that conclusion.

The Convener: As Michael Matheson has concluded his questions, do other members want to take up the point about the public interest test?

Lord James Douglas-Hamilton (Lothians) (Con): In its representations, COSLA mentions that it is concerned that the charging system does not distinguish between private individuals and private companies. COSLA also suggests that more thought needs to be given to the charging system. We are interested to know your recommendations.

Iain Matheson: The point that we were making was a philosophical concern that, at a time of budget constraint, local authorities might have to devote resources to obtaining information that they were certain would be used by a company for commercial purposes. Some sort of mechanism should be introduced to prevent undue consumption of scarce resources when material that is to be used for commercial gain is supplied. At the moment, there is no requirement to say why information is requested. In certain circumstances, local authorities could anticipate that the information was requested for purposes that could generate income.

Lord James Douglas-Hamilton: My question asked for a spur-of-the-moment reply and what you have said may not be your final response on the matter. Would you send in a written response on that point? You said that a mechanism should be put in place. It would be helpful to have some further information on that.

Iain Matheson: We could certainly consider that request.

Lord James Douglas-Hamilton: Thank you.

The Convener: In your submission, you emphasise

"the importance of the Codes of Practice and stress the need for the active involvement of local government in their drafting."

I am concerned, as I suspect are other members, about when we are going to see the codes of practice. They are not integral to the bill. When would you like to see the codes of practice?

Councillor McChord: As soon as possible.

The Convener: Perhaps I should ask when would be the latest that you would like them to appear.

Lorna McGregor: We would require to see them before the final stages of the bill at the very latest.

The Convener: Before stage 3?

Lorna McGregor: Yes.

The Convener: Have you moved towards developing the codes of practice?

Councillor McChord: We know little about when the codes will emerge or about the arrangements for compiling them. As we were very much involved from the outset in the development of the code of conduct for councillors, we assume that we would be involved—and be helpful—in the development of the codes on freedom of information.

14:00

The Convener: It might be early March by the time we reach stage 3. Are you saying that the Executive has to get a move on with at least substantially drafting the codes of practice to allow COSLA and the committee to examine them?

Councillor McChord: That has to happen if local government is to have any meaningful involvement.

The Convener: What do you want to be included in the codes of practice?

Iain Matheson: The codes should include guidance on how the tests should be applied. The bill says little about the factors that we should take into account or have regard to when deciding whether something amounts to substantial prejudice or whether the public interest has been served. We have discussed the issue of trademarks, which is a class exemption. If we apply the public interest test to that issue, we could argue that the public interest would be better served by making the trademark more widely available rather than by restricting it. As a result, there must be ground rules or guidance about the criteria that public authorities apply when deciding whether certain tests have been met. There seems to be a bit of a vacuum at the moment.

Lorna McGregor: The codes of practice should also cover the issue of assistance in the handling of requests, particularly where information is shared with the local authority, which is the

instigator of the information held. However, that information might be retained or held on the authority's behalf by other public, private and voluntary sector bodies. There will have to be clear arrangements about how requests should be handled when they are passed to a third party and about how local authorities should deal with requests in relation to contracts and partnerships with third parties.

The Convener: I follow that line of thought, as we are aware that work is now either shared with or totally delegated to private companies outwith the council. We have heard arguments about whether companies in that position should be treated in the same way as public bodies.

This is something of a catch-22 situation. Some witnesses have said that the commissioner should be a major player in the codes of practice, but there will be no commissioner until the bill is enacted. Are you saying that the committee should have a fairly substantive working paper on the codes of practice before stage 3?

Councillor McChord: We would probably be looking not for a written code of practice, but for a discussion about local government interests and—I suggest—elected members' interests. At the moment, we do not really know whether elected members are to be involved in the internal review of decisions. We have said that elected members should be involved at some stage in the process. However, will that be part of a formal decision-making process or will our contribution merely be based on someone's point of view? We have to think the issue through for ourselves and have that debate with central Government.

The Convener: The problem is that, often, the committees do not see codes of practice. That has happened with other legislation, such as the Adults with Incapacity (Scotland) Act 2000, which has just disappeared from the committees' clutches. Perhaps we should pay more attention to the guidelines for the daily implementation of the legislation.

As for the internal review of decisions by public authorities, section 21 of the bill says that

"a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn ...) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement".

There is then a list of the various authorities that will have to deal with the review of the decision. Is that just to be left like that, or are we back to codes of practice to deal with reviews within time limits?

Iain Matheson: Individual authorities may adopt slightly different approaches. In the case of my authority, initial requests for information will probably be dealt with by the service that holds the information. For example, if someone asked for information about social work, that service would obtain the information and issue it or withhold it, as the case may be. If the applicant was dissatisfied, another officer—probably somebody in one of the central support departments, such as law and administration—would review the initial decision and the factors that were taken into account. They would then take a view, possibly involving elected members, on whether the decision should stand. I envisage a two-stage process in local authorities. Authorities will want some flexibility to tailor that to suit themselves, depending on their size. I do not think that there is a gap in this area.

The Convener: The time limit for compliance is

"not later than the twentieth working day after receipt by it".

Is that too tight?

Iain Matheson: Our comments about the desirability of a 40-day limit to reach a considered opinion apply equally to the review process.

Lorna McGregor: That would particularly be the case if review decisions are to be made by elected members, which might not be feasible if the time scale for compliance for review is within 20 days. We would like the 20-day working period for reviews to be extended to 40 days.

The Convener: That is interesting. It is useful to have that information.

Donald Gorrie: I wish to ask about commercial confidentiality. I know from my time as a councillor that things become difficult when, for example, a council moves its recreational facilities into a trust that is run commercially. One is not allowed to ask questions. There is also the private finance initiative on which, at a parliamentary level, it is hard to get answers, because the information is commercially confidential.

There are more and more types of partnership. It has been suggested that any body that provides a public service should be open to questioning in so far as the question relates to its public service. For example, if a multinational was mending roads in Falkirk, it would answer questions only about mending roads in Falkirk, not about extracting gas from Greenland. Commercial confidentiality is a major inhibition to seeking out legitimate knowledge. What do councils feel about that?

Iain Matheson: I am not sure that we have reached a conclusion on that. We recognise the desirability of all relevant information being available to members of the public. The public will have difficulty distinguishing between information that an authority holds and information that happens to be held by a private contractor. However, I recognise the desirability of making it clear which organisations and bodies are caught by the bill's provisions, so that they can plan and

prepare for implementation. A balance must be struck between the desire for the provisions to apply as widely as possible and the practical implications of applying them. As the legislation develops and becomes more established, the provisions may have to be rolled out in stages to make them workable.

Councillor McChord: We are not just talking about commercial organisations, as there is a range of service-level agreements with voluntary organisations. Indeed, what would be the arrangements for housing associations and housing co-operatives?

Michael Matheson: The bill is likely to go through Parliament before the summer. How much time will local authorities require to prepare before the bill comes into force?

Councillor McChord: Resourcing, training and development need to be phased in.

Iain Matheson: Local authorities are used to responding to new initiatives and new legislation. To implement the bill, we will need a reasonable run-in period and for people to be clear about what is expected of them. If the bill becomes an act in March 2002, it will probably be several months before local authorities can comply.

Lorna McGregor: There was discussion earlier about implementing the proposed act a year after it receives royal assent, which would be a reasonable and realistic time scale.

The Convener: I am interested in pursuing that. As we know, section 72 of the bill will

"come into force ...at the end of that period of five years which begins with the date of Royal Assent",

or at an earlier date. Section 72 also states that

"different days may be so appointed for different provisions".

I want to deal with that last point. You used the term "phased in." Do you mean that sections of the bill should be phased in?

Councillor McChord: I meant that there should possibly be different stages of implementation for different organisations, such as public authorities and local authorities.

The Convener: Would not that be confusing? The trouble with bills that do that—from my humble experience in legal practice—is that some sections are in operation but others are not until they are brought in by order. That becomes confusing, perhaps not for the profession but for the public. The Freedom of Information (Scotland) Bill is intended for ordinary members of the public or organisations to access information. Do you foresee complications if the proposed act applies only to, for example, local authorities and not to other public bodies or agents of local authorities at the same time? I can foresee phasing leading to confusion.

Councillor McChord: The main point is that we need time to prepare for the implementation of the proposed act, whether it is phased in or comes in as a big bang. Local authorities in particular need time to respond. We want time after the bill is given royal assent to comply with it.

The Convener: Would not it be the case, as section 72 states, that some technical sections would come into effect only on royal assent? You could defer the entire proposed act's coming into effect, during which time local authorities would have time to prepare to comply with its provisions. I am unhappy to talk about not enacting all the provisions until five years after royal assent.

Iain Matheson: We said that the proposed act should be implemented a year after royal assent.

The Convener: I understand that, but I am getting at the business of phasing in the bill, to allow you time to install a freedom of information officer—if you want one—and to ensure that the public knows that on a particular day, whether it be a year or two years after royal assent, the proposed act will come into force.

Councillor McChord: The purpose of the bill is to extend freedom of information to the public to allow them to participate in governance. That is where we are coming from in local government.

The Convener: You said that the proposed act should be implemented about a year after royal assent.

Lorna McGregor: That seems to be a reasonable period for implementing the training programme. Phasing would be useful, if not essential, when considering the different categories of information that are held—such as historic records and their management. There may be a requirement for phased implementation for different types of information rather than for different types of bodies.

Councillor McChord: In my historic home town of Stirling, we have an archive section. The management of archives is not all it should be following the reorganisation of local government in 1996. Archive management was torn apart then. We will need time to consider the implications of the bill for the practical management and curation of archives.

The Convener: As there are no further questions, I thank you all very much.

I welcome from Friends of the Earth Scotland Kevin Dunion, the chief executive, and Kirstie Shirra, the project researcher. Members have the witnesses' written submission before them.

14:15

Kevin Dunion (Friends of the Earth Scotland): Friends of the Earth has been in Scotland since 1978. We have been members of the UK Campaign for Freedom of Information for more than 10 years and, more recently, we have been part of the strategy group of the Scottish branch of the campaign. We believe that access to information is crucial to the work that we do in promoting sustainable development and environmental justice. The communities that we work with look for information on the environment around them, including on air quality and the polluting industries, and on other developments, for example in health and social policy.

It is not only environmental information that we seek. We have a wealth of experience of utilising existing legislation to ask for information from public authorities. We think that that experience provides an insight into how the freedom of information provisions may operate in practice. It may be of interest to the committee to know that, in the recent work that Kirstie Shirra has co-ordinated, almost one in 10 requests for information did not receive a response. Those were reasonably simple requests to public authorities. A 10 per cent failure to provide information is not acceptable.

We welcome much of what is in the bill; any criticisms we make should not be taken as criticism of the intent. We particularly want to ensure that the intention, which embodies the principles of openness, effectiveness and equality of access, is maintained. We welcome specifically the role of the Scottish information commissioner. However, as we highlight in our evidence, we are concerned about a number of sections. In particular, we are concerned that two or more requests can be refused if they are perceived to come from an organised campaign. We are concerned about the upper limit being proposed for provision of information, and the fact that requests must only be in writing—the committee has touched on that. We are concerned about the commercial confidence provisions and the fact that environmental information will be exempt.

I am happy to take questions on those points and others we have raised in our submission.

Maureen Macmillan: On the exemption of environmental information, the Executive has said that modifying the right of access to information to make the bill fully compliant with the requirements of the Aarhus convention would be a complex exercise and might result in tensions in the bill. Therefore, the decision was taken to provide for a power in the bill to introduce separate regulations and access to environmental information, which would be compliant with the convention. Do you agree with that approach?

Kevin Dunion: Ideally, the bill would encompass environmental information—in other words, the bill would be capable of implementing the provisions of Aarhus. Our concern is that we could continue to have a twin-track approach to access to information. For example, if the bill were enacted as it stands, the freedom of information provisions would require a response within 20 days. However, under the environmental information regulations, a response could be provided up to two months after the request. It would be unfortunate, to say the least, if we continued to operate a twin-track system and the public were not sure which deadline they were operating to. Indeed, it might then be left to the authority to decide which of the provisions encompassed the request for information that lay before it.

Maureen Macmillan: Would not there be duplication of effort and administration costs?

Kevin Dunion: If the provisions of the Aarhus convention and the new environmental information regulations can be adopted at the same time as the bill is brought into effect, that should take care of any difficulties. However, if the bill is brought into effect and the environmental information regulations are not amended to comply with or match the FOI provisions, that would be unfortunate for the public.

Maureen Macmillan: The Executive said that it did not consider it necessary to include a power to implement article 5 of the Aarhus convention, because that part of the convention can be delivered administratively and much of article 5 will be covered in a revised directive on freedom of access to environmental information. Do you agree with the Executive's reasons?

Kirstie Shirra (Friends of the Earth Scotland): When we asked how article 5 of the Aarhus convention would be covered, we were told that it would be covered by the Pollution Prevention and Control (Scotland) Regulations 2000. We were concerned because we did not think that they would be strong enough or effective enough to implement the intention of article 5. If the bill included a provision on article 5, which deals with dissemination of environmental information, more priority would be placed on introducing good pollution registers, for which we have campaigned.

Maureen Macmillan: In what ways are the Pollution Prevention and Control (Scotland) Regulations 2000 not strong enough?

Kirstie Shirra: I will not go into great detail, but a couple of elements are relevant to pollution registers. The regulations say that 50 substances must be on a register of pollutants, whereas the intention of the Aarhus convention is to cover at least 250 to 300 substances. At least initially under

the regulations, a register would have to be updated only every three years, whereas the Aarhus convention says that that should be done annually. I can give more examples if need be. A major point for us is that the Pollution Prevention and Control (Scotland) Regulations 2000 do not say that the register must be accessible in numerous locations or on a website, as we would like it to be and as Aarhus states.

The Convener: I would like you to explain the matter more. Is the Scottish Environment Protection Agency one of the public bodies that is involved?

Kirstie Shirra: Yes.

The Convener: If you want to ask a question under the freedom of information regime about pollutants from a factory, what is the problem with the system? Are you saying that less access will be available under the bill than would be available if the bill were in harmony with the environmental information regulations?

Kevin Dunion: If I am incorrect, Kirstie Shirra will correct me. I understand that if we asked SEPA for information, it could say that the request was not an FOI request, but a request under the environmental information regulations, so it could take up to two months to supply the information and not the 20 days that the FOI provisions would require. That would be the most obvious distinction if the proposed twin-track approach was adopted.

Kirstie Shirra: We believe that new environmental information regulations are to be introduced, which should be more in line with the Freedom of Information (Scotland) Bill. The intention is to introduce them at the same time, which we welcome. The Scottish information commissioner would then be responsible for both regimes. Our main concern is that a gap between the introduction of the two new systems or a substantial difference in the time scales under the two systems could lead to public confusion and, as Kevin Dunion said, a twin-track system.

The Convener: I am not just talking about time, but about the substance of the information. I gave the example of nuclear waste being moved. The public body might take refuge under a national security exemption or another exemption. I am trying to understand whether the quality of the information that is received under the bill would be different from that received under the environmental information regulations. Are the European regulations more dynamic? I do not know whether I am thinking properly about the issue. If the freedom of information regime were operated separately, could access not be obtained under that system to information that would be obtainable under EIR? How is that?

Kevin Dunion: Pieces of legislation are leapfrogging one another. At the moment, we get more access to information than other organisations because there is a European directive. The environmental information regulations provide us with a right to information on the environment. Such information in respect of health and other information held by public authorities is not available. We are in a favourable position. If FOI comes into effect as suggested, there will be a certain leapfrogging. For example, from the public's point of view, the time scale for the provision of information under FOI is much better than it is under the EIR. We want harmonisation so that all elements of a request will be dealt with under a similar system. Even if the legislation is separate and the environmental information regulations have to be different, they should be introduced at the same time. The public should not be shuttled between two pieces of legislation.

The Convener: So your concern relates to time scales, rather than quality of information.

Kevin Dunion: No. The point that Kirstie Shirra was making is that article 5 of the Aarhus convention places a responsibility not just to provide information but to disseminate it. In that respect, we want public authorities to volunteer information that is regularly requested and expensive to collate on each request. In particular, under the provisions on the collection and dissemination of environmental information, we want inventories in the public domain that provide information about the release of pollutants—a full list of 250 to 300 substances. As far as I know, that has not been contemplated and is not provided for by the current environmental information regulations. If we asked for that information under FOI, I am certain that it would not be accepted as an FOI request because it would be covered by the environmental information regulations.

Maureen Macmillan: Would you not get it under the EIR?

The Convener: I am getting rather confused.

Maureen Macmillan: I thought I understood what was being said initially, but now I am not so sure. You are saying that you could not get such information under FOI, but could you get it under EIR?

Kevin Dunion: Only in so far as the environmental information regulations provide for that. As EIR currently operates in Scotland, there is no obligation on SEPA to disseminate information.

Michael Matheson: I, too, am trying to get my head round the issue. I imagine that if committee members are having problems getting their heads

round it, the general public will have difficulties too. That may reflect the confusion that will occur if we do not get the matter sorted out.

If there was a request that was covered partly by EIR and partly by FOI, one element would be provided within 20 days and the other would take two months, even though the information might come from the same public body. Could we end up in such a situation?

Kevin Dunion: Yes. Indeed, in some respects that is what happens just now, because some information is provided under codes of practice that allow 20 days for public bodies to provide information and other information will be covered by EIR, which provides for up to two months. That is the current state of affairs in Scotland. We can be told that a request has two parts, which fall under different regulations and which will be dealt with accordingly.

Michael Matheson: Is there a possibility that some public bodies might classify information as being under EIR as opposed to FOI because it would give them more time to deal with the request?

Kevin Dunion: There is potential for that. The committee is considering what can be done to improve the bill, learning from the experience of groups such as Friends of the Earth. At the moment, we know that local authorities regularly fail to provide information even within the two months. In the past two years we have asked for information about who in local authorities is responsible for bathing waters. Of the local authorities that we asked, only 17 provided the information within two months. Of the remainder, three authorities did not provide the information at all.

It was an extremely simple request, but it took two months for half of them to answer and more than two months for the rest to answer. From our point of view, it is important that loopholes do not exist and that twin-track provision is not available to local authorities. It would be easier all round if there was the same time scale in law for the provision of information, whatever its provenance.

Michael Matheson: If there is going to be harmonisation, should the time scale under EIR come down to 20 days as opposed to the time scale under FOI going up to two months?

14:30

Kevin Dunion: That is our preference because that would be in line with the current codes of practice that many local authorities operate for providing information to the public. We would prefer the shorter time scale.

The Convener: Having harmonised time scales, do I take it that you want the bill to say that it complies with and implements article 5 of the Aarhus convention on the dissemination of environmental information to the public? There would then be a direct link between primary legislation and regulations.

Kirstie Shirra: Yes. The bill contains provisions that deal with the dissemination of other information. It is important to have provisions that deal with the dissemination of environmental information.

Lord James Douglas-Hamilton: You made the point that you welcome the powers of the commissioner to take a public body to court to force the release of information. You also believe that there is a need for sanctions for bodies who fail repeatedly to give out information in an appropriate and timely fashion. Obviously, the penalties for non-compliance need to be meaningful and should include fines. Do you think that companies would be less inclined to delay if that were the case? What other methods do you suggest?

Kevin Dunion: Did you say companies or public authorities?

Lord James Douglas-Hamilton: I said companies, but the questions should really be about public bodies.

Kevin Dunion: Yes. Our concern is that there is nothing at the moment that allows the commissioner to intervene in the case of a public authority that fails persistently to meet the terms and the intention of the bill. At the moment, the commissioner can make a ruling or take the authority to court. We are thinking of more prosaic circumstances in which authorities flout the time scales regularly or fail to give adequate or full information regularly. In those cases, the options that are open are either to fine the authority concerned or—copying some other legislation—to rule that the authority is a failing authority and place a member of staff in it to oversee the implementation of more adequate information systems.

Lord James Douglas-Hamilton: You mentioned bathing waters. If I understood you correctly, you said that some authorities had not given you information at all.

Kevin Dunion: That is correct.

Lord James Douglas-Hamilton: How many authorities did not respond?

Kevin Dunion: Seventeen authorities replied within two months, which is the deadline that is set down under the directive. Our reminders produced responses up to 100 days after the initial request and three local authorities did not reply at all, despite reminders.

Lord James Douglas-Hamilton: What reason did they give for refusing to give information?

Kevin Dunion: They did not refuse; they just did not reply. They gave no reason.

Lord James Douglas-Hamilton: Were the standards of their bathing waters below the appropriate standards?

Kevin Dunion: I do not have that information.

Lord James Douglas-Hamilton: You stated that if excessive costs were to be incurred as a result of a large number of people asking for the same information, the public authority should be under a duty to respond to the first request and to publish the information in an easily accessible form for the rest of the applicants. Is not that common sense? Does it need to be written into the bill?

Kevin Dunion: We think that it does because, at present—and this is a matter of extreme concern—section 12(2) entitles public bodies to ignore two or more requests if they perceive them to have come from an organised campaign and if answering the requests would cost more than the prescribed threshold. That is undemocratic in many respects. It is not helpful to have a provision that allows the provider of information to interpret requests that they receive and to assume without checking that requests originate from an organised campaign.

If providing the requested information would entail a considerable cost, public bodies should, after making the information available to the person who first made the request, publish it either in paper form or on a website and inform the other people how the information can be accessed. It is not acceptable that requests can be denied because they are presumed to come from an organised campaign and because providing the information might exceed a cost. That would be harmful to public confidence in the system.

The Convener: As an alternative to deleting section 12(2), would it be a solution to give guidance in the codes of practice on how public bodies should deal with multiple requests?

Kevin Dunion: From our point of view, it is extremely important to remove section 12(2) from the bill. There is provision elsewhere to deal with vexatious requests, so it is a belt-and-braces job in any case. The codes of practice should deal with multiple requests and inform authorities that they need not reply to each one with voluminous paper correspondence if they can provide the information more efficiently elsewhere in a way that is accessible to the public. Section 12(2) would leave the bill open to abuse by public authorities that do not want to release information. After all, two or more requests might come from people who do not know each other, in which case the authority would not be able to substantiate that there is an organised campaign.

Maureen Macmillan: You said that authorities might use section 12(2) as an excuse not to answer requests from campaigns, but campaigns can sometimes be a bit of a nuisance. Members do not reply individually to every e-mail that they receive from campaigns—we compose a stock reply to send out. I presume that councils will either do that or publish the information on their website. It is disingenuous to require a completely fresh reply to every request, when it is obvious that a campaign is involved. People know a campaign when they see one.

Kevin Dunion: As far as I understand section 12(2), it is up to the local or public authority to decide whether the requests come from an organised campaign, which is an interesting function to give authorities. If there are multiple requests, the authorities should provide the information if it is not costly to do so. If the material is expensive because of its volume or nature, it can be published elsewhere and the authorities should respond to multiple requests by informing them of that. We do not have a problem with authorities explaining the difficulty in meeting a request, but as far as we understand it, the bill would allow authorities not to reply to requests and not to supply information.

Maureen Macmillan: That is not likely. It is likely that the authority will say that the information can be found on the website, because there have been so many requests.

Kevin Dunion: I have no objection to the information being provided in that way. However, as the bill stands, authorities could refuse to provide information, which is what we have a difficulty with. It would be wrong to have such a provision in the bill. Section 12(2) is a catch-all provision, but we have not received from the Executive—or anybody that we have asked—an example of a current situation or difficulty that it would remedy. It is not a good provision.

The Convener: You are saying that if the information is published, and the ordinary man or woman on the street agrees that the information is in the public domain, continued requests would fall into the category of vexatious requests, which gunge up the system.

Kevin Dunion: That is right.

Michael Matheson: I have a point relating to what Maureen Macmillan said. Most reasonable local authorities will make information public if it fits the criteria. Further requests can be dealt with in the way in which members deal with campaigns—by issuing a stock reply.

The fact that local authorities can deal with the matter in that way is probably a good reason for not having section 12(2) in the bill. My concern—and I think that this is your point—is that local authorities could use section 12(2) as an excuse for not providing information in the first place, when it would be easy enough for them to do so, even if there was an organised campaign.

Kevin Dunion: We must face up to the fact that public authorities wish that they did not receive certain requests for information and that they did not have to divulge that information, as they are required to. As an organisation, we regularly ask for information that public authorities do not want us to have. They second-guess what we might wish to use it for, which—in their eyes—might be to embarrass them. We should not make available to them a get-out—such as section 12(2)—that would allow them to provide no information whatever.

Maureen Macmillan: Can I ask another supplementary on that?

The Convener: I do not know whether Donald Gorrie—

Donald Gorrie: Go on, if you want to. I am absolutely against what you say, but do go on.

Maureen Macmillan: If your organisation wants the information and one person writes off for it and gets it, that is it—the organisation can then disseminate the information. Why have 50 people write in for the same information? A campaign is designed to put pressure on people, not just to get information. If you want information rather than just to make a political statement by saying, "We have written 500 letters to the council", I do not understand what your difficulty is.

Kevin Dunion: I do not know why we would do that. The bill states that the request must be the same or "substantially similar". As an organisation, we would not write and ask for the same information.

First, it is up to the public authority to decide whether there is a campaign, not for us to wage one. That is a matter of interpretation of the genesis of the request and of why there are two or more substantially similar requests. The authority is entitled to interpret "substantially similar", which is a generous power to give it.

Secondly, if we asked for information and somebody else asked for it at the same time, both of us could be denied the information. It is not a case of giving the information to Friends of the Earth, then asking Friends of the Earth to disseminate it.

Thirdly, I do not think that it is the responsibility of an organisation other than the public authority to disseminate the information. If we ask for the information and so do many others, it is up to the public authority to supply that information in a form that is most economic to it and to meet the request. If that means anticipating that several people will want the same information, the authority should put it on to a website or publish it, rather than collating it afresh each time. That is the public authority's job, not our job.

Donald Gorrie: There is an extraordinary misapprehension that campaigns are some sort of Napoleonic army, with everyone walking in step. Interest is aroused in a local issue—let us say the closure of a swimming pool—and a lot of people become concerned about that. They might write in and ask how many people have been using the swimming pool. They all do that individually, but are agitated by the campaign, which is not some sort of wicked attitude. The powers that be seem to think that campaigns are a bad thing. I would have thought that, as democrats, we would regard campaigns as a good thing.

In this case, most of the campaign will consist of people writing to the council to ask it not to close their swimming pool. There will be only a few requests for the information, but the council should surely provide it. It is important that the council should indicate precisely where the information is available, because some more sneaky members of the council might say that the information is publicly available without people having any idea where that might be—it could be deep in some vault somewhere.

That was not a question; it was just my way of expressing my indignation at some of the recent conversation.

I would like to explore the issue of secrecy. A number of provisions in the bill—such as those relating to the ministerial certificate and the categories that are exempted, regardless of content—are about denying access to information. Would you elaborate on whether those secrecy elements are acceptable? If not, what should be done about them?

14:45

Kevin Dunion: Wherever possible, the class-based exemptions should be removed and replaced by a contents-based approach. We understand entirely that advice to ministers should not be inhibited from being frank and open, but we do not want the information that lies behind that advice to be withheld. Such information may be statistical, fact based or interpretative. It is important that the public understands why decisions are taken. We understand entirely why advice on what ministers should or should not do or comments made by senior officials should not be divulged, but we see no reason why, with a

contents-based approach, background information should not be divulged, even if it is part of the overall advice to ministers.

We are not happy with the provision that the commissioner can be overruled and we would prefer that veto to be removed. Ministers should not challenge a commissioner's decision.

Donald Gorrie: To use the word "statistical" in respect of information seems rather narrow. A lot of factual information that may not be statistical should be open to publication, too.

Kevin Dunion: Yes. The selection of facts and the cohorting of a selection of facts is an important part of framing an impression for a minister of what a decision should or should not be. It is important for the public to know which facts have been selected. Each fact may not be challengeable in its own right, but the selection of facts will be of interest. There is no reason that the selection of facts used in preparing background briefing materials should not be in the public domain.

The Convener: Members of the public can seek review of a refusal for information within 20 days. In your submission, you ask for the period to be extended to 40 working days. That is interesting. COSLA took the view that a public body should have 40 days to respond to a request. Should we substitute 40 days overall, both for the public body and for the applicant?

Kevin Dunion: Perhaps Kirstie Shirra should answer the question about public bodies, but we favour 20 working days. We drew a distinction because, if a public authority fails to provide information within 20 days, no real sanction will be applied to it. A person can complain and if the complaint is serious enough, they can complain to the commissioner. Eventually, the information must be released. However, a real sanction can be applied to members of the public. If they fail to ask for a review within 20 days, they lose absolutely their right to a review. There is a different set of circumstances.

We prefer the longer period for members of the public. The two time limits do not have to be the same. I understand why, for neatness, 20 days was used for both, but there is no other reason why that should be the case.

Kirstie Shirra: The public bodies will operate the system—that is their job. Members of the public will not know the legislation as well as the public bodies will and should not be expected to be able to respond within the same time limits. We do not favour increasing the 20-day period that public bodies have to respond to requests to 40 days to make the figure the same as that which we have requested for members of the public.

The Convener: Did you hear COSLA's evidence on that? It mentioned archive records, for example, and put the view that the proposal was practical. Was the evidence substantive enough?

Kevin Dunion: As I understand it, a response must be issued within 20 working days but that response could simply be a statement to the effect that it was not possible to provide the information within 20 working days and that it would be provided by a set later date. I do not see why the period should be extended to 40 working days to take account of difficulties that might be experienced in only a limited number of circumstances.

The information that we receive from public authorities under the environmental information regulations often comes with the provision that, although not all the information can be supplied at the moment, it will be given to us when it is collated.

The Convener: That means that the issue could be kicked into touch for quite a long time, just as when members are told that a minister will write to them later, months can pass before a letter is received. Is that what you are saying?

Kevin Dunion: That is one of our concerns. There is no back-up. In a recent exercise that we carried out, one public authority replied promptly but provided almost none of the substantive information that was requested. It would be bad if that happened a lot. At the moment, the local authority cannot withhold information. However, if it were difficult to access the information—for example, if it had never been accessed before—and the period of 20 working days was inadequate, the local authority could say to the applicant that the information would be provided at a later date.

The Convener: Where is that in the bill? I must have missed that.

Kirstie Shirra: It is in section 10. The concern is that that section does not state whether a public body can issue a response saying that it will produce the information at a later date. The section simply states that a response must be received within the 20 working days without specifying what the response should be.

The Convener: Section 1(1) says:

"A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority."

Section 10(1) says:

"a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day".

Section 1(1) refers to information, not to a holding reply.

Kevin Dunion: My point is that a similar provision currently applies to environmental information regulations and that we occasionally get holding replies. Where they appear to be reasonable—which they often do because the information is complex and detailed—we live with them. COSLA's point is that some thought should be given to the length of time in which it could be guaranteed that 100 per cent of requests could be answered.

The Convener: I am sorry, I have just read section 1(3), which says:

"If the authority—

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so (specifying what the requirement for further information is),

then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information."

So a caveat is included in the bill, although one might feel that a local authority could use that provision as a delaying tactic.

The bill's provisions mean that, if circumstances changed between the time when the information was requested and the time when it was received, the information would reflect the situation at the end of that period rather than the situation that obtained when the question was asked. However, if we were believers in conspiracy theories, we might think that that situation could have been changed for a reason—that it might suit someone for the situation, and therefore the information, to change before the information was issued. Given that, should the commissioner be able to say that such a tactic was not reasonable?

Kevin Dunion: That situation would be more likely to occur if the time between the submission of a request and the delivery of the information were lengthened. That is one of the reasons why we think that 20 working days would be a suitable period, especially since the public authorities would be able to let the applicant know that they could not meet their request in that time.

The Convener: Should penalties be imposed if public authorities fail to deliver the information or issue a holding reply in 20 days?

Kevin Dunion: We raised that issue in response to an earlier question. As far as we can see, the bill contains no provision for the imposition of any penalties.

The sanction is available to make a complaint to the commissioner who can then deal with that request and force the provision of the information. However, if the authority regularly fails to provide the information, for whatever reason, the commissioner does not appear to be able to apply a penalty.

Donald Gorrie: Could you clarify the graph on charging proposals? There seems to have been a hiccup in the duplicating process. The text refers to a 25 per cent option, but there is no line for that on the graph. Is that 25 per cent starting from zero or starting from £100?

Kevin Dunion: It is starting from £100. I am sorry if that line is missing.

Donald Gorrie: Would that be better than what the Executive is proposing?

Kevin Dunion: What the Executive is proposing is at variance with what might be introduced south of the border, which might put people in Scotland at a disadvantage. The Executive is proposing that information costing up to £100 should be provided free. We agree with that, but the Executive is also proposing that people should pay the additional or full marginal costs, which are set at the discretion of the public bodies. Someone could be charged £400 for information that cost £500; they would have to pay the full marginal cost less the first £100, which would be free.

Under the system that is being proposed at Westminster, the public body would be entitled to charge the applicant only 10 per cent of the total costs. In England, therefore, the authority can only charge the applicant £50 for information that might cost £500 to provide. In Scotland, the authority could charge the applicant £400. That is a severe disparity and a disincentive to asking for information that might be expensive to provide.

We are proposing a hybrid between those two systems. The free provision of information costing less than £100 should be maintained; thereafter, there should be an option to charge 25 per cent of the full marginal costs. In Scotland, someone would still have to pay £125 for information costing £500, compared with £50 in England. However, we would have the benefit of the £100 exemption.

Donald Gorrie: Thank you. That is helpful.

The COSLA representatives aired the idea that commercial organisations could be charged more than private individuals or non-commercial organisations such as Friends of the Earth Scotland. Do you think that there is any mileage in that idea?

Kirstie Shirra: We have not examined that issue in any great detail. Our main concern is to ensure that ordinary members of the public can get access to information. Our charging proposals have been based on that.

The COSLA suggestion ties in with our idea that there should not be an upper limit to charges. When the proposed upper limit of £500 is reached, perhaps a company that can afford to pay for the information should pay for it. That is the only aspect of the issue that we have considered. Our main concerns are for the public and we have always argued that if the upper limit is reached, the authority should refer the matter to the commissioner instead of just not giving the information to the applicant. The commissioner could decide where the burden of cost should lie. If the applicant was a company, it could pay the charges.

Donald Gorrie: From your activities so far, do you get the impression that a lot of inquiries would cost more than £500 and would therefore be ruled out?

Kirstie Shirra: We rarely come across costs as high as that. When we complain about the cost limits, people say that very few inquiries would cost more than £500. However, the fact that people need either a vast amount of information or information that is difficult to retrieve should not be a reason for their not being able to get it.

The Convener: Friends of the Earth Scotland is probably interested in commercial confidentiality. I could go to a company and ask for public information only to be told that it is a trade secret. For example, if I was trying to find out what a company was putting into a river, would section 33, which allows the company to say that the information is a trade secret, negate the regulations on lists of pollutants that you mentioned?

15:00

Kevin Dunion: We have experienced that twice relatively recently. In one case, which concerned an application to construct a road using PFI, we requested information on the outline business case, including details on alternative projects. Our request was denied on the grounds that the document contained commercially sensitive information. When we asked again, we were told that we were not entitled to see the document as it did not contain any environmental information—we learned subsequently that it did. When we asked the council to remove the commercially sensitive bits of the document and provide us with the rest, we were told that that would be prohibitively expensive and would leave little of the original text.

We have not been able to obtain information that is now classed as commercially sensitive on what were hitherto public contracts. The move to PFI has meant that the contracts have become commercial contracts, which would be given a class exemption under the FOI proposals as they stand.

A similar thing happened when we asked for details of waste transfer notes, which describe what is being carried into landfill sites. As was mentioned earlier, we are talking about pollutants going in rather than pollutants going out. When local people asked to have access to the waste transfer notes to find out what was going into the landfill site, their request was denied by SEPA on the grounds that the notes were commercially confidential.

I think that we can expect commercial confidentiality to be used quite extensively. In public-private partnerships, will public interest or commercial confidentiality be the governing issue? As PFI contracts would be class exempt, we could not even deal with them using a context or case-by-case approach.

The Convener: Section 33 also states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially … the economic interests".

That concerns me. Although there is a test as to what "prejudice substantially" means, how do we define what we mean by "economic interests"? Do you feel that that provision is very wide?

Kevin Dunion: Yes. We have experience of how the provision would affect environmental activity. For example, a company's economic interests may be affected if it was known that the company was a polluter, since potential clients might steer clear of having dealings with such a company. The provision that relates to companies' economic interests could be very widely interpreted.

Michael Matheson: I have heard that other countries that have introduced a freedom of information regime have had difficulties changing the culture within public bodies so that people accept the whole idea of making information more freely available. Many of your concerns about the bill are predicated on the basis that the public bodies will be fairly reluctant to provide information in the first place. Alongside the bill, what must be done to tackle the culture of secrecy that exists in our public bodies? What must be done to ensure that the bill will function effectively once it is enacted?

Kevin Dunion: I agree entirely that we require a change of culture, not simply a change of legislation or technical provisions. We agree with COSLA that a rigorous programme of training on and anticipation of the provisions of the bill will be required. I am not sure that I agree entirely with the suggestion that one year would be required, but several months would certainly be required. There must be a culture change at the top of

organisations, so that requests for information from the public are no longer treated as symptomatic of people being troublemakers. In other words, we must get rid of the culture in which it is assumed that people who ask for information must intend to do something dangerous with that information.

Information also needs to be provided proactively. Public bodies need to anticipate what information will be requested regularly and to make it readily available either on websites or in published form. Public bodies should not make things more difficult for themselves and for the public by having to collate the information afresh each time.

It will take several months for some public authorities to come up to speed. However, it is obvious from testing that we have done that many public authorities are already pretty good at dealing with requests for information. I am on the board of Scottish Natural Heritage, and I am happy to say that a recent survey by SNH showed that there had been no concerns or complaints about the nature of the information supplied, its timing or its volume. A culture change can take place.

Michael Matheson: COSLA has said that a year would be required between the granting of royal assent for the bill and full implementation of its provisions. You feel that a couple of months would suffice. To ensure that the legislation works as effectively as possible from the outset, might it be better to err on the side of caution and give public bodies extra time to ready themselves? The bodies would then not have the excuse of saying that they were not given adequate time.

Kevin Dunion: I apologise if I gave the impression that a couple of months would suffice. I did not mean to: I meant that implementation would take a matter of months. In coming to that conclusion, we had expected that the bill would go through by early spring and come into force from the beginning of 2003. That is a reasonable period of time—we say nine months; COSLA says a year. We could live with a year, but I do not think that going beyond a year would be acceptable.

The Convener: COSLA has said that it would wish to be consulted on codes of practice. Who else should be consulted?

Kevin Dunion: That is a testing question; I heard you put it to previous witnesses. There are good reasons for saying that the codes of practice should be drawn up well before the bill goes through so that people can see what is meant by terms such as substantial harm, public interest and commercial confidentiality. However, the information commissioner should have a role in determining how the provisions are put into effect. It is important to have a draft code of practice that the information commissioner could subsequently amend but that would allow those who are voting on the bill to see what is intended by certain terms. The codes of practice should therefore be circulated in the same way as the draft bill was circulated. It would be intelligent proactively to seek the engagement of those who have so far shown an interest in the bill.

The Convener: Who are many. We have had many responses.

Kevin Dunion: Yes, they are many, but a difficulty is that lots of things will be put not in the bill but in the codes of practice. The codes of practice really matter to people.

The Convener: I was not being critical of your suggestion to seek engagement—I applaud the fact that we have had responses from lots of external bodies. Thank you for your evidence.

We will take a 10-minute coffee break before we hear evidence from the Campaign for Freedom of Information, which has submitted a substantial paper, and the Association of Chief Police Officers in Scotland.

15:07

Meeting adjourned.

15:23

On resuming—

The Convener: I introduce to the committee Maurice Frankel, who is director of the Campaign for Freedom of Information, and David Goldberg, who is co-convener of the Campaign for Freedom of Information in Scotland. I refer members to the witnesses' written submission, which is headed FOI 61 and was circulated yesterday. I thank the witnesses for a very full and useful submission. I understand that the witnesses do not wish to make an opening statement, so I ask members to begin questioning, bearing in mind the low temperature in the chamber today. Donald Gorrie will start with a question on exempt information.

Donald Gorrie: Through my own fault, I have failed to find the section in the bill that states that councils or other organisations do not have to say whether they hold certain information that is being sought. Could you point me to that section?

Maurice Frankel (Campaign for Freedom of Information): It is section 18.

Donald Gorrie: Thank you. You have indicated that a plus point—as opposed to a minus point—of the Scottish bill, in comparison with the English, or UK, legislation is that in Scotland there will be a substantial prejudice test, rather than a prejudice

test. Do you think that the inclusion of the word "substantially" will really help?

Maurice Frankel: Yes. The existing "Open Government" code uses the test of harm or prejudice when dealing with exemptions. That is a clear indication that a more demanding test is being called for. There is a benchmark against which the new test can be judged. However, no one can tell what change will be brought about by having a test of substantial prejudice as against a test of prejudice, until the system is in operation.

Donald Gorrie: I will move on to exemptions. Do you think that we need to include in the bill any class exemptions? Would you advocate sweeping away class exemptions entirely and including only exemptions that are based on content and that are subject to the substantial prejudice test?

Maurice Frankel: Yes. We favour sweeping away the concept of a class exemption. The purpose of a freedom of information act is to allow the public to have access to information, except in cases in which to do so would be harmful. The best way in which to judge access to information is to apply a test of whether the particular disclosure that is being sought would be harmful or not. Class exemptions undermine that approach.

Donald Gorrie: As I understand the bill, issues will be judged on the basis of public interest. However, the bill does not define public interest. Is that a defect or is such vagueness occasionally helpful?

Maurice Frankel: I am not sure that we would favour an attempt being made to define public interest, because one cannot predict in advance what the public interest will be. The definition will evolve over time, through the public interest test, in the same way as the public interest test under the common law and the law of confidence have evolved over time. I do not object to the omission of a definition, although a purpose section would be helpful, because that could indicate some of the principles that the act is intended to further. In interpreting the public interest test, one could draw on those principles. That is what has happened under New Zealand's Official Information Act 1982 and under other freedom of information laws.

Donald Gorrie: Is there a risk that the public interest could be interpreted at the convenience of a senior water board official or Government department official—that is, by someone who could be embarrassed by the questions that were being asked?

Maurice Frankel: The test says that one must weigh public interest in disclosing information against public interest in withholding it. One could leave it to officials to elaborate on the public interest in withholding information, because that would be clear to them. However, it will be difficult for public officials to see where the public interest lies in disclosing information. I agree that we will need guidance, which I assume the commissioner will produce over time. However, guidance would be assisted by a purpose section, if such a section were incorporated in the bill.

Donald Gorrie: As I have joined the committee only recently, I have not compared the provisions in the bill with the provisions in the draft bill. The provisions on investigations by Scottish public authorities seem to be drawn very widely, although I think that those provisions have been changed since the publication of the draft bill. Is that change satisfactory? Would you like that area to be re-examined and amended?

Maurice Frankel: The change brought the bill more into line with UK exemptions. Some elaborations were made to the scope of exemptions in the draft bill, which was considerably wider than the UK exemptions, which are too broad. Although the bill has been brought more into line with UK exemptions, its scope is still too broad, because the provisions to which you refer create a class exemption. In our submission, we illustrate the most obvious consequence, which is that if somebody seeks access to information on an environmental health matter or on a consumer safety problem, all the information that is held by local authority officers as a result of an investigation or an inspection into that matter will be exempt. In order to obtain information about a consumer safety issue or an environmental health issue, interested members of the public will have to weigh their argument against the public interest test. The assumption that all the information in that category is likely to be substantially prejudicial if it is disclosed is wrong. That is why we would like an explicit harm test in that regard.

The Convener: I understand what you say about being opposed to class exemptions, but how do exemptions work in other freedom of information regimes? You mentioned Australia and Ireland in your submission.

15:30

Maurice Frankel: Are you asking about policy formulation?

The Convener: Yes, because anything that is in policy—factual information, data and so on—seems to be included. Do I take it that in other regimes content drives the exemption, as opposed to class?

Maurice Frankel: The most common approach to narrowing the focus in other exemptions is to exclude certain types of information from the scope of the exemption. Ireland's Freedom of Information Act 1997 excludes factual and statistical information and analysis of that

information. Scientific and technical advice and opinion, reports into the efficiency of a public authority and the reasons for a decision simply cannot be withheld under that exemption. In those cases, it is also difficult to withhold information under any other exemption. The information automatically becomes available if asked for.

The Convener: You are saying that other regimes have a class exemption but that they say, "Notwithstanding that, these types of information are not to be excluded."

Maurice Frankel: That is right. They have a class exemption that includes a public-interest balancing test. Internationally, a vast number of different items of information are included in the range of information that cannot be withheld. Some jurisdictions make a point of excluding opinion polls from the policy formulation exemption. Regimes sometimes adopt different approaches that are based on problems that they have had in the past in their jurisdictions. We are entitled to consider our experience under the "Open Government" code, including the recent experience following devolution in Scotland, where effectively factual information is excluded by a combination of interpretation of provisions, ombudsman's rulings and what the provision itself says.

There is a harm test included in the code at the moment, which relates to whether disclosure of information would harm the candour and frankness of internal discussions. In addition, factual information is generally excluded. That is the current regime, but if we follow the line in the bill, we will take quite a large step back from it.

The Convener: Any ancillary information would be exempt.

Maurice Frankel: It is all exempt. That is a wide starting point because it includes everything that relates to the formulation or development of Government policy plus—as, I think, the COSLA witnesses reminded us—anything that relates to ministerial communications. That includes not only actual exchanges between ministers; it also includes officials' references to ministers' correspondence. The exemption includes anything to do with the operation of a minister's private office.

In addition, there is the harm test, which relates to information whose disclosure would harm the collective responsibility of Scottish ministers. There is a harm test for the frankness of advice and a harm test for the frankness of views—

The Convener: Could you refer to the appropriate section?

Maurice Frankel: The appropriate sections are sections 29 and 30. Section 29 is directed exclusively at ministers, but section 30 applies to ministers and to all other public authorities. One must ask why ministers require both sections. What is the deficiency in section 30 that requires the class exemption?

The Convener: Does anybody else want to come in on the range of class exemptions? Have you concluded your first stab at the matter, Donald?

Donald Gorrie: I have had a fair crack at it.

Michael Matheson: Section 48 sets out circumstances in which there is no right of appeal to the information commissioner, particularly where certain decisions are arrived at by the Lord Advocate or a procurator fiscal. What would be the implications of the fact that there is no right of appeal? Are you comfortable with that?

Maurice Frankel: I am not comfortable with it. David Goldberg may wish to answer the question.

David Goldberg (Campaign for Freedom of Information in Scotland): We are not comfortable with the proposal. The Executive has told us that the provision is a necessary implication of the Scotland Act 1998 and that that provision protects the independence of the Lord Advocate. The Executive also says that the Lord Advocate's independence would be compromised if the information commissioner could review his decisions. That is probably a broader problem, because of the interaction between the Scotland Act 1998, which is not under the purview of the Scottish Parliament, and the Freedom of Information (Scotland) Bill, which is. However, we have always been concerned about the unnecessary confusion between the Lord Advocate's independence and his accountability. We should not confuse one with the other. As I said, the issue is bound up with the complex ramifications of the Scotland Act 1998.

Whether the same will apply to procurators fiscal is an interesting and broader question that should perhaps be probed with the Executive. I am not sure whether the Executive's argument about the protection of the Lord Advocate's independence under the Scotland Act 1998 necessarily extends to procurators fiscal.

Michael Matheson: I am also concerned about that. Although I understand some of the arguments in relation to the Lord Advocate, I am not so sure whether the Executive's arguments should also apply to procurators fiscal.

David Goldberg: In fairness to the Executive, it has always pointed out that it is not saying that information about elements of the operations of the offices of procurators fiscal or of the office of the Lord Advocate cannot be made public. There is a distinction to be made between the categories

of information that would be requested. Section 48(c) mentions

"the head of the systems of criminal prosecution and investigation".

That sounds like a qualification and I assume—indeed, I hope—that it represents a restriction on the veto of reviews by the information commissioner. Interestingly, however, that is not mentioned in section 48(b). Why not? With respect, I do not think that it is up to us to answer the question, although we are entitled to ask it so that others who are more competent, qualified or responsible can answer it satisfactorily.

Michael Matheson: We have touched on the ministerial veto. Some of the evidence that we have received has evinced considerable concerns about ministers' ability to override the information commissioner's decisions. At last week's meeting, a witness expressed concerns about the nature of the First Minister's consultation in using the veto on such decisions. In effect, that veto could amount merely to a quick phone call to some of his Cabinet colleagues. We discussed ways of getting around the issue by giving the person who challenges the veto the right of appeal or the right to take the matter to a judicial review. Do you have any suggestions about how we might address concerns about that?

Maurice Frankel: We have two suggestions. Ideally, there should be no veto; in the absence of such a step, ministers would have the right to challenge on a point of law or to review judicially a decision that was made by the information commissioner. Secondly, an intermediate approach would be merely to insert an additional statutory test that would say that the veto would be available in cases in which the effect of disclosure would be exceptionally serious. The Executive made such a statement in "An Open Scotland" to explain why the power of veto was necessary. If that was written into the bill, the veto could not be used for minor issues that were more of an embarrassment or an administrative inconvenience.

Michael Matheson: I was going to ask about that. Can you think of examples of situations in which ministers would have to use the veto? I understand that issues of national security are covered by other statutes. Can you think of examples that do not involve issues of potential political embarrassment?

Maurice Frankel: The veto does not apply to issues of national security. It can be used for matters that pass the public interest test and for a range of classes of exemptions. When the UK legislation was introduced, we had a similar debate about whether anyone could imagine that such a veto would be needed. Our submission highlights the fact that two weeks ago the parliamentary ombudsman's recommendation under the UK Government's "Open Government: Code of Practice on Access to Government Information" was overruled by ministers in London. That was the first time that ministers have refused to comply with an ombudsman's recommendation on open Government, which is analogous to a veto. The procedure that preceded it was a consultation with Cabinet ministers, which is analogous to the consultation that must take place under the bill. It was clear that the ombudsman felt that the information was not exempt and that the code contained no ground for withholding it. However, ministers did not accept that decision and used their veto.

The argument that the political consequences of exercising the veto would be so severe as to deter ministers has not proved to be correct in Westminster. There has been no outcry, not least because a war is going on in Afghanistan and MPs' concerns are elsewhere. However, I doubt whether in other circumstances the outcry would have been great enough to deter ministers. In that example, the information that was sought was relatively minor. Our concern is that when the veto has been used once or twice and ministers discover that it is relatively easy to get away with it, it will become a frequent occurrence. In that situation, the basis of the bill would be undermined.

Michael Matheson: I am aware of Jim Wallace's comment to the committee that the use of the veto would be limited. However, I am also conscious that the late Donald Dewar said that the use of Sewel motions in the Scottish Parliament would be limited, although several have gone through Parliament in the past few weeks. I understand Mr Frankel's concern that when the veto has been used once or twice it might become a matter of course.

What is the experience of use of that power in countries that have introduced a freedom of information regime and a similar ministerial veto? Have all countries that have introduced freedom of information legislation included such a power of veto?

Maurice Frankel: Ireland has a veto, but the public interest criterion does not apply. The veto can be used in relation to international relations, defence, security and law enforcement. As far as I know, that veto has been used only twice, both times in relation to issues that were connected to the troubles in Northern Ireland. The veto does not apply to day-to-day political issues.

When the veto was introduced in New Zealand, exactly the same argument was made about it being used rarely but, in the six months after the legislation came into force, it was used several times in cases that we find to be incomprehensibly

trivial. One was the price of wall plugs in a Government contract.

Michael Matheson: Wall plugs?

Maurice Frankel: Yes. The law was later tightened so that a collective cabinet decision was required for vetoes; they have not been used since then. However, the change was a result of a change of Government, so the extent to which the lack of vetoes is a result of the collective system as opposed to a different Government's willingness to abide by the legislation is an open matter. I believe that the early flurry of vetoes were all notified to the Cabinet beforehand.

The American and Canadian systems do not include a veto.

David Goldberg: I draw members' attention to section 52(3) because I have a question about how it will work. First, there is a trivial objection to the provision, which states that a copy of an exemption certificate is to be laid before Parliament "as soon as practicable". The bill contains definitive time periods for other elements of reviews, but that phrase is inadequate because it is too vague.

Secondly, there is interest in the sort of debate that the Parliament could hold on the substance of certificates pertaining to information that the First Minister has ruled ought not to be in the public domain. What could the debate be about? While our main problems with the veto are that it is in principle unacceptable in a freedom of information bill, and that the examples of where it has been used cause some concern, there is a third question of how a review could work.

15:45

Michael Matheson: I do not think that there would be a debate; rather, it would be more of a collective body of speculation.

David Goldberg: Would that be useful?

Michael Matheson: No.

David Goldberg: It might depend what the issue was. For example, the issue could be the cost of the Holyrood project, which might be the subject of ministerial communication, which could be the subject of a veto. In that case, Parliament might wish to have more than merely a formal review of a motion.

The Convener: That is not what the bill says. The ministerial veto is the determinant, and that would be an end to the matter, as the bill stands.

David Goldberg: Yes, but when a copy of a certificate is laid before the Parliament, what is Parliament to do with it? What is the consequence of that? Is it an affirmative—

The Convener: I understand what you are saying. It looks as if it is just a matter of complying with the procedures and putting the certificate in the public domain, and that that would be the end of the story. We are considering that, but as the bill stands, laying the certificate before Parliament would be the end of the matter. The certificate would be provided simply as notification.

Lord James Douglas-Hamilton: I have a couple of questions, one of which is about time limits. As you know, the bill sets out a variety of time limits governing application and appeal processes. It includes a power that will allow Scottish ministers to alter by regulation those time limits. Officials from the Executive have told us that that power was added in response to comments that were received during consultation. It would be helpful if you gave us your views on the time limits in the bill and the power to alter them.

Maurice Frankel: The time limit in the bill is 20 "working days". There has been a slightly false comparison made between those 20 working days and the 40 days that are mentioned in the Data Protection Act 1998. The Data Protection Act 1998 sets out 40 days, not 40 working days. The Freedom of Information (Scotland) Bill sets out 20 "working days", which is the equivalent of 28 days on the scale of the Data Protection Act 1998. I understand that about 92 to 94 per cent of all "Open Government" requests are dealt with within 20 working days, which is the "Open Government" time limit for dealing with requests.

We would be unhappy about that limit being changed to the Data Protection Act 1998's 40-day period. As I understand it, 40 days was chosen for that act because at the time of the bill's passage, the old mainframe computers operated on a system of batch processing, which would not allow current data to be retrieved in less time. When a long period is set, the work on a request will start a certain amount of time before the deadline.

Lord James Douglas-Hamilton: By inference, if the Data Protection Act 1998 was reconsidered, the time limits might be amended, in the light of what you said.

I have one more question, the subject of which you have already touched on. Do have any concerns about the ability of ministers to remove or add bodies to schedule 1?

Maurice Frankel: That power could be used in effect to exclude almost wholesale from the provisions of the bill bodies that are currently subject to the bill by simply removing from the scope of the bill information relating to various functions. I understand that the purpose of the power is to deal with bodies that cease to exist, but a provision could be written into the bill to the

effect that a body is deleted from the schedule when it ceases to exist, without granting the power to ministers to remove organisations as the bill allows.

Maureen Macmillan: I have a few questions about your views on charging. The Executive seems to be fairly relaxed about charging. It indicates that it intends, in the light of responses to the draft bill, to consider further how fees should be structured.

You indicated a preference for the fees system that will apply under the UK Freedom of Information Act 2000, which would prevent high charges from being levied at the top end, but would perhaps charge more of people at the lower end. Friends of the Earth Scotland wants the best of both worlds—the £100 limit plus only a 25 per cent levy on the rest. What do you want? Do you have models of charges from elsewhere? How much will it cost to access information? People are bandying figures about, but I have no conception of how much provision of information will cost. Some people say that the £100 limit will be perfectly sufficient, but others say that provision of information will cost much more. I have rambled, but what are your thoughts?

Maurice Frankel: In practice, I do not think that the UK Freedom of Information Act 2000 will allow a small charge on basic requests for the simple reason that, under both regimes, all written requests are freedom of information requests, including those which are currently dealt with in ordinary correspondence. A charge could not be introduced for ordinary correspondence requests that are currently dealt with free of charge. As a result of freedom of information, one could not start to charge people for inquiring why their social security payments were being held up, for example. One would be able to do so only after a certain number of hours' work. In practice, there will be a free period under the UK act, too. The £100 free period is a good and positive system that corresponds to existing open government practice for many bodies.

I do not think that there can be a steep charging regime once the £100 free period has gone, whereby £20 for one hour, £40 for the second hour, £60 for the third hour—or whatever—could be charged. That would quickly price many people with no resources out of their rights. There must be a subsidised system.

There are various ways of subsidising. For example, there could be a 10 per cent charge after a free period or fees could be waived for requests that are in the public interest and charged for commercial requests. I am not too concerned about which method is adopted, although a 10 per cent charge after a free period would be most helpful to the public.

David Goldberg: An interesting question to which there has been no clear answer is: what is the formula upon which the costing is based? From the Executive's comments over months and years, I understand that there is a notional figure of £20 per hour in respect of location and retrieval, which is the element to which the cost is related. Copying, for example, is a supplemental cost. It is difficult to establish how and why that yardstick has been arrived at. I have seen figures in legislation elsewhere—in the Irish legislation, for example, the figure per hour is lower. There may be a problem in that, after investigation, the figure per hour is higher. What is the figure based on?

Publication schemes under section 23 of the bill are a related issue. With respect, the section has not received a huge amount of focus. At the end of the day, we are talking about location and retrieval of information that is managed in some fashion by authorities. We must ask not merely about the cost basis on which the £100 plus is determined, but whether the duties on public authorities under the publication scheme provision are tight enough. For example, the bill mentions

"classes of information which the authority publishes or intends to publish".

In a library, there are biographies, history books, travel books and so on—classes of information—but from those classes, one does not necessarily know which individual books are available. If a public library's holdings are used as an analogy for a public authority's holdings, the duty under the publication scheme ought to be much tighter.

For example, indexes of all documents should be maintained and contained in a register that is available generally. I know that it sounds a bit far away from us, but in Trinidad and Tobago there is an FOI act under which there is a requirement for an annual index of specific categories of information and the individual items within those categories.

On the issue of the fees charged, two important dimensions require attention. The first is the cost basis on which those figures are being considered. The second is the correlation between that and the duties of information management. I presume that the location and retrieval cost has a direct correlation with the efficiency of the indexing of that information, although it is true that in one or two cases the complexity of the information being requested would have an impact.

Maureen Macmillan: In other words, one local authority might charge a lot more than another for the same information because it did not have such good retrieval systems.

David Goldberg: Exactly.

The Convener: I suggest that we debate that

when we come to discuss the codes of practice.

David Goldberg: With respect, convener—

The Convener: I get to say that—you do not.

David Goldberg: I love to say, "With respect".

There is a danger that the codes will somehow become a repository for all the difficult issues. A general philosophical approach could be taken to impose the maximum specificity in the bill, with the least reliance put on the codes of practice. The codes are not legally enforceable, which is an issue. Your suggestion might be slightly better if the codes of practice were to be legally enforceable; however, they will not be legally enforceable. Earlier, you said that the codes somehow often got away from scrutiny.

The Convener: I meant just charging rates—something specific that might be updated, which might normally be put in statutory instruments rather than in primary legislation.

David Goldberg: That is right. The charging rates would be the subject of subordinate legislation.

Maureen Macmillan: But perhaps we need to reconsider the way in which charging rates are calculated. I take your point about that. For example, will there be a notional rate for certain types of information, or will the rate be what each individual public body chooses to charge? Who will challenge the figures?

The Convener: David Goldberg has raised an interesting point about the status of the codes of practice, concerning giving some kind of authority to codes of practice and whether there might be litigation if they were breached by public bodies. That is an interesting argument, which we might develop.

Let us move on. I have a couple of points to raise that have not been raised so far. First, I would like you to put on record your concerns about section 36, on confidentiality, which we have read in your written submission. Secondly, you make a rather interesting submission concerning changes to the draft bill. You say that, following your representations, the bill was redrafted in a way that made it worse. Can you please tell us about those two matters that you have raised for the committee's attention?

Maurice Frankel: The redrafting of the bill relates to a requirement on the information commissioner not to disclose information that the commissioner obtains for the purposes of the act, except in certain circumstances, with the effect that an offence is committed if the commissioner discloses information in breach of that requirement. We do not like the concept of the commissioner's being subject to an offence for disclosing information. That provision got into the UK act because the UK commissioner handles freedom of information and data protection together and the Data Protection Act 1998 already contains the definition of an offence. It was felt that it would be difficult to operate an offence for some of the functions but not for the other functions when the commissioner undertakes a joint investigation. An identical offence appeared in the draft bill but we argued that, as the Scottish commissioner will have no data protection responsibilities, the bill does not need to include the offence. If it is to be included, it must be more liberal. The definition of an offence has been broadened and now applies not only to information relating to an identifiable individual or business but to all information, including information that is obtained from a public authority.

The defences have also been changed. Where previously there was a defence that disclosure was necessary for a variety of reasons, including the public interest, there is now a defence that, had the commissioner received the request under freedom of information, the commissioner would have had to disclose it. That change has been a genuine attempt to meet our concerns but, in the form in which it has been presented, it does not do so. In fact, both the changes—the broadening of scope and the changing of the defences—make things worse.

The UK commissioner was very unhappy that she was subject to an offence at all—under the Data Protection Act 1998, let alone the Freedom of Information Act 2000. We hope that the Scottish legislation will not include such an offence, because it is harmful.

16:00

The Convener: If there is an offence, there is usually a penalty. What is the penalty?

Maurice Frankel: A fine.

The Convener: So the commissioner, himself or herself, can be subject to a fine?

Maurice Frankel: Yes.

The Convener: That would appear to undermine their position; it would be rather like fining a Court of Session judge.

Maurice Frankel: Yes, it would undermine their position. This legislation will be accompanied by a review of existing statutory restrictions on disclosure, with a view to removing those that are unnecessary or wider than necessary. Why introduce a new restriction with the legislation—a restriction on the person who, one could assume, would be most respectful of the real need for a restriction to protect certain information, because that is the kind of thing that the commissioner will

be dealing with all the time.

The Convener: Would you talk briefly about confidentiality?

Maurice Frankel: There is an exemption for information whose disclosure would constitute an actionable breach of confidence. That leads to a difficulty, because it is easy to acquire an obligation of confidentiality under common law—by accepting information that you agree to accept in confidence—unless the information is publicly available or trivial. Authorities may either tie their own hands without fully realising it, or willingly enter into an obligation of confidence because an agreement with a third party makes it undesirable for the information to be let out. Sometimes, that information may be of a kind that the public are entitled to see.

The Convener: So it could be cloak-and-dagger stuff, just to keep parties from disclosing an arrangement?

Maurice Frankel: There could be collusion, yes.

The Convener: Yes, that is a better word.

Michael Matheson: To help with the implementation of the legislation, what has to be done to change the culture of secrecy that often pervades public bodies? You probably heard the evidence from COSLA and Friends of the Earth on when the legislation should be implemented after receiving royal assent. COSLA said that about a year would be required for its members to prepare; Friends of the Earth said nine months but would be happy to accept a limit of a year if need be. How long should be allowed for people to prepare for the legislation?

Maurice Frankel: We will not quibble between nine months and a year; a year would be fine. However, I am unhappy about the five years in the statute. The UK act also gives a five-year limit. We were told that it would start to come into force after 18 months and would be phased in thereafter. The five years was supposed to be just a fall-back position. Now we are being told that the whole act will come into force in January 2005—more than four years after royal assent. If five years is given as a statutory fall-back, the danger is that people might rely on having those five years to get the act into force. I would hope that the statutory limit would be shorter.

As for the culture of secrecy, the number of exemptions in the bill is potentially overwhelming. If authorities receiving requests start going through the list, check by check, asking whether they have any grounds for withholding information, they will find grounds for withholding anything and everything. The substantial prejudice test is helpful. It means that authorities would have to start with the objective of always releasing information unless doing so would be damaging. Once they had persuaded themselves that releasing information would be damaging, they would then consider whether or not that was justified under the act. The problem with class exemptions is that they make it easy for authorities to persuade themselves that they have legal justification for withholding information. That is why I believe that class exemptions will undermine the efforts made to change the culture.

If one were to adopt content exemptions, there would be a substantial prejudice test plus a public interest test and no ministerial veto. There would be a strong right of access to information and a strong culture-changing philosophy in the statute. With class exemptions, however, there is no harm test, but there is a test of the balance of public interest, backed up by a ministerial veto, and little incentive to change culture. All documents contain a mixture of information that would be covered by content and class exemptions.

How can a change of culture apply to paragraph 1 of a document but not to paragraphs 2 and 3 of the same document? How will that work? The change of culture will not happen if there are broad class exemptions and a ministerial veto, as people will rely on those provisions to back up an instinctive reluctance to disclose information. That is why we found the combination of a bold approach and a timid approach to be odd. We wanted the bold approach to be expressed more broadly throughout the bill.

David Goldberg: There should be strong, enforceable duties to publish information, as per the publication schemes, and those duties should be beefed up. The campaign recently published a response to the information commissioner's consultation paper on publication schemes. Perhaps we should supply the committee with a copy of our response, as in it we make a number of specific suggestions on how the positive duties under section 23 could be enhanced.

The Convener: We would be content to receive additional papers. I thank the witnesses for their evidence.

I welcome Karen Williams, who is the director of corporate services at Grampian police, and Peter Wilson, who is the chief constable of Fife constabulary. Both are here to represent the Association of Chief Police Officers in Scotland. I apologise to you for the diminishing number of committee members. Only three wise members are left, but I think that that is due to the kerfuffles that are going on elsewhere and which might be stealing the headlines even as I speak. We are probably the only people who do not know what is happening with the Cabinet reshuffle.

I thank you for your paper, which is headed FOI

34. I understand that you would like to make a short opening statement.

Chief Constable Peter Wilson (Association of Chief Police Officers in Scotland): I thank the committee for hearing our presentation.

As you might expect, the police service in Scotland supports the philosophy behind what the bill is trying to achieve. I suspect that we will find ourselves accepting many of the general provisions of the bill. For many years, we have dealt with similar provisions under the data protection legislation. We find that some of that legislation imposes constraints on what we would like to achieve through partnership working and working with victims. In some ways, the bill is a positive step for the police service.

One can always find negative examples, but for many years guidelines have meant that there has been an openness about special branch surveillance arrangements, for example. The police service has worked consistently with the media on documentary programmes and on other public interest issues. Therefore, freedom of information is not new ground for the police, although members will know that we fear that there might be an impact on work load.

Police forces have been keen to be as open as possible about complaints against the police, particularly with police authorities, which have a statutory duty to satisfy themselves about how such complaints are dealt with. Local authority members of police authorities increasingly find that they can have free access to complaint files.

I suspect that the issues that will be of concern in relation to the police will be the provisions on crime inquiries, how the responses that will be expected from us are to be resourced and charging. I listened to some of the questions that members asked earlier and I suspect that that is the ground that members might wish to cover with us.

The Convener: Only two members—plus me—are left. Members usually compete for questions, but today we will have some left over.

Maureen Macmillan: The first question is about the relationship between the UK legislation and the Scottish bill. In earlier proposals you highlighted the need to avoid any incompatibility or confusion between those two sets of provisions and data protection legislation. Are you quite happy with the situation or do you have concerns about that?

Chief Constable Wilson: I will start and then let Karen Williams join in.

The issue is that some of our work is national and concerns the National Criminal Intelligence Service and other joint crime inquiries. We sometimes work closely with police forces in England and Wales. There is the potential for conflict if different approaches were to be taken by anyone judging whether different standards were being adopted.

Karen Williams (Association of Chief Police Officers in Scotland): I agree. Clearly, we want to comply with the eventual act, and all the necessary steps have been taken to ensure that the protection of individuals' privacy within the Data Protection Act 1998 is there. Mr Wilson makes the point well that we want to ensure, from a policing perspective, that we are giving people who are asking for information a consistent right of access to that information. We hope that that will be the case.

Maureen Macmillan: How much conflict do you think there might be on the matter of people accessing information if, for example, Lothian and Borders police were working with Northumbria police? How would that work out? Would each police force follow the legislation in its own country? Where do you think the areas of conflict are?

Chief Constable Wilson: Issues might surround the fact that, when we are working together on crime inquiries, sources of information might come from different areas of jurisdiction. There might be a conflict, depending on how access to that information was sought at a later stage. That will depend on how the legislation works out in practice. We will not know that until such matters arise. We work closely with colleagues south of the border; there will be different thresholds and the potential for different outcomes, which is not desirable.

Maureen Macmillan: I can see the potential for extreme irritation.

Chief Constable Wilson: It would not be constructive for public perception if there was seen to be an unnecessary obstruction because of thresholds being different.

Michael Matheson: The content exemptions in relation to law enforcement in section 35 are intended primarily to ensure that policing operations are not prejudiced. Are you satisfied with what is covered in section 35? Do you envisage problems? If so, what would they be?

Chief Constable Wilson: The exemptions are similar to those in the Data Protection Act 1998 in terms of access to information that relates to the prevention or detection of crime.

Two issues might flow from that. If a request for information went beyond a particular crime inquiry but related to something current, access would be denied and the sustainable defence for that would be that the information was current. I suspect that

two issues might start to cause concern. There might be historical interest in access to information about something that may have taken place. That might go beyond a crime inquiry in which the operation is live. Some inquiries on high-profile cases may have gone cold, but not have been closed. That is not an infrequent event. We do not have to go back many years to find cases when DNA testing did not exist. Many cases are now being detected because of DNA; people are being identified from the national database.

If the pressure is for the disclosure of information for legitimate public interest in an inquiry on a particular case, where will the threshold lie? The case may be solved some day and the information could remain exempt. There could be the charge that the information should be published because the inquiry is not going anywhere and it has been two years since the police last did anything with it. DNA in the database may yet throw up a cold hit some years on, but the information would be in the public domain and that might compromise the inquiry. My guess is that for some of the issues, notwithstanding the fact that the cases are cold, we will have to take advice from the Crown Office and Procurator Fiscal Service about whether we can disclose the information. That is one issue.

The second issue relates to the operational techniques that may be used. Although, as I said in my opening remarks, there is a willingness for there to be public information about thresholds on surveillance guidelines and so on, we would want to prevent techniques—particularly successful ones—being exposed unnecessarily to the public gaze as that would compromise inquiries in the future. There is a balance to be struck. The wording of the section is fine but whether it is interpreted in an acceptable way remains to be seen. I do not know whether that issue is related to codes of practice, but I can see difficulties arising in relation to it.

16:15

Michael Matheson: You mentioned cases that are open but cold. Will the bill force the police to close cases prematurely on the basis that they might have to disclose information that would prejudice a case? Within a force, how many cases would be left open but classed as cold?

Chief Constable Wilson: We tend not to give cases labels quite like that because any unsolved case remains to be closed at a later stage. In relation to minor crime, officers usually inform the victims that they have done all they can and, in the absence of any further evidence, they do not expect to be successful. More serious cases remain on the minds of the officers concerned and are revisited from time to time to see whether anything has occurred that might prompt new lines of inquiry. I do not believe that the bill will have an impact on the decision about whether to close a case as all cases lie open until they are solved. A private individual with a legitimate interest might want to be sure that the matter has been dealt with thoroughly and make an inquiry to that end.

In Ireland, where, as I understand it, the gardaí are excluded from the freedom of information legislation, the Department of Justice, Equality and Law Reform receives the most inquiries under the legislation. There is considerable public interest in what the police service does and the number of inquiries that come from the media and people with an interest might be higher in those cases that, while not closed, do not have a team of officers working on them at that moment.

Michael Matheson: Would issues relating to surveillance techniques that are in compliance with the Regulation of Investigatory Powers (Scotland) Act 2000 be dealt with under the harm test exemption?

Chief Constable Wilson: Yes, if the issue were pure. However, if cases that had used those techniques had gone cold, one would have to be careful to edit carefully the information that was to be disclosed to prevent information about those techniques being disclosed.

The starting point for this line of inquiry was whether we are satisfied with section 35 in relation to information relating to the prevention and detection of crime. We are satisfied with it in terms of cases that we are investigating, but techniques might be exposed as a result of an inquiry at a later stage. We have to be cautious about that because unless a conscious decision to exempt that material is made, it would not be covered by the exemption.

Maureen Macmillan: Even with cases that are closed, I assume that because of the Data Protection Act 1998 there is a limit on what can be disclosed. For instance, you would not be able to disclose names.

Chief Constable Wilson: The detail could be taken out.

Maureen Macmillan: I am thinking of cases where people have been interviewed by the police and the interview has not been followed up, for example. Surely you would have to be careful about quite a lot of that information.

Chief Constable Wilson: Absolutely. When push comes to shove, that may be the exclusion that chief officers will seek to apply. I am suggesting that that view might not be accepted in all cases. The experience in the United States and Canada has shown that such information often becomes the subject of an FOI inquiry, on a case

basis, in relation to police attendance at certain places, or in relation to the frequency of crime in areas covered by closed-circuit television schemes, for example. That is an interesting mode of policing.

The Convener: I want to pick up on complaints against police and about police procedure. Let us take the example of the Andrew Aspinall case and the failed prosecution because of the warrant. As I understand it, the police are investigating that. At the moment, what would be disclosed to the public about that investigation?

Chief Constable Wilson: I do not know enough about the particular case to comment.

The Convener: Let us take a general case of a failed procedure. Take a case that the police were engaged in investigating, which failed at prosecution because of failed police procedures, such as contaminated evidence. What would the public be entitled to know about that now and subsequently under the freedom of information (Scotland) act?

Chief Constable Wilson: Complaints against the police are dealt with under the current regulations; the public watchdog is the police authority, which has a duty to satisfy itself that complaints are properly handled. Currently, the policy authority, through the police board, would have that statutory power. In the past, when a particular case has drawn wide public attention, there has been a wider publication of the circumstances. Police findings in relation to the general handling of parts of the case that the convener mentions have had fairly wide publication and have been put in the public domain.

In minor cases, the police authority has the responsibility. The inspectorate report on complaints against the police—"A Fair Cop?"—includes a recommendation that the police service should be more willing to give a full explanation of the nature of the inquiry following a complaint and its outcome. That work is being followed through. The Scottish Executive has indicated its intention to review the way in which complaints against the police are handled. There will be a new arrangement whose impact is unclear.

The Convener: There are two things: complaints against the police by the public who are perhaps unhappy about the way in which something has been handled and cases where the police investigate their own procedures that have impacted on the public and the public purse. What extra information would an interested party be entitled to under the bill that they are not entitled to at the moment?

Chief Constable Wilson: Currently, such information would be accessed through the police authority. The expectation would be that the authority would seek from the chief constable a report on the nature of the particular event. It may or may not go into the public domain in that way.

I do not see the exclusions relating to our procedures in the future unless one of the particular points applies. I expect more detail to come into the public domain.

The Convener: We have discussed the fact that Scotland and England will have different regimes. How do we achieve uniformity across various constabularies?

Your written submission suggests that all requests for information should be channelled through one office. That would mean that requests for information would be lifted from the constabulary where the mistake—if we may put it like that—or problem arose. Instead, requests for information would be made to a central place. Would that arrangement be better for reasons of objectivity as well as for administrative reasons? Would such an arm's-length arrangement be better?

Chief Constable Wilson: Having listened to the debate earlier this afternoon, I imagine that each police force will handle inquiries in much the same way as we currently handle data protection inquiries. One office in each police force will gain experience and deal with inquiries directed at that police force. As the provision of the information is the responsibility of the chief constable, whom the bill designates as the public authority, there will be eight such offices in Scotland. An element of independence will exist because the chief constable will know that he or she may ultimately be answerable to a later challenge if the inquiry has not been dealt with proficiently or objectively. I expect the system to work in that way.

If I may, I want to add that I am sensitive to the fact that people who participate in our inquiries—be they criminal inquiries or internal inquiries following a complaint—willingly do so because they trust the police service and are willing to co-operate with us. In future, we will have to ensure that cautions are given, to make people aware that their contribution may yet find its way into the public domain.

The Convener: I am not sure whether this applies to the police, but section 36 provides that

"Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information."

The police might, therefore, be able to obtain information strictly on the basis that it is confidential and may be shared only between the parties involved.

Chief Constable Wilson: That opportunity will

exist but it will not apply in all circumstances. We will need to develop a culture of advising people that, notwithstanding the fact that we want them to help us with our inquiries and that identifiable elements may be deleted from any future disclosure, the evidence they provide may find its way into the public domain. One hopes that that will not be counterproductive.

The Convener: But to return to the question, instead of some sort of freedom of information officer for the police service in Scotland, would a separate office operate in each chief constable's domain, as it were?

Chief Constable Wilson: Because the provision of information is the responsibility of the chief constable as the public authority, I think that freedom of information would need to be dealt with by each constabulary. Given the fact that the chief constable is accountable and has independent responsibility for the police authority in the operational sphere, I cannot conceive how a central authorising body could operate in Scotland.

That is not to say that, between those offices, there would not be an on-going working relationship such as exists currently, whereby independent people could be brought in to conduct an inquiry to ensure that what is provided is objective. I suspect that co-operation among police forces will apply. Perhaps Mrs Williams could add to that.

Karen Williams: Sir Roy Cameron referred to that suggestion in the submission, which was submitted in May, because the Association of Chief Police Officers in Scotland was considering the concept. As Mr Wilson said, data protection is currently dealt with by each force individually. A working group of all data protection officers has regular meetings, at which contentious and difficult issues are discussed—obviously without disclosing any identities—to try to achieve a commonality of approach. That probably happens in most cases, but there are certain cases in which one force might disclose information by saying A, whereas other forces might say B. We try to ensure that we achieve commonality as far as is possible without treading on the independence of each chief constable.

I think that a similar approach will be adopted for freedom of information, but ACPOS has not yet decided in detail how things will work in practice. The suggestion in our submission about one office may have been made to try to ensure that administrative procedures could be set up, but the suggestion has not been agreed within ACPOS. It is more likely that each force will set up protocols that will be discussed among the forces so that we can avoid people perhaps getting different responses dependent on whether they live in the Glasgow or in the Northern constabulary area. Although one cannot ensure that there will be perfect uniformity, our policy will be to strive for that through things such as the code of practice and publication schemes, which we will consider later in the bill. All forces will look at those sorts of issues.

The Convener: Obviously, you would also hear the views of the Scottish information commissioner, in that the commissioner himself would give guidelines. That would contribute to achieving commonality or some uniformity of response.

Karen Williams: Exactly. In our written response, we said that we would welcome the information commissioner's views on how we draw up the publication schemes, so that we can achieve what we are setting out to do, which is to assure legitimate, consistent access to information while ensuring that police investigation is properly and adequately protected.

16:30

Michael Matheson: This is the same question that I have asked everyone else who has given us evidence: it is about the time scale of the bill's introduction. The likelihood is that the bill, once passed, will receive royal assent by next summer. An opinion has been expressed that local authorities and public bodies may require about a year to get up to speed and ready to deal with the enforcement of the eventual act. Do the police have a view about the time scale required to meet the act's demands?

Chief Constable Wilson: I understand that we are looking at 2004—that is when, according to the current discussions, we are due to reach phase 2. Much work will be required for the arrangements to be set up. I am also conscious that much work will be required to respond to the requests made. An inquiry may require a huge amount of transcription work for taped or broadcast and taped material. The accuracy of that will also have to be ensured. A considerable burden will follow the requests made. If the Irish experience is to be borne out here, the burden in criminal justice will be significant.

Michael Matheson: May I confirm that you have been advised that you will be involved in the second phase and that you have been informed that different phases are involved?

Karen Williams: Yes: in informal discussions with the freedom of information working group, we have been trying to get a lead on what the likely time scales are. It has been indicated that we are likely to be involved in the second phase which, all things being equal, is likely to be in the summer of 2004. We have not had formal notification of that, but we have at least been given a target to work towards.

The Convener: I thank the witnesses. That concludes today's evidence taking on the Freedom of Information (Scotland) Bill.

Petition

Unborn Children (Recognition in Law) (PE382)

The Convener: Item 2 is on petition PE382, from Thomas Howe. Members have in front of them a note about the petition, which is document J1/01/32/2. The petition concerns a tragic case.

The committee will note the fact that the Executive has responded to the terms of the petition. The law relating to the unborn child does not entirely come under reserved powers, but it is bound up with reserved matters—it is a complex area.

The petition relates only to civil law. Where there is a criminal offence, such as an assault, it is possible for any effect on an unborn child to be regarded as an aggravation of the crime—but I reiterate that the petition relates to a civil matter. No action for damages is possible while a child remains unborn, but a claim can be made when the child is born alive following damage sustained while the child was a foetus.

We understand that only if the woman suffers physical damage resulting in a miscarriage can she claim compensation for related distress and anxiety as the result of the death of an unborn child. The woman, therefore, can enhance—although I think that that is the wrong word—or increase her claim for damages for pain and suffering if, as a consequence of an injury to her, she loses her child. However, there is no claim in respect of the unborn child, who does not have a legal identity. This is an extremely complex area of law, although saying that does not diminish the concerns of the party submitting the petition.

I wish to make one observation. I can understand the motivation behind the petition: that the party suffering distress, whether that be the mother—although, in this case, the mother did not survive—or a member of the family, should compulsorily receive an apology. Regrettably, an apology that is not made voluntarily and whole-heartedly would appear hardly to be worth the breath in which it is given. Is there even a purpose in that? I seek other members' guidance: should we note the petition now—accepting that it relates to a very sad and very serious issue—but say that we are not in a position to explore the issue?

Maureen Macmillan: I agree that the case is very tragic. You were talking about the fact that a mother who lost her child as a result of an accident would have a greater claim for compensation. What is the situation with a father who has lost his wife and unborn child? Would that be taken into account?

The Convener: You are stretching my knowledge of the law of reparation. In the instance with which we are concerned, the mother and child both perished and another relative is seeking at least an apology for that. My comment was an aside on the law. The law is extremely complex. It goes into when a person is a legal entity.

Maureen Macmillan: It seems that there should be some recognition that the unborn child whose life has been ended is not a nobody. However, I realise that that area of law is very complex. I feel that that is not something we can resolve.

Michael Matheson: I agree with Maureen Macmillan that the case is tragic. I was surprised to learn that a child is not a legal person until they have taken their first breath. That would have to be dealt with by changing the status of the unborn child so that it is a legal person.

I am surprised because my understanding is that, under the Abortion Act 1967, an abortion can take place only up to something like 26 weeks into the pregnancy. That recognises that, after that point, the child is at a stage of development at which it is no longer appropriate to have an abortion. To me, the legislation seems to conflict. The problem is that the legislation that would have to be changed is probably reserved and therefore outwith our control.

If the law protects an unborn child from being aborted after 26 weeks, I do not understand how we can continue to state that the unborn child is not a legal person. There is conflict in the legislation, but it appears that it may be outwith our legislative competence.

The Convener: By what we have been saying, we indicate that we know how complex the matter is. It involves issues of definition and circumstances. I suggest that we simply note the petition at the moment. Does the committee wish me to add anything else?

Maureen Macmillan: We should also note that we sympathise with the petitioner and the loss that he has suffered.

Michael Matheson: The petitioner has been modest in only requesting an apology.

The Convener: We will simply note the petition at the moment because of its complexity and the intricacy of reserved and devolved powers. If we were to enter into the matter, it would take a considerable amount of time. I do not wish to diminish the case, but we are constrained at the moment. We could not address the matter at the moment. However, the Parliament is in its youth.

Maureen Macmillan: I do not know whether there are any other ways in which redress can be made, without having the unborn child declared a legal person.

Subordinate Legislation

Diligence against Earnings (Variation) (Scotland) Regulations 2001

The Convener: Members have a paper on the Diligence against Earnings (Variation) (Scotland) Regulations 2001. The instrument just changes the tables in schedule 2 to the Debtors (Scotland) Act 1987, which show the amounts that can be deducted from weekly earnings under an earnings arrestment.

I draw the committee's attention to paragraph 3 of the paper, which states that the Executive note includes

"a list of consultees on a draft instrument. This list includes Citizens Advice Scotland, CBI Scotland and Money Advice Scotland. The note reports that where a response was received 'no adverse comments' were offered."

That is important. It appears that the instrument does not do anything substantive: it just brings the figures into line with inflation.

I remind the committee that, as is stated under the heading "Procedure" in the paper,

"Under Rule 10.4, this instrument is subject to negative procedure which means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment."

Any MSP may lodge such a motion. Therefore it is open to any member of the committee to do so, in their own capacity. Do I take it that the committee simply wishes to note the instrument?

Michael Matheson: Yes. I note that the average increase will be in the order of 160 per cent, which is rather substantial, and that people will probably be quite surprised at the level of the increase next time there is a deduction from their wages. The fact that the Executive has tried to plan ahead and has offered the proposed charges for 2002 or 2003 is to be welcomed, but the figures have been left unchanged for a long time and such a large increase is probably unfair on the people from whom deductions will be made.

The Convener: I hear what you say. October 2002 is seven years on—

Michael Matheson: The levels were last revised in 1995.

The Convener: Yes, I see that. I hear your comments. Is it the position that we wish simply to note the instrument? If Mr Matheson wishes to deal with the point that he raised, it is open to him to do so—he can lodge a motion.

Convener's Report

The Convener: There is one final thing that I want to say. There were other matters that I wanted to raise under convener's report, but I will leave them until another day when there are more of us present. The next meeting is on 5 December at 9.30 in committee room 2. We will take evidence from the Lord Advocate and the Minister for Justice on the Freedom of Information (Scotland) Bill. We will also start our inquiry into the regulation of the legal profession by taking evidence from the Law Society of Scotland and the Scottish Conveyancing and Executry Services Board.

I ask members to put in their diaries meetings on 11 and 19 December—busy, busy, busy. At those, we will discuss the long-term forward work programme for after the Christmas recess.

Maureen Macmillan: You are speaking too quickly for me.

The Convener: I am so sorry. There are meetings on 11 December, which you did not have earlier notification of, and 19 December.

Maureen Macmillan: I might have to send my apologies for 19 December, because that clashes with a Transport and the Environment Committee meeting.

The Convener: The meeting on 11 December is in the afternoon, in committee room 3. The meeting on 19 December is in the morning, in committee room 1. Members will be glad to know that we are not being shot off to the Hub again.

Meeting closed at 16:42.

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