Official Report
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Criminal Justice Committee

Comataidh a' Cheartais Eucoirich

Wednesday 18 November 2026

Session 7

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CRIMINAL JUSTICE COMMITTEE
12th Meeting 2026, Session 7

CONVENER

*David Linden (Glasgow Baillieston and Shettleston) (SNP)

DEPUTY CONVENER

*Ben Macpherson (Edinburgh North Eastern and Leith) (SNP)

COMMITTEE MEMBERS

*Amanda Bland (Central Scotland and Lothians West) (Ind)
*Maggie Chapman (North East Scotland) (Green)
*Stephen Kerr (Mid Scotland and Fife) (Con)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Amanda Dunlop (Scottish Government)
Chief Constable Jo Farrell (Police Scotland)
Neil Gray (Cabinet Secretary for Justice)
Kevin Lee (Scottish Government)
Will Linden (Scottish Violence Reduction Unit)
Chief Superintendent Scott McCarren (Police Scotland)
Assistant Chief Constable Lynn Ratcliff (Police Scotland)
Graham Robertson (Scottish Government)
Assistant Chief Constable Alan Waddell (Police Scotland)

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 18 November 2026

[The Convener opened the meeting at 09:03]

Decision on Taking Business in Private

The Convener (David Linden): Good morning, and welcome to the 12th meeting in 2026 of the Criminal Justice Committee. I have not received any apologies for today's meeting. Under agenda item 1, do we agree to take in private item 9, which is consideration of a draft report on police conduct regulations?

Members *indicated agreement*.

Crime and Antisocial Behaviour (E-bikes and E-scooters)

09:03

The Convener: Our next item of business is an evidence session for our inquiry into crime and antisocial behaviour associated with e-bikes and e-scooters. We will hear evidence from Assistant Chief Constable Alan Waddell, who is responsible for operational support at Police Scotland; Chief Superintendent Scott McCarren, who is the head of road policing; and Will Linden, who is the deputy head of the Scottish Violence Reduction Unit. Good morning to them, and welcome to the meeting. We are tight for time as we have a packed agenda, so I will launch straight in.

As this is our first public evidence-taking session on the issue of antisocial behaviour related to e-scooters and illegal e-bikes, I am keen to set the scene. For a start, we have had NHS Scotland recording 446 e-bike and e-scooter accidents in just eight weeks; there has been viral footage of someone dressed from head to toe in black, riding an e-scooter at up to 40 mph on the M8 over the Kingston bridge; in May, a 94-year-old grandmother from Fife spent three months in hospital after being hit by a Sur-Ron bike; evidence from Police Scotland today details a 15-year-old illegal e-bike rider travelling on the wrong side of the road and colliding with a car; and, compared with last year's data, we have seen a 157 per cent increase in crimes and offences relating to e-scooters and e-bikes.

My first question, therefore, which is directed to the assistant chief constable, is, can you understand why I, and thousands of people in the east end of Glasgow, talk about this issue being an epidemic in our community? How do you think we have got to this place?

Assistant Chief Constable Alan Waddell (Police Scotland): Thank you, convener. I absolutely understand the concerns that have been raised and I hope that, in our submission to the committee, we have conveyed that we recognise the strength of feeling that exists and our commitment to working with partners to address the issue.

As you have outlined, and as we have said clearly in our submission, harm prevention is our primary focus. Dangerous riding can cause serious injury to riders, other road users and pedestrians, and we also understand the impact on our communities of the persistent illegal use of e-bikes and e-scooters and the wearing of face masks. We have made it really clear that we do not have a full data set on this matter; we are working with partners to try to understand things, but, as

we have made clear, the impact has not been fully recorded at this time.

In our evidence today, I want to reassure committee members that an active and co-ordinated police response is in place. I am here because I, along with my colleague Scott McCarren, have responsibility for road policing. We took responsibility for co-ordinating our response earlier this year, and we have put in place internal structures to ensure national oversight of the brilliant work that some of our colleagues are doing locally to try to address this issue.

We are also clear that existing powers enable action to be taken. For example, we have powers to remove illegal e-bikes and e-scooters from communities, and I think that the fact that 1,200 have been seized from the start of the year to the end of October demonstrates our commitment in that respect. However, such seizures are never going to be the whole solution, so we need to have conversations about prevention and the limiting of supply. We look forward to those.

This is a real challenge in our communities, but there is a focused police response in place. That said, any approach to resolving this issue will have to go beyond policing.

The Convener: Earlier this month, the *Daily Record* published photos and video footage showing officers in Glasgow being brazenly taunted and goaded by illegal e-bike riders performing wheelies just a metre or two away from their van. Is that part of a trend of people playing a game of cat and mouse with the police on these vehicles?

Assistant Chief Constable Waddell: We have seen those kinds of examples. They are not the whole picture—illegal e-bikes and e-scooters are used for a variety of reasons, and Will Linden might come on to talk about that—but we do know of such occasions.

The sense that I get—committee members might get this, too—is that there is a desire for a more proactive policing response in such circumstances. However, when it comes to pursuits, those using e-bikes and e-scooters in our communities are also quite vulnerable road users, so we have to be careful in the tactics that we employ; otherwise, they could result in serious harm to those road users, other road users or our officers. However, we are proactively looking at that issue and we are trying to support our officers in that space.

The Convener: I should say that you do not need to operate your microphone—we have people who will look after that for you. You have enough on your plate; you should not have to deal with microphones, too.

I will now hand over to my colleague Amanda Bland.

Amanda Bland (Central Scotland and Lothians West) (Ind): I am interested in your comments about pursuits, and I agree with you about the vulnerability of all parties. You also said that you are proactively supporting officers. How do you do that during a chase? As you have quite rightly pointed out, that sort of thing is dangerous for everyone—the officers, the person on the bike and the public. What advice is being given, and what action is being taken?

Assistant Chief Constable Waddell: I will shortly pass over to my colleague Scott McCarren to answer that question. We have proven policies, procedures and practices for assessing the threat, risk and harm that individual incidents pose, which influences the decision on whether a pursuit is appropriate in the circumstances. Depending on the level of threat, harm and risk posed, a pursuit may well be appropriate and we will do that, but there will be other occasions when it is not appropriate, in which case we will make other plans to try to disrupt the behaviour.

The focus must be on our community policing teams, which understand where the behaviour is happening on a repeated basis. Those teams will be able to generate the intelligence and understanding from the community as to who is responsible, which allows for tailored and focused activity to try to disrupt the behaviour—sometimes as it happens and sometimes at a later date when that is safer, more proportionate and better for all involved. The national structures that are in place ensure that we inform all our local policing divisions and officers of the best, consistent guidance so that we support them in that space. However, this is undoubtedly a challenging environment for officers.

Chief Superintendent Scott McCarren (Police Scotland): As the ACC outlined, the solution to this issue is not having our officers engage in pursuits on a nightly basis, because that would be inherently dangerous to them and to the public. We consider even fully trained motorcycle users to be vulnerable road users because of the disproportionate number of them who are killed and seriously injured. Those are people who are fully trained, on roadworthy bikes and have protective clothing, whereas most of the people who are engaged in antisocial behaviour will have none of those things, so there will be significant risk to them if we start to engage regularly in pursuits. In some ways more important is the significant risk to members of the public walking along a footpath or a road, because the people

who are being pursued will not be trained to ride. Therefore, we need to be very careful.

We have a monthly group that looks at pursuit tactics, and we put out guidance to advise officers about those. As the ACC said, it is about proportionality and the level of threat, risk and harm posed There have been occasions on which we have used such tactics because the threat that was posed by the rider's behaviour merited it, but there have been other occasions on which those tactics were not merited. We must be able to justify our actions.

Amanda Bland: You said that 1,200 bikes have been seized, and you will gather intelligence as you bring those bikes in. I open up my question to all the witnesses. Will you explain to the committee which crimes relate to the bikes that have been seized, such as drug dealing, theft and organised crime? Will you talk us through the general picture of how e-bikes and e-scooters are being used in crime, or whether we are looking more at general use of them for fun?

Assistant Chief Constable Waddell: We do not have that data set available, although we are trying to develop more informed data on the issue. However, your point is absolutely on the money: there will be a variety of different illegal uses of e-bikes and e-scooters.

Amanda Bland: Why do you not have that data?

Assistant Chief Constable Waddell: It is just that our recording systems do not lend themselves to having it, but we are working to address that. What we can tell you from our professional judgment—

Amanda Bland: Is it not odd to not have that data?

Assistant Chief Constable Waddell: It is not unusual in these circumstances. It is something that every police force across the United Kingdom and—I would hazard a guess—across Europe is wrestling with. However, your judgment that there will be a variety of reasons behind the use of e-bikes and e-scooters is exactly what we see from our experience. There will be younger children and people who enjoy the use of e-bikes because they go fast and are fun—social media is a driver of such use—but there will also be other people who may well use e-bikes or e-scooters to facilitate illegal activity.

Chief Superintendent McCarren: I will expand on the point about data capture. We have had the same issue in other areas—I am thinking back to a while ago, when we were trying to understand mental health demand and other issues. At the moment, an analyst will do keyword searches and pick out incidents and crimes that are linked to e-bikes and e-scooters, which gives us a picture of the trend. However, we are working with our colleagues who deal with stats on our level of demand to better understand the data. We are upgrading our systems so that we can have a tick box that would allow the control room to record where an e-bike or e-scooter is involved in an incident. The crime management system would then use a function to articulate that, taking away the need for a keyword search and that kind of analysis.

Amanda Bland: With those data search difficulties in mind, are you able to effectively share information across the UK—you also mentioned Europe—to see cross-border patterns?

09:15

Chief Superintendent McCarren: Yes, that is what we have here. Our submission gives you a pattern of crimes and incidents, and you can see the increase. That is management information that gives you an idea of the significant increase, which I am sure reflects what you are hearing from your communities. Our submission shows you that there has been a significant increase in recorded incidents relating to e-bikes and e-scooters and a significant increase in crime in that regard. We cannot say that that is the full picture. There might be slight underreporting because of the methods that we are using to extract the data, but that data will be enhanced through further work.

You can see a similar thing in the national health service reporting that was referred to, where a survey was used. I assume that NHS systems are the same in that they do not allow a box to be ticked to report the use of an e-bike or e-scooter when someone comes in. As we go forward, we want to work on that as a collective so that we capture the data in a better, more accurate way.

Amanda Bland: Convener, my next question links to supply chains, but I am happy to leave it if you need to move on.

The Convener: That is great. I appreciate your courtesy to other members, Ms Bland. I think that Pauline McNeill wants to zero in on e-bikes, but first Mr Kerr has questions on enforcement measures.

Stephen Kerr (Mid Scotland and Fife) (Con): For clarity on the legal status of e-bikes and e-scooters, under the Road Traffic Act 1988, e-bikes are legal, provided that they travel at less than 15.5 mph. Is that correct?

Assistant Chief Constable Waddell: Yes.

Stephen Kerr: E-scooters are not mentioned—

Chief Superintendent McCarren: It is illegal to use them on public—

Stephen Kerr: Are they completely illegal?

Assistant Chief Constable Waddell: You can use e-scooters on private property, but their use on public property is entirely illegal.

Stephen Kerr: Therefore, the scooters that we see whizzing along pavements and roads are all illegal.

Chief Superintendent McCarren: Yes.

Stephen Kerr: In that case, what is the standing instruction to officers when they see—as we all do—all those scooters, given that they are available for 120 quid or so from Amazon?

Assistant Chief Constable Waddell: The standing instruction is that, if we have the opportunity, we will engage and look to seize the scooter. Of course, the officers you are talking about are the same officers who are involved in community policing and response policing—

Stephen Kerr: And there are not many of them—

Assistant Chief Constable Waddell: —and they are dealing with a whole variety of competing demands. Some of that is a capacity challenge, and there is no getting away from that.

Stephen Kerr: Yes. The fact is that the thin blue line is incredibly stretched, and the front line of available police officers is diminished, which does not help. To underline the point, I note that all e-scooters are illegal unless they are being used on private property.

Assistant Chief Constable Waddell: Correct.

Stephen Kerr: What is the protocol if someone is observed conducting themselves in a dangerous fashion? If they are moving at 15.5 mph—probably faster in some cases—what can an officer do?

Chief Superintendent McCarren: You can see that, compared with last year, the number of e-bike and e-scooter seizures is up significantly.

Stephen Kerr: Yes, so how does that happen?

Chief Superintendent McCarren: We use a number of tactics, some of which we might not want to speak about in a public forum, but we would be more than happy to talk about those in a private session, if that would be helpful. We could then go into far more detail.

Stephen Kerr: Yes, that would be helpful. You are saying that you have strategies.

Chief Superintendent McCarren: Yes, we have strategies, which is why we have seized so many. However, it comes back to community policing, and that is what underpins our policing response now, because a wider partnership response is required. I am sure that we will talk about the availability of e-bikes and e-scooters, which is a significant issue, but when it comes to the police response, we have a collective response between community policing and more specialist officers. For example, our recent use of drones has aided us to have an impact on the issue.

Stephen Kerr: How common is the use of drones? This week, I saw that fabulous video from London.

Chief Superintendent McCarren: It is becoming more common. We now have the advantage of having a national group to look at the issue. It has been doing outstanding work for a significant time for local policing divisions, including fantastic engagement and enforcement work as well as carrying out a lot of prevention measures. We have a monthly group that my colleague Andy Barclay chairs, and we have representation from every local policing division dialling into that. We are sharing best practice; for example, a division might talk about the benefit of using drones or a particular tactic and that will be shared across all the divisions. We have seen some excellent work in Aberdeen, Fife, Lanarkshire and right across the country, and there have been some great successes.

Stephen Kerr: Does that apply to other forces across the UK? I guess that everyone will be trying different things and having success with some.

Chief Superintendent McCarren: I attend a quarterly meeting of heads of roads policing from forces across the UK. We discuss our top priorities, and every force talks about e-bikes and e-scooters, so the issue is not unique to Scotland, and, in some areas, it is worse than it is here.

Stephen Kerr: That is interesting. So, across the entirety of the UK, e-bikes and e-scooters are a number 1 or number 2 issue?

Chief Superintendent McCarren: Yes.

Stephen Kerr: What can be done about conversion kits, which convert bicycles to e-bikes and can be bought online? That is clearly a gap in legislation. If something can be sold that will make something that is legal into something that is illegal, such as an e-bike, there is clearly a gap somewhere.

Chief Superintendent McCarren: That comes back to the initial point about availability. You can go into any major retailer and buy e-bikes and e-scooters, because they are—

Stephen Kerr: Even though they are illegal?

Chief Superintendent McCarren: Well, they are to be used on private property.

Stephen Kerr: Do you think that people understand that e-scooters are illegal?

Assistant Chief Constable Waddell: Can I come in?

Stephen Kerr: Can I ask that one question and then come back to you on the other issue?

Assistant Chief Constable Waddell: I am happy to answer your current question as well. I think that there is a partial understanding about legal situation. I do not think that it is fully understood. We have done significant communication work, through our local policing divisions with community safety partnerships and community planning partnerships, but there is still a bit of a gap in knowledge.

We are about to run a Christmas campaign to make people aware of the hazards of buying them for gifts. I think that there is still work to be done—

Stephen Kerr: So, are you saying that parents do not understand that, if they buy an e-scooter for one of their children this Christmas, and on Christmas morning they take it on to the street in front of their house, they are breaking the law?

Assistant Chief Constable Waddell: That is correct.

Your point about conversion kits touches on a point that I really wanted to discuss. We cannot enforce our way out of this, and it is a significant challenge. I hope that the issues lead us to a conversation around the availability of e-scooters and e-bikes that are, in effect, illegal to use on the road. There has to be a conversation about whether we can limit or ban the sale of those, or, if there is no appetite for doing that, about the regulatory framework that is needed to accompany those sales. What accountability should be placed on companies that sell those products? What accountability will be placed on the individuals who buy them? What does that mean for safety, equipment, guidance and so on? Those are the natural next steps—

Stephen Kerr: Those are the gaps that need to be filled.

The Convener: We will come on to legislative reform and how we can resolve this issue. I would like to bring in Pauline McNeill, one of my colleagues from Glasgow, who is keen to ask more questions on touring bikes.

Pauline McNeill (Glasgow) (Lab): Good morning. First, I thank Police Scotland for the work that you are doing, which I think is bold. I had the chance to go out with the team in Glasgow and see the seizure of an illegal e-bike, and I learned quite a lot from that.

As Stephen Kerr says, one issue is around the sale of bikes, whether they are Sur-Ron bikes or e-bikes that are meant for off-road use. There may also be a bit of ignorance around the modifying of bikes. It seems to me, as a layperson, that most of the e-bikes that I see have been modified. Is there any data on how many of the e-bikes that you have seized so far have been modified and how many have not?

Chief Superintendent McCarren: All the ones that we have seized are illegal. Either they were illegal when they were bought, such as the bike that you saw being seized, or they were originally a legal, electrically assisted pedal cycle that was converted so that it became illegal. I do not have any statistics to hand on those that started off as legal and were changed to illegal.

There will, no doubt, be people watching this meeting who will be keen for us to point out that electrically assisted pedal cycles, if they are under the 15.5mph limit and are pedalled, are entirely legal, and a lot of people use those bikes for the right reasons. It is worth pointing that out. In effect, if you see someone out on a bike and they are not pedalling—unless they are going downhill—it is highly likely that that bike is illegal, because it has to be pedalled for it to be counted as legal: it cannot have no pedals, and it should not continue to move if they have their foot off the pedal.

Pauline McNeill: I learned that that is the difference when I was out and about with the police. Sur-Ron bikes seem to be one of the big issues.

Allan Waddell, as you said, we cannot just use enforcement—there has to be some other way to stop this coming down the track. The issue of sales is a reserved matter, but is it is Police Scotland's view that having either restrictions on the buying of Sur-Ron bikes or warnings about the sale of Sur-Ron bikes should be pursued?

Assistant Chief Constable Waddell: There needs to be a move towards being really clear about the position. Either we place a limit on the sale of those products that end up being used illegally on the roads, or, if there is not an appetite for that, we ensure that we are really clear about the regulatory framework that accompanies them, which feels like the next natural step.

One of the things that we are looking to do, in conjunction with partners in health, criminal justice, Transport Scotland and the Violence Reduction Unit, is to establish a forum that brings together the Scottish perspective on the issue. I hope that that can be used to influence colleagues and the Government down south.

Pauline McNeill: In studying for this session, I picked up on the fact that some companies are marketing e-scooters to children as young as three. Have you seen that?

Assistant Chief Constable Waddell: Yes, e-scooters are attractive to children. They see them

on social media—perhaps not when they are as young as three—and I can understand why there is an appetite for them. Will Linden might want to touch on that issue.

The Convener: Mr Linden, not just because you have a great surname, do you want to add to that?

Will Linden (Scottish Violence Reduction Unit): There are massive problems with e-bike legislation, given the attractiveness of e-bikes to kids. We are moving into the Christmas period, and we will see a spike in their use again. They are attractive partly because of their availability, partly because of need and partly because they are a free way for a young person to indulge in thrill-seeking behaviour—and well-meaning parents want to get their kids what they want for Christmas.

It is difficult to change legislation: it takes time, especially if it involves reserved matters. However, as has been mentioned, it is possible to go to websites and buy the types of bikes that are illegal to use on the streets, without seeing any warning or notice aside from a wee line that says that the bike is only suitable for use off-road. That is not good enough. If you buy a knife or alcohol, you will see that they come with warnings and information.

What we are doing is enabling parents to buy their kids stuff that is helping them to break the law. We first need to think carefully about how we educate parents in relation to that one aspect. There are different aspects to this activity, from the thrill-seeking young kids riding bikes with face masks on who are just out having fun to the people using the bikes for criminality. We need to think about the first thing that we need to tackle, which I think is the safety element: the safety of the riders and the safety of the public in general. After that, we can think about what comes next.

There is a lot to say about the matter, but the issue of thrill-seeking young people is a specific issue to consider.

The Convener: Ms McNeill, do you have further questions for the witnesses on this issue?

Pauline McNeill: Not on this issue. I have other questions, but I can come back in later.

The Convener: That is fine. Ben Macpherson, who represents Leith, has some questions.

Ben Macpherson (Edinburgh North Eastern and Leith) (SNP): First, I acknowledge that this is a difficult area, and we appreciate your time and your efforts so far on it. Today's update on the action that has been taken and other recent updates on seizures using existing powers are most welcome, and we appreciate that harm prevention needs to be at the heart of everything that you are doing.

What I receive most correspondence about as a constituency MSP, and have done for some time—indeed, Will Linden and I met two years ago to discuss this matter when it was an emerging trend in our communities rather than the established situation that it has, sadly, since become—is the fact that a very small minority of young people ride these vehicles irresponsibly and often undertake serious criminality when they are doing that. What people say to me is, "Why can't the police do more?"

I am reminded of operation soteria, an initiative to combat motorcycle theft that took place in the years after I was elected in 2016 and involved the use of new technology such as SmartWater as well as helicopters—I appreciate that now it would be drones—which allowed the police to follow people who went off road or used pedestrian pathways and so on. What lessons have been learned from that approach?

The public want to see not just seizure, but action on the streets to stop this activity, while appreciating that harm reduction needs to be at the heart of what is done. The rule of law is a perception. People are seeing such things happening in their communities and thinking, "Why can't the police do more?" So, what more can we do and how can we help you?

09:30

Assistant Chief Constable Waddell: Your point is well made and it has got me thinking about whether we need to do more on communications. We removed 1,200 e-bikes and e-scooters between the start of the year and the end of October, and we have added about another 150 bikes to that total since that date. That is the action that you are talking about. We are taking action and we are on the front foot, but that has somehow not landed; your point about perception is entirely correct and we need to think about how we are updating communities so that they are confident that we are responding.

Scott McCarren talked about the forum that we chair nationally that includes all our local policing divisions, which is exactly what you have asked for. We discuss innovative practice and results, and we ensure that best practice is shared across the country and learned from. We tried to capture some of the initiatives in our written submission to the committee. Scott, is there anything else that you want to highlight?

Chief Superintendent McCarren: I know that the committee is aware that we ran operation overlap in October to increase seizures and, more importantly, to increase awareness of the issue. We had a lot of media coverage. My friend Andy

Barclay did a lot of pieces to camera and we put out almost daily—

Ben Macpherson: I am sorry to interrupt you, but people are getting the message that Police Scotland is taking effective and robust action through seizures. That has been understood, especially in recent weeks and months, but what more can be done on the streets of our communities? Sometimes, bikes and scooters are driven around on some of the busiest streets of our capital city; I have seen people doing wheelies along Princes Street. I appreciate that pursuit comes with a load of risks, but people want to be assured that the law is catching up with those individuals, even if it is slow. What consequences are there for those riders, especially if they are young people? I appreciate that a whole load of risk analysis needs to be done; we do not want young people to fall off the bikes. It is bad for them and bad for the community that they are riding them so recklessly. Our committee inquiry aims to help to address the problem and to build an awareness that the issues are being followed up, action is being taken, and that the activity will not be allowed to continue.

Assistant Chief Constable Waddell: There is a danger that I will repeat myself, although I do not mean to. I go back to the importance of community policing and having established community teams who understand where repeat offending is taking place and who is involved, so that they can target them appropriately. You have touched on some of that; there are different groups of people. We do not want to criminalise children for the use of e-bikes; we think that there is space for education and diversion from harm.

Ben Macpherson: I appreciate that we do not want to criminalise children; nobody wants to do that. However, from my casework, I know that people on those vehicles can use them to sexually harass people, hit people with weapons, pursue people and scare them, or run drugs through communities—that is the hard end of how minors are using those items. That is problematic. We need more powers and actions to address that.

Assistant Chief Constable Waddell: It is absolutely problematic. What you have described is a tactic that criminals use. In those cases, the illegal use of e-bikes or e-scooters is a manifestation of how people go about their business. Rightly, that is where you would expect us to be targeting people for the underlying cause. If anyone is involved in organised criminality, drug dealing, or sexual harm, in the first instance, we should be all over that as a basic response and we should deal with the use of e-bikes as part of how they go about their business.

The Convener: Before I bring in Mr Macpherson, who will have further questions, I acknowledge that the committee is very aware of the pressures that Police Scotland is under and we fully recognise the pressures that you and your colleagues face. We have just been through a pre-budget scrutiny process and our report will be coming out this week.

Considering the proliferation of that particular phenomenon, do you feel that you have been under pressure to respond to it and have perhaps been a bit late to the party in relation to the challenges that communities have faced with the spike in activity?

Assistant Chief Constable Waddell: I hope that we have not been late to the party. The reason that Scott McCarren and I are sitting here is that we have identified that it is a challenge across the country, and we want to take ownership of and leadership on the response. Those are the structures that we have in place and that is what has been shown across our communities. As both Scott and I touched on, we have good examples of local policing working in conjunction with national divisions to target the issue. However, we are in no way complacent. We understand and are alive to the scale of the challenge. Mr Macpherson spoke of the volume of letters that he receives; it is no different for us in that we receive a significant number of letters that show concerns about the issue. We are not complacent—we know that we need to do more.

Ben Macpherson: The committee and the wider Parliament have been interested in the issue of face coverings, which are worn by the very small minority of people who use those vehicles in order to engage in quite serious criminality and harm.

For understandable reasons, there is a very high bar for the use of section 60 of the Criminal Justice and Public Order Act 1994: it must be activated by Police Scotland's senior level for a specific area at a specific time. Some officers have said to me that we can only use it in certain circumstances. However, given that we are facing higher use of face coverings by those who want to engage in harm and criminality, do we not need to look at that again? Although there are all the human rights considerations, you need more help here, and we need to enable and empower you to tackle the issue, do we not?

Assistant Chief Constable Waddell: I agree with the officers that you quoted, but I will caveat and qualify that a bit. Your description of section 60 is entirely correct—I was asked about it in the summer, but the focus at that stage was primarily around the consistent level of protest that we were seeing.

We have no specific power in Scotland in relation to face coverings. Section 60 is effective in dealing with challenging protests or perhaps football matches for which we have intelligence on what level of violence or carriage of weapons we might see. However, we do not have the same powers as the rest of the United Kingdom. In England and Wales, for example, section 60AA of the 1994 act speaks specifically to face coverings, and there is a slightly lower bar for how that legislation could be—

Ben Macpherson: That section was introduced recently by primary legislation in Westminster, was it not?

Assistant Chief Constable Waddell: I cannot quite remember when it was introduced, but England and Wales certainly have it.

I come at the issue from several lenses, one of which is operational effectiveness and whether we are equipping our officers to do the job that you and the public would like them to do. Currently, there are no powers in Scotland to remove face masks in the circumstances that you described. The fact that we are the police means that we still expect officers to engage and deal with people who act suspiciously or intimidatingly, but we have no specific power in that space, so I think that the time is right to have a debate about what such a power might or might not look like, while recognising that we need to be cognisant of human rights.

We want to inform that conversation. We also need to be clear that the fact that we can enact legislation does not necessarily mean that we will be able to enforce it, depending on the circumstances. For example, even though the legislation is in place, it might be challenging for two or three officers to deal with a large group wearing face masks, so we think that the time is right to have a conversation about and explore the issue.

We are really focused on our legitimacy as an organisation—policing legitimacy is important. Although we and the Police Federation, as well as other groups, have a voice in that regard, there are other interested parties, which is why the debate should be led at the behest of public and elected member opinion, and we could inform it. We are very open to having further conversations around the issue. Indeed, I should say that one of my colleagues has already had a conversation with the police division of the Scottish Government about it, so the Government has reached out.

The Convener: That is very helpful. I might come back to that point later in relation to reform and resolution, but one of the issues that you have correctly identified is that of prevention, and I know that Ms Chapman and Ms McNeill have some questions on that. I hand over to Ms Chapman.

Maggie Chapman (North East Scotland) (Green): Good morning, and thank you for being here. As the convener said, I am interested in exploring and unpicking some of the prevention points. That is not to minimise the harm that is being done now, but we also want to prevent harm in the future.

I will go back to something that was said earlier around the data that we have. As was indicated, if illegal vehicles are being used in ways that breach traffic legislation, that is different to people just having fun on vehicles that are being used illegally, but are themselves not illegal. It is different again to antisocial behaviour, which includes intimidation and harassment, and it is different again to behaviour being used to facilitate other criminal activity. If we do not have the data on that, how do we understand where to focus our prevention efforts? Each of those strands of behaviour will have different prevention tactics.

Chief Superintendent McCarren: If someone is using an illegal e-bike or e-scooter to commit a theft or a robbery, we will have that recorded as a robbery or a theft and we can understand what method that person used. Local policing divisions will be acutely aware of what those vehicles are being used for and what can be done to prevent that. That is why we come back to the point that we made at the start, which is that community policing will underpin our response. Local divisions will have that data and understand the concerns in their area, but when we are presenting a national picture of figures, we use keyword searches and other methodologies to understand the best data to present to Government.

Maggie Chapman: If that activity is happening in different places, how is it translating into prevention, rather than just the diagnosis of a problem?

Chief Superintendent McCarren: Again, to prevent something, we need to understand what the issue is in the first place. We are repeating ourselves, but it comes down to a local policing division or area commander understanding the problems in their area. It is down to a subdivisional management team looking daily, as we all do, at the data on what is happening and what trends there are and asking how we best respond to that activity, whether that is through high-visibility patrols or, more importantly, partnership working with other groups. It is about how we have the best impact in each area. In our governance group, it is important for us to recognise that every division has different needs and issues, and it is about working together.

Assistant Chief Constable Waddell: We have a number of examples of prevention activity that are on the go just now. For example, as a parent, Scott McCarren received a letter that the Lanarkshire division distributed through all the schools.

However, I think that Ms Chapman is asking how we evaluate the effectiveness of our prevention activity, and we do not have that data at the moment, because the work is multifaceted. The ongoing prevention efforts are being made in a number of different ways and involve different groups. There is no silver bullet that will prevent this behaviour.

Maggie Chapman: You have talked about partnership working as well. Some of the prevention issues are not policing issues—they are social work and broader societal issues.

Will Linden: This is quite a challenging area for prevention because of the multifaceted nature of the problem. If we are referring to young people's behaviour, it is about education and supporting parents, as well as a campaign to make people aware.

There are also lessons to be taken from the past, particularly around young people's behaviour. This is not the first time that this has happened, and we have moral panics every now and again about different things. We can even go back to the BMX bandits in the 1980s. The big difference between the BMXs and these vehicles is their power and the inherent danger of riding them, but there was the same moral outcry about gangs of kids in the streets riding their bikes on the pavements and terrorising neighbourhoods. To deal with that, the authorities built lots of BMX tracks and tried to force those young people away from the streets by providing services. It was not just about education; it was about providing an alternative.

What we have now is a slightly different thing. We have the same idea of thrill seeking, and you could build something to provide for that, but I will throw something else into the mix. We have talked about face masks and a little bit about this too: one of the biggest drivers of this behaviour, particularly around the thrill-seeking stuff, is content creation and social media.

It goes back to the policing tactics for some of what we have seen before. We talk about policing, responses, justice and consequences, but what we are seeing across different countries—and I have not done a detailed evaluation of this; I have just looked at it casually—is that different jurisdictions, some of which have much more robust policing, for want of a better phrase, of young people than we have in the UK and Scotland are experiencing the same trend. All of it is linked to content creation and the idea of that content being promoted on social media.

Therefore, if we want to tackle the problem, we need to find out what the drivers are. One is thrill-seeking, and, as I said, we can talk about the criminality aspect of that separately, but we want to establish what about that thrill-seeking is appealing. Are they doing it for the kicks or are they doing it for the clicks? We need to start thinking about it in different ways. We do not quite have a grasp of that yet.

09:45

Maggie Chapman: That was a helpful presentation. If we considered this to be a public health issue or a violence prevention issue, rather than focusing on whether the vehicles are illegal or whether they are breaking road traffic rules, we would take a very different approach. Do you see the beginnings of the development of the partnerships that are needed to tackle the issue, or coherent awareness of the issue across different public services, or have you not seen that yet?

Will Linden: I would not say we have seen that for e-bikes specifically, because it is a niche area. I am going to be honest; e-bikes are a big concern, but we are also considering wider antisocial behaviour, levels of violence and so on. Apart from the work to create a group to look at the response, prevention and what can be done in partnership, which is starting to kick off and was discussed by Alan Waddell and Scott McCarren, there is no consistent strategy across the country.

However, the work has to be linked into other things, such as a youth work strategy and an education strategy. We should stop looking at such things in silos. That is part of the problem. We can have a stand-alone group do the work, but we have to think about how that work connects to existing services and programmes so that all of the onus to deliver the work does not fall on schools. We say to schools "Why don't you talk about drugs, alcohol, healthy eating, violence, vaping and now e-bikes? Oh, and by the way, can you teach English and maths, as well?" We need to think about the best way of doing this. Schools are important, and having strategies is important, but everything needs to be linked.

Maggie Chapman: When the VRU talks about primary, secondary and tertiary prevention, where are the gaps? Where do you or other services need more resources?

Will Linden: More resources are needed across all areas of prevention, but if I was going to look at one area in particular, it would be secondary prevention. When young people and others are involved in high-risk behaviour, that brings a lot of

media attention, which in turn helps to demonise young people and causes fear in communities. Demonisation and fear go hand in hand.

We therefore need to know how to tackle it by providing additional resources and support for young people to find alternative ways of biking or of meeting their need for thrill-seeking. That will help reduce the number of incidents, and if we start reducing the number of incidents we can concentrate on some of the other activity that relates to organised crime, drugs and violence rather than having a big number of young people and others involved in high-risk activity, which, under the letter of the law, is illegal.

The Convener: Later in the meeting, I am keen that we talk about reform and resolution, but before I do that, I will bring in my colleague from Clydebank, Ms McNair.

Marie McNair (Clydebank and Milngavie) (SNP): My questions have been covered, but I am quite happy to come back in afterwards.

The Convener: That is very helpful and incredibly kind of you, Ms McNair. Now, we will move on to talk about legislative reform and resolution I will bring in other colleagues on this, too. Assistant Chief Constable Waddell, I was heartened by some of the language that you used in regard to section 60 of the Criminal Justice and Public Order Act 1994, which Ben Macpherson asked about. If I picked you up correctly, you said that conversations about that are now ongoing with the police division of the Scottish Government. When did those discussions start?

Assistant Chief Constable Waddell: I would be lying if I gave you an exact date.

The Convener: Would you be happy to write to us and give us an answer?

Assistant Chief Constable Waddell: Yes, absolutely. I would be happy to confirm that.

The Convener: I appreciate that. That is very kind of you. Later, I will come on to what additional powers and resources you need.

On the issue of seizure, Chief Inspector Jonny Watters, who is the local head of policing in Shettleston and for whom I have a huge amount of respect, has told me—and you have alluded to this, I think, in your evidence—that when the police stop somebody on an e-scooter on Shettleston Road, there is quite a lengthy delay before a private contractor can come and take it away. Obviously, that ties up police time. How might we be able to speed that process up? I understand that there are some challenges when it comes to enforcement.

Chief Superintendent McCarren: It is an issue, and if the Parliament, or this committee, could do more about it, we would welcome it. Our service level agreement with the contractor says that it should be 30 minutes, but I believe, right enough, that Ms McNeill waited longer than that when she was out with colleagues. The average time is around 30 minutes, but it all adds to the capacity issue. If an officer seizes an e-bike or e-scooter, that is another 30 minutes in which they are not able to deal with other matters. It also comes with a cost, which the police are footing.

The Convener: I know that the resale auction of e-bikes and e-scooters still happens in other parts of the UK, but am I right in thinking that it stopped here only in September?

Chief Superintendent McCarren: That is correct.

The Convener: There have been numerous cases of this activity, some of which have been in the media. How confident are you that there are checks and balances in place to ensure that individuals who have committed criminality, whether it be collisions or knocking down folk, and have had their e-bike or e-scooter seized are not back out, riding their e-scooter or e-bike, after they have hit somebody and been involved in a police incident?

Chief Superintendent McCarren: We have given instructions that the vehicles are now to be destroyed. They are seized under section 165A—

The Convener: But what if they go and get a new one?

Chief Superintendent McCarren: Well, if they get a new one, we do not know—

The Convener: I guess that my question is this: where is the deterrent? If a young man in Fife, say, hits an elderly woman, what is the deterrent to ensure that he is not back out on an e-bike or e-scooter?

Chief Superintendent McCarren: If that happens, and the individual is identified at the time, they will be charged, and the e-bike will be taken off them. If identification happens later on, we might seize the bike as production, but if identification happens at the time, we will seize the bike under section 165A of the Road Traffic Act 1988. The individual will not get it back, and they will be reported to the procurator fiscal. In essence, though, they could go back out the next day and purchase another e-bike. As we have already said, e-bikes are widely available, and that brings us back to the initial question about availability and regulation and the fact that more needs to be done in that space.

The Convener: I am conscious that other folks want to come in, but I was very interested to see that, in operation armour in the north-east,

individuals who had had their bikes seized and were arrested had been found with drugs on them. I have certainly heard anecdotally that, in Glasgow, these vehicles are essentially a form of Deliveroo for drugs. Are we seeing examples of those who are apprehended being found with drugs on them? Are the bikes being used to move drugs around communities?

Assistant Chief Constable Waddell: There are undoubtedly such examples, yes.

Chief Superintendent McCarren: Operation armour has highlighted such examples, as you have pointed out, and there is intelligence that the bikes are being used for that purpose.

The Convener: Before I bring in colleagues who have been trying to catch my eye, are there any powers and resources that you do not have but which would help ensure that, if I were to bring you before the committee next year, you could tell me that there had been a reduction in these incidents? What do you need in your toolkit that you do not currently have?

Assistant Chief Constable Waddell: Capacity is one. I know that members have talked about this in relation to the budget bill, but a really strong and effective community policing resource is fundamental in targeting this activity.

I talked earlier about reducing the prevalence of these things on our roads, but we need help in that respect. We can enforce all we like, but if the supply is continuing to hit the streets, what we do is almost a fool's errand.

I am not saying that we are looking for extra powers with regard to face masks, but there is a gap there, and a willingness to explore the issue is where we are at. We would certainly welcome further conversations in that respect, but we also want to hear other voices in that space.

The Convener: Okay. My understanding is that you were saying that you might need new powers, but we can go back and look at the *Official Report* on that.

I know that colleagues have been seeking to catch my eye, but I did promise Ms McNeill that I would bring her back in if she wanted to, and I will always look after a fellow Glasgow MSP.

Pauline McNeill: No bias there.

On the question of powers and what other parts of the UK are doing, I believe that Nottingham, and the UK Government, have been looking at on-the-spot fines for antisocial behaviour. This is where things get a little bit complicated, because you have these people riding on the roads, others riding on the pavement and so on. Would it be helpful if the police had the power to issue on-the-spot fines?

Assistant Chief Constable Waddell: There is a technical bit that I will ask Scott McCarren to cover, as it relates to the power in section 165A to recover an e-bike or e-scooter. If we do that within 24 hours, we will be able to seize it. We might know that a Ms Pauline McNeill, say, had been out riding, but we were unable to stop her at the time. If we can trace her within 24 hours, we can take the e-bike or e-scooter; if not, we have no further recourse, and that is where an antisocial behaviour approach is worth considering.

Chief Superintendent McCarren: If someone were involved in a serious crime, we would go to the procurator fiscal to get a warrant, go to their house and seize whatever we had to seize. We have engaged extensively with our officers on the front line about the section 165A procedure and we are satisfied that that procedure is sufficient for us to seize the vehicle. If the e-bike use is proved to be illegal, it is, in effect, treated as a motorcycle and the driver should have insurance and a driving licence, which they cannot get for that. We are satisfied that section 165A of the legislation gives us a power to seize it at that time.

One area that could be looked at, which has been discussed—the Cabinet Secretary for Justice mentioned it in his submission—is section 126 of the Antisocial Behaviour etc (Scotland) Act 2004, which requires a warning to be given initially. Further dialogue could be had about getting rid of that warning, similarly to what has happened in England and Wales. If we got information at a later date that someone had been riding an illegal e-bike or e-scooter, perhaps that power would be more useful than the powers that we currently have. We think that that should be looked at.

Will Linden: I am not a big fan of fining people, because of the inherent problems with financial inequality and targeting of certain areas.

It is a big enough financial penalty to take the e-bikes away. More resources need to be given to support confiscating the bikes, rather than fining people. For an e-bike of the brand that was mentioned earlier, we are talking about a cost of more than £1,000 to replace it. That is more than an on-the-spot fine would be. Therefore, that is the more effective way to do it: even if they tried to replace the bikes, there would be more of a financial penalty than there would be from an on-the-spot fine.

I would be worried about the fines not getting paid and about what that would lead to. It would become a cycle.

Pauline McNeill: That is helpful.

Lastly, I have concerns about something that has been highlighted to the committee, which is the weight of some of these bikes, should there be

an accident. I know of one case that happened to somebody in my team in Glasgow. An e-bike was involved and her leg was fractured. That situation is not uncommon. Can you comment on that? The sheer weight of the bikes is one reason why more work needs to be done to ensure that those who use them, even if it is legal for them to do so—

The Convener: I ask witnesses to give a brief answer to that. We only have a couple of minutes left and I am keen to bring in Mr Kerr and Mr Macpherson.

Assistant Chief Constable Waddell: When anybody uses e-bikes such as those that you describe, there is a risk of serious harm if they are used inappropriately and involved in a collision. Absolutely, that is a conversation to have.

Chief Superintendent McCarren: It is similar to motorcycles. One point that I want to raise, in case it is missed, is that an NHS report has given us data that we did not have before. That report used a survey, so the data is not exact, but, of those who were surveyed, only 4.7 per cent said that they used e-bikes on private land. That gives you an idea of the prevalent ways in which e-bikes are being used after they are bought.

The Convener: That is helpful—I am glad that you put that on the record.

We have about two minutes left. I know that Mr Kerr and Mr Macpherson will be keen to use that time and will be patient with each other. I bring in Mr Kerr first.

Stephen Kerr: Assistant Chief Constable Waddell, I agree with the convener that your earlier comments about face coverings were welcome. You somewhat threw me—and others who are listening—when you said that the police are not asking for additional powers. You have identified gaps in the law whereby officers do not have powers to take action, and then you said that. Can you be clear? Surely, the police would welcome those powers.

Assistant Chief Constable Waddell: We think that there is a gap and we need to work with the Government and other interested parties to make sure that any legislation is appropriate and fit for purpose.

Stephen Kerr: Is that a yes, though?

Assistant Chief Constable Waddell: Yes, we want to come to the table and have conversations about it.

Stephen Kerr: I am sorry—that is very mealy mouthed. Either you want and need the powers or you do not. You cannot say that there is a gap and then say that. Just say that you want the powers. What is wrong with saying that?

Assistant Chief Constable Waddell: I have not been mealy mouthed. I think that I have been clear—

Stephen Kerr: I think that you have been, but that last answer was a politician's answer.

Assistant Chief Constable Waddell: I must be in the right place, then.

Stephen Kerr: You are talking to politicians. Can you be absolutely clear? The police identify a gap; the officers on the ground are saying that there is a gap; you need the powers.

Assistant Chief Constable Waddell: There is a gap. We need to inform the powers, but we need to make sure that the powers work.

Stephen Kerr: Sure—but you need them.

Assistant Chief Constable Waddell: We need to make sure that they are also compliant with other legal considerations.

10:00

Stephen Kerr: But the point is that you need them.

My last—very quick—question is about operation armour, which involved three weeks of concentrated effort and a massive resource commitment. There were huge results and it was very successful, but it shows that what you needed to bring that about was a concentration of resources. You do not have front-line resources—the committee has gone through that issue to the point of exhaustion. What has been the consequence of operation armour in Aberdeen? Has the incidence of the use of these bikes and scooters gone back up or has the problem been dealt with?

Chief Superintendent McCarren: The data is not agile enough to give a definite answer to that.

Stephen Kerr: You do not know.

Chief Superintendent McCarren: The community—

The Convener: Chief Superintendent McCarren, if you want to look at that and then write to the committee about it, we would appreciate it. We are very tight on time today.

Chief Superintendent McCarren: I will do that. We do really—

The Convener: I bring in Mr Macpherson to ask the final question.

Ben Macpherson: Thank you, convener.

Do the police need more help from the Crown to tackle this issue?

Assistant Chief Constable Waddell: There has not been an absence of help from the Crown. It is a key part of the criminal justice process and we work together in this space.

Chief Superintendent McCarren: We are engaging directly with the Crown about this.

Ben Macpherson: So, it is alive to how problematic the issue is in our communities. For the record, I, too, hugely respect the Crown's work.

Assistant Chief Constable Waddell: Yes.

Ben Macpherson: Can we learn from the Metropolitan Police? Even this week, we saw footage of a prolific phone thief using an e-bike, being knocked off their bike and being charged. I am not saying that Police Scotland is not robust—it is appropriate that they are so—but can lessons be learned? The situation is worse down there, and we do not want to get to that point.

Assistant Chief Constable Waddell: Lessons can be learned across the United Kingdom and we are entirely in that space.

As a final comment, we are robust. People should not leave this forum thinking that, in any way, shape or form, we are not robust about dealing with this matter. That is why about 1,350 e-bikes have been removed so far. However, we continue to seek to learn.

Ben Macpherson: For the record, we are grateful and appreciate that.

The Convener: On that point, this committee would have lots of questions about that. You can tell from the fact that it has been such an engaging session that there is more for us to get into.

It is appropriate to finish by recognising the work of all your colleagues, who do an incredibly difficult job. Any observers who look at our pre-budget scrutiny report, which will be published later this week, will see that there is a big focus on police officers and resources. This committee is acutely aware of that issue. My final point is to say an enormous thanks to the police service in Scotland, which has our enormous gratitude as it tries to tackle these difficult issues.

We thank the witnesses for their attendance. I suspend the meeting briefly to allow for a change of witnesses.

10:02

Meeting suspended.

10:07

On resuming—

Subordinate Legislation

Police Service of Scotland (Conduct) Amendment Regulations 2026 (SSI 2026/276)

Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 (SSI 2026/277)

The Convener: The next item on our agenda is consideration of two instruments relating to police conduct regulations. The Delegated Powers and Law Reform Committee considered the instruments on 3 November and drew both to the attention of the Parliament under the general reporting ground in respect of a drafting error in regulation 8. The DPLRC noted that the error is relatively minor and indicated that it is content with the Scottish Government's proposal to correct the wording at the next suitable legislative opportunity, which it expects to arise next year.

In considering the regulations, the committee received a range of written evidence, took oral evidence from stakeholder organisations on 4 November, and heard from serving and former police officers in a series of private evidence sessions on 11 November. I thank all those who engaged with the committee's work on the regulations. Their written submissions, oral evidence and willingness to share their expertise and experience have been invaluable in informing the committee's consideration of these matters.

I welcome our witnesses. Jo Farrell, the chief constable of Police Scotland, is joined by Lynn Ratcliff, assistant chief constable with responsibility for professionalism. I also welcome the Cabinet Secretary for Justice, Neil Gray, and his supporting officials from the Scottish Government, who are Kevin Lee, from the police division, and Amanda Dunlop, who is a lawyer.

I have agreed with the chief constable and the cabinet secretary that each of them should be allowed to make an opening statement of up to three minutes. We will start with the chief constable.

Chief Constable Jo Farrell (Police Scotland): Good morning, convener and committee. As I outlined in my letter to the committee, I welcome the proposed regulations, which would modernise the police conduct regime. More than 99 per cent of our officers are skilled, hard-working, professional and courageous. However, I have set out the intolerable position whereby officers convicted of offences who have no place in

policing remain in the organisation for longer than they should.

The current regulations build in windows for objections and, at times, we have paused for 28 days in cases where the officer has appealed against the criminal case. Investigations must be conducted and papers served, so, in reality, 46 days is the quickest that we have conducted even straightforward cases that required limited investigation. Many cases drag on for far longer. The new regulations address those issues.

I recognise the positions that have been provided over two consultations and in further views and information that have been shared with the committee. There are differences between the regulations. I recognise the comments about the impact that misconduct processes—even aside from their outcomes—have on individuals. Conduct proceedings are painful for any professional, whether they are a teacher, a nurse or a police officer.

My focus is to deliver a fair, effective and timely process. As chief constable, through my senior leaders, I want to set and maintain high standards in the service. As senior leaders, we are accountable to the Scottish Police Authority, to the Parliament, at a local level and, ultimately, to the public, whose trust and confidence is essential to the principle of policing by consent.

Where senior officers' conduct is in question, the regulations go further than for junior officers when it comes to transparency, with a presumption that hearings will be in public, in addition to the outcomes being published. An increased role for the Police Investigations and Review Commissioner and independent panels addresses any perceived proximity bias in relation to what is a small number of senior officers in Police Scotland, whereas proximity bias is a far smaller risk for the 16,500 junior officers, with a cadre of chief superintendents drawn from across the country.

The key is that safeguards for fairness are maintained and our chief superintendents are supported by high-quality training from experienced legal counsel, with access to a legal adviser throughout the process. There is a route of appeal, and we report publicly and regularly on conduct assessments and hearing statistics, providing an opportunity for any trends to be scrutinised. As I outlined in my letter, the test is whether the proposed regulations can enhance public trust and confidence in policing and deliver swifter outcomes that treat witnesses in a trauma-informed manner, while maintaining fairness and appropriate safeguards.

I note the emphasis on those who have been affected by crime or serious breaches of our professional standards. It is their voices and experiences that we must understand and seek to improve. On that basis, I welcome the proposed conduct regulations.

The Convener: Many thanks for your opening statement. I now hand over to the cabinet secretary.

The Cabinet Secretary for Justice (Neil Gray): Thank you, and good morning. I begin by echoing what I said in my letter last week, in which I recognised the hard work and dedication of police officers across Scotland. The overwhelming majority carry out their duties with professionalism, integrity and commitment to the communities that they serve. However, as I also said, when things go wrong, it is essential that there is a robust, fair and transparent system that is capable of addressing misconduct, maintaining public confidence and upholding the high standards that are rightly expected of policing in Scotland.

I turn to the regulations. I want to make it clear that they do not establish a new policy direction. They implement the framework that was legislated for by the Parliament through the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025, including the differentiated arrangements for senior officers' conduct proceedings, which is a key principle that was supported by all parties and stakeholders during the passage of the legislation.

The regulations are subject to the negative procedure. Therefore, the committee's choice is simple: allow them to come into force or annul them entirely. If annulled, that would mean the loss of a substantial package of reforms that would implement key recommendations from Dame Elish Angiolini's review. The reforms would improve timeliness, transparency, support for complainers and witnesses, case management, disclosure and accountability.

Much of the debate around these regulations has focused on the question of independently chaired hearings. Although that is an important issue, the Government does not accept that they are the sole measure of whether the conduct system is fair. Fairness must be assessed by reference to the proceedings as a whole, balancing the rights of officers, complainers, victims and witnesses alongside the wider public interest in maintaining confidence in proceedings.

10:15

Some have argued that too many cases progress through the gross misconduct system and that successful appeals are a basis for concluding that the system is not working effectively. However, Police Scotland's own data does not support that assertion. Most matters that are referred to professional standards never reach

formal misconduct proceedings, and those that do so are generally among the most serious cases, including allegations of off-duty criminality.

Of the officers who are currently suspended, more than half are awaiting outcomes from the Crown Office or criminal justice proceedings. Nearly two-thirds of all suspensions relate to either domestic abuse allegations or sexual offence allegations. Appeal outcomes must be considered alongside the wider volume of cases resolved without appeal, rather than treated as a stand-alone measure of the effectiveness of the system.

We have also heard much through this scrutiny process from a policing and officer perspective, but committee members also need to be mindful of the interests of victims and survivors, as well as informants, whose voices we have heard much less. Fairness cannot be considered solely from the perspective of the officer who is subject to proceedings; we must also consider the person who has had the confidence to come forward, and the witnesses who may be asked to give evidence, some of whom may also be serving officers. Victims and survivors must be listened to, supported and kept appropriately informed. These reforms strengthen their position and provide greater support for those participating in proceedings. The right of an officer to a fair process is fundamental, but fairness cannot be viewed solely from one side. A credible misconduct system must command the confidence of officers, victims and survivors, and the wider public.

The committee has also heard calls for independently chaired hearings across all ranks. Such proposals would represent a fundamentally different conduct framework and would require further primary legislation, which is not pragmatic. There has been an enormous amount of engagement, consultation and scrutiny over years, which first informed the 2025 act and then these regulations. It is also notable that the United Kingdom Government has moved away from having legally qualified chairs for non-senior officer hearings in England and Wales, concluding that chief officers should retain responsibility for disciplinary decisions within their forces. The Scottish Government agrees. It is also a position that was previously advanced by the Scottish Police Federation during scrutiny of the bill, when concerns were raised about interference with the operational responsibilities of the chief constable, and reference was made to the reversal of the England and Wales model. Against that backdrop, recent calls for a different approach have not always been accompanied by a clear explanation of why those earlier concerns no longer apply.

There is also a wider public sector comparison to consider. The majority of public sector employees facing disciplinary proceedings are subject to processes that, appropriately, are led by senior managers within their own organisation. Therefore, such proposals move policing away from, rather than towards, wider public sector norms. Accountability for standards and responsibility for disciplinary outcomes should remain aligned. If the chief constable is accountable for standards in policing, the chief constable must retain meaningful responsibility for enforcing them.

I finish by reflecting on the comments made by Dame Elish Angiolini when she appeared before the former Criminal Justice Committee in May 2024 to discuss the bill. In her evidence, she said that she was

"impressed by the people who conduct the investigations"

and felt that

"what they do is far from the actions of people who are all pals together."

She also said:

> "I think that the system in Scotland is possibly nearly as good as you can get it. It is always possible to improve the system, and to incorporate good ideas that could enhance it, but, generally, it is significantly better than it was when I started as a young fiscal depute."—[*Official Report, Criminal Justice Committee*, 16 May 2024; c 11.]

That is the context for where the bill took us and where these regulations take us.

I therefore encourage colleagues to consider the cumulative benefits that the regulations deliver, the improvements that they make and the consequences of those benefits being lost should these instruments be annulled, with the effect that the current system would remain in place. We have a system that can be improved.

The Convener: Thank you, cabinet secretary. We appreciate the opening statements from you and the chief constable.

Committee members and those observing our proceedings will be aware that the regulations have been laid via the negative procedure. It is unusual, although not unprecedented, that a committee would spend as much time as this taking evidence on instruments that are subject to motions to annul. That speaks to the seriousness with which the committee and I as convener take our scrutiny role.

I have no doubt that, as a result of the evidence that we have received, many members will have questions. I anticipate that we will spend about an hour on questions before we move to the formal debate on the motions to annul. We will start with questions from Stephen Kerr.

Stephen Kerr: Cabinet secretary, I feel that you created a false dichotomy in your statement. You

seemed to be saying that we can have fairness for victims, but not necessarily fairness for officers who are involved in disciplinary hearings. Did you mean to say that?

Neil Gray: I said no such thing.

Stephen Kerr: What did you mean, then? Did you not say that we should not listen to the concerns of police officers who feel that the system as it is and the system that is designed for the future under the regulations are unfair, because listening to them would put in peril fairness to victims?

Neil Gray: No. I said that it is important that the views of victims, witnesses, complainers and informants are considered alongside the concerns of officers, and that we cannot view fairness from one perspective only. In order to ensure that we have a fair and balanced system, we must take all perspectives into account.

I also said that I feel that the views and voices of victims, witnesses, complainers and informants have been heard less during the process than those on the other side. I felt that it was important to put that on the record to ensure that we take a rounded view of what the regulations do.

Stephen Kerr: That is your judgment, but the committee has considered, and is considering, the issues in the round. That may be your opinion, but it is not my opinion as a member of the committee.

When speaking to the Association of Scottish Police Superintendents just a few months ago, you mentioned the issue of preferential treatment and inconsistent standards for senior officers, and you said that it goes

"to the heart of confidence, fairness and legitimacy"

and

"undermines trust in leadership".

You said that you did not support a two-tier approach to conduct and the administration of discipline in the police, but you have changed your mind. Can you explain why you think that it is fair to have a two-tier approach with separate and distinctive approaches to conduct and discipline?

Neil Gray: Convener, Mr Kerr is again seeking to put in my mouth words that I have not said.

Stephen Kerr: You said that—

Neil Gray: Hold on a second. I said that I feel that it is important that we have transparency and fairness and that people are held accountable. Mr Kerr will be aware that there is a reason why we have a differentiated system. It does not just relate to the regulations but goes back to the founding of Police Scotland under the Police and Fire Reform (Scotland) Act 2012, where the responsibilities on senior officers were set out in statute as being differentiated. They have a different employment status, and the conduct regulations must mirror that. That is why we have a differentiated system.

In addition, the conduct regulations provide greater scrutiny of senior officers. Legally independent chairs are one part of that, and the other part is that the hearings will be conducted in public. I believe that that is the right course of action, because senior officers have not only differentiated responsibilities but different levels of accountability for their performance and actions. That provides a clearer route to the transparency and accountability that I think Mr Kerr is also looking to achieve.

Stephen Kerr: I am looking to achieve that, but the distinction of allowing independent legal chairs to one set of officers—senior officers—and not to other ranks introduces a degree of unfairness when we are talking about gross misconduct, because in both contexts the procedures and processes can lead to the career-ending sanction of dismissal, and worse. Correct?

Neil Gray: First, the principle of independent legal chairs being available across all ranks is not one that is before us today. What is before us today is the implementation of the 2012 act. I remind Mr Kerr that all parties in this Parliament supported that, and that the stakeholders at the time supported the principle of a differentiated system.

Stephen Kerr: When the evidence—

Neil Gray: In addition, appeal processes are available to junior ranks in order to ensure that independent legal consideration can be available to them, so the ability to ensure transparency and fairness is built into the new regulations. Junior officers are not subject to the same levels of scrutiny as senior officers through the hearings, which I imagine other colleagues feel to be appropriate. They are not subject to the same level of accountability as senior officers through the process.

Stephen Kerr: But the standard of fairness should apply to both.

Neil Gray: I believe that the regulations are fair. They reflect the responsibilities, including the statutory responsibilities, and the level of accountability for both senior officers and other officers.

Stephen Kerr: You quoted the 2012 act and you quoted comments made during the previous parliamentary session, so I am sure that you would agree that, if new evidence or different evidence presents itself, it is quite all right for people to look again.

Neil Gray: The point that I made in my opening statement is that, when it comes to new evidence, I have not heard a justification as to why individuals would have changed their position. I am not just resting on the differentiated system that was legislated for in the 2025 act; the establishment of Police Scotland differentiates between the levels of responsibility and accountability for senior officers and for other officers. The system is based on who employs officers. Senior officers are accountable to the Scottish Police Authority, and other officers are employed by Police Scotland. I think that Mr Kerr—

Stephen Kerr: I think that you are introducing a diversionary concept because, at the end of the day, we are talking about the need for everyone who is involved in conduct and disciplinary hearings to feel that they were treated fairly. That is at the heart of this.

Neil Gray: I think that I have covered that. I am not seeking to divert; I am merely pointing out the statutory responsibility—

Stephen Kerr: Let me turn to—

The Convener: Can we have some order? We will be having a debate on this. The purpose of the evidence session is to put the questions, so let us avoid having the debate just now and stick to the questions. If we can try to do that, that would be great.

Chief Constable Farrell: Convener, would it be helpful for me to describe the situation and reassure the committee in relation to countering any bias and ensuring fairness with chief superintendents—

The Convener: Mr Kerr has the floor for another few minutes, so I will let him continue with his questions. He might come to that, as might others. Mr Kerr, you have a few minutes left before I need to pass to Ms McNeill.

Stephen Kerr: There are many different aspects to be covered, so I appreciate your willingness, chief constable, to offer that evidence, and perhaps there will be time to hear it.

However, I want to turn to your letter to the committee dated 13 November, which I have in my hand. In this letter, as part of the justification for the changes, you refer to the current situation, in which 11 officers who have been criminally convicted, eight of whom have been convicted of violence against women and girls, remain employed with Police Scotland. You go on to say:

"In some cases, officers remain with Police Scotland for over a year after conviction."

That paragraph has spawned a tremendous reaction from serving officers, including from the Scottish Police Federation, which wrote to us this morning to refute what you said. One officer who contacted me said that none of this would have arisen if those in the professional standards department, which is under your jurisdiction, "got their finger out"—forgive me for repeating the terminology that they used—and did their job.

I will also quote directly from the letter from the Scottish Police Federation and then ask for your response. It says:

"The Scottish Police Federation firmly believes that the current conduct regulations already provide a route by which an officer's career can be ended within 35 days following a criminal conviction, where dismissal is justified."

It goes on to say:

"The suggestion that the regulations themselves prevent Police Scotland from dealing swiftly with convicted officers is therefore misleading."

Can I have your response to that, please, chief constable?

Chief Constable Farrell: The discussion and commentary from the general secretary in relation to 35 days has had considerable airing at this committee, and my colleague Assistant Chief Constable Ratcliff will take the opportunity to talk through all the elements of the process following conviction. The 35-day period will be described to you. It is one of a number of elements that we need to work through following conviction.

On your broader point on the regulations that are before the committee, as it stands, following conviction, the conduct regs in effect rerun the process of examining the evidence and making a determination.

Stephen Kerr: Do you mean after the criminal conviction?

Chief Constable Farrell: Yes.

10:30

Stephen Kerr: So your investigation into the officers—

Chief Constable Farrell: The criminal conviction by the court means that the officer has been found guilty of that offence, beyond all reasonable doubt. Currently, what then flows from that—the 35 days is part of it—is a process of, in effect, rehearsing every—

Stephen Kerr: Relitigating the court case?

Chief Constable Farrell: No. It is a case of going through a similar process of evidence gathering, presenting and deciding on witnesses, to get to a hearing. These conduct regulations say that, if the officer has been found guilty, we can fast-track the process, based on the fact that the officer has been found, beyond all reasonable doubt, guilty of a criminal—

Stephen Kerr: It will sound incredibly bizarre to the public that someone is convicted in a criminal court and then the police decide to relitigate the case and decide whether the court was correct. That sounds ridiculous.

Chief Constable Farrell: No. What I am saying is that, currently, we work through the regulations and that, as they stand, there is not a provision to take the finding and to fast-track the decision and the outcome.

Stephen Kerr: The Police Federation—

Chief Constable Farrell: It is important, given that you have talked about the 35 days a lot in committee, that I let ACC Ratcliff describe in detail what the 35 days is for and what part it plays in the broader process, post-conviction.

The Convener: I can bring in ACC Ratcliff to cover that in detail, but—

Stephen Kerr: I do not necessarily want to hear that, if I am honest with you, convener, because we have already had—

Chief Constable Farrell: It is important, Mr Kerr, because it has been given a lot of visibility in the committee.

Stephen Kerr: We do not have very much time, and that is why—

The Convener: I will see whether I can bring in Ms Ratcliff later during my questions. We are under a lot of time pressure today. I agreed in advance with members the amount of time that we would have, and we need to respect that and to work as a team. I will try to come back to the matter, but I will bring in Ms McNeill now, so that we can move on.

Pauline McNeill: Good morning. First, I have a quick technical question on the new regulations in relation to fast tracking to dismissal. Am I correct in my understanding that, regardless of the level of criminal offence—it could be a driving offence or any criminal offence—there would be fast tracking to dismissal under the new regulations? Or would there be a hearing, following a conviction?

Chief Constable Farrell: There is always a hearing—there is always a panel presided over by a chief superintendent—even though it might be following a conviction through the fast-track process proposal that is on the table in the new regulations.

Pauline McNeill: Thank you. Therefore, there would still be a hearing.

Chief Constable Farrell: Yes.

Pauline McNeill: This is probably a question for Lynn Ratcliff, but bear with me. I am interested in the accelerated misconduct hearings, which are part of the new regulations. We did not see the detail of those when we passed the bill, so we are only now seeing that. The accelerated misconduct hearings are not limited to criminal convictions or an admission of gross misconduct. The Police Federation has drawn our attention to paragraph 16(c), under which there will be a presenting officer.

There are several concerns about that, and I wonder whether you might address those. First, with regard to rank-and-file officers, the Police Federation is asserting that the new regulations represent a much more adversarial process. It is also saying that a case may be considered for the process before an investigation has been completed. I am interested in the question of fairness as applied not to criminal cases but to misconduct hearings. There is quite a difference in the procedure between the new and old regulations, is there not?

Assistant Chief Constable Lynn Ratcliff (Police Scotland): Yes, there is quite a difference. As the chief said, in an accelerated hearing, the matter would be presented to a panel, which would consider it. Under the new regulations, the accelerated hearing process does not require the full investigation process that the chief has spoken about.

I do not know whether the convener wants me to talk about that now, but you are correct that there would no longer be a requirement to have a conduct investigation following a criminal conviction, as is currently required under the 2014 regulations. The circumstances of the case would be presented by the presenting officer at the accelerated hearing, but it is still a hearing.

Pauline McNeill: We are talking about accelerated misconduct hearings, which are not limited to criminal convictions—they deal with other misconduct matters. Am I correct?

Assistant Chief Constable Ratcliff: That is correct. Not all officers who are the subject of criminal proceedings are convicted. The standard of proof for criminal proceedings is beyond reasonable doubt, whereas the standard of proof in misconduct proceedings is on the balance of probabilities. There are cases in which there has not been a criminal conviction but, based on the evidence that is contained in the pack and as a result of the investigation, it is the opinion—

Pauline McNeill: Does that not refer to other misconduct cases in which there is an allegation of gross misconduct? That is my understanding. We are not talking about cases that would go anywhere near a court hearing; we are talking about accelerated misconduct hearings where there is an allegation of gross misconduct, which are not limited to cases with criminal convictions.

Does it not cause you concern that one of the Scottish Police Federation's big concerns is that the regulations represent a big change and will be unfair to its members? Rob Hay said in his evidence that his members get only two days' training for the hearings that they conduct, which alarms me. He also said that no two officers conduct hearings in the same way. Given that the regulations represent a big change, and that we have heard evidence that there is a lot of variation, do you understand the concerns from your ordinary rank-and-file officers about the regulations that we are being asked to sign off today?

Neil Gray: Before ACC Ratcliff gives more technical detail, I will go back to the point about fairness. I accept the contention that the new regulations will potentially give rise to a more adversarial process. Many colleagues at this meeting have experience of representing individuals during employment matters. By their nature, the criminal justice system and the employment system can have adversarial processes. However, establishing a presenting officer and a chair will be further steps to ensure that the perception of bias or a conflict of interest can be removed. That will ensure that the chairing officer genuinely looks at both sides of the argument in relation to the evidence that is before them and being taken forward.

The point about training does not relate to the regulations, but I would be more than happy to work with the committee on that.

Pauline McNeill: That is my concern—all those things should have been considered before the committee was asked to recommend approval of the regulations. I know that we were discussing a bigger issue, but I want to focus on some of the other issues. I would have thought that you would want to have the confidence of rank-and-file police officers. You say that the change will be fairer, but they do not think that it will be—that is my problem.

I will go on to talk about the regulations extending the period that written and verbal warnings remain in effect for police officers by up to five years. I support what the chief constable is trying to achieve with the police regulations, which is to do more about officers who have offended and to get them out of the system quicker when they receive criminal convictions. However, that is not all that we are being asked to sign off today. I do not understand why it was necessary to include an extension to the period that is covered by verbal warnings by up to five years. Why was that put in the regulations? I will also have a question for Kevin Lee about the 2014 regulations.

Neil Gray: Lynn Ratcliff will cover the technical areas of Ms McNeill's question. Beyond the fundamental principle of a differentiated model, which is not on the table today, there are genuine issues and concerns on which we can work with the committee and Police Scotland.

One of those issues is training. It is about ensuring that the capacity is there and that training is robust, and it is also about working with officers so that they are able to get the training that they need. However, that is not in the regulations—

Pauline McNeill: I welcome that, but would it not have been better to have done it beforehand? Another concern, which relates to the publication of misconduct outcomes, is that the Police Federation does not think that the proper safeguards are in place. So, it is about the balance between publishing reports of misconduct so that the public can see what is going on or what has happened with a complaint and ensuring that the proper safeguards are in place.

I have difficulty with the detail, because I have seen the exchange of letters from the federation to Kevin Lee, the head of the conduct department, in which the federation continues to express concerns about the lack of engagement, in contrast to the engagement that it had with the Scottish Government in 2014 when they worked together on the regulations. It mentioned that there were still 14 judicial reviews on the implementation of the conduct framework, several of which it won.

I am really struggling to understand why your whole department did not try to get more agreement with and more perception of fairness for those who are affected by the policy change. Many of those things have been put in the regulations that we did not see during the passage of the 2025 act.

Neil Gray: I am happy for Kevin Lee to pick up on the engagement point, because I think that he will directly refute that.

Kevin Lee (Scottish Government): We have had extensive engagement with all the members of the Scottish police consultative forum. I have been in post for four years, during which regular and constant engagement has taken place. Ultimately, there must be trade-offs, and we cannot get everyone to agree on every particular policy proposal—

Pauline McNeill: I appreciate that—

Kevin Lee: However, I strongly refute any suggestion that my team has not engaged with the federation or anyone else. That is not accurate at all.

Pauline McNeill: I totally take your point that there must be trade-offs, but I will just finish my point. I confess that I have not been able to read everything—there is a lot, so I am trying to focus

on areas of concern. The Police Federation is concerned about accelerated misconduct hearings—it does not seem to accept that the new procedure will remove the bias. It is also concerned about the variety of standards in relation to the current two-day training process; about the publication of the misconduct outcomes and the lack of safeguards; and about the extension of the removal of verbal warnings. As far as I can see, not many trade-offs have been going on here for those who are affected, which gives me real cause for concern. Although I want to be clear that I want a lot of the regulations to be enforced—I want change and modernisation—I am not comfortable with the fact that so many rank-and-file police officers seem to be unhappy about the balance of fairness.

The Convener: I will bring you in briefly, cabinet secretary, before I move to Ms Chapman.

Neil Gray: The chief constable or ACC Ratcliff might want to come in on some of that, too, but I have covered the areas around perception of bias, some of which are dealt with in relation to the presenting officer and the chairing officer. Although we of course consider the views of officers in that process, I am concerned that we also consider those of victims, witnesses, complainers and informants, because we have not heard much about them. The modernisation of the process is about greater transparency and fairness and ensuring that the very highest standards of policing are held in Scotland. I will bring in the chief constable or—

The Convener: I will take only one of you, because time is very tight and I want to protect members' ability to question.

Chief Constable Farrell: I will make a couple of points. On the training for the 35 chief superintendents, those individuals sit just below the chief officers in the hierarchy, so they are very senior in the organisation—until a year ago, Lynn Ratfcliff, who was the chief superintendent in Glasgow, was responsible for leading 3,500 police officers. Those individuals have experience and a high level of responsibility and are accountable to the public through locally elected officials. In their day-to-day business, they set the standards for their department or divisional area, and they are very experienced in dealing with information, making fine judgments, using their discretion and working in partnership with federated ranks and the supers association.

These are individuals who come into these roles having been tried and tested across a huge range of people issues and operational issues. They make extremely high-risk decisions on a daily and a weekly basis. Last week, the committee talked about there being two days' training, but it is important to point out that they come to the table with a vast amount of experience. We can go through the detail on that.

10:45

To go back slightly, the other point that I want to mention concerns the circumstances in which we would use the fast track if somebody had not been convicted. The Crown might have considered that a case might not meet the high threshold that would cause it to go to the criminal court, but we might take that case and ask whether, on the balance of probabilities, there was credibility in the evidence that would get it over our threshold. Alternatively, there might be a not guilty plea in a case that has gone through the system, and we might look at the evidence and decide that it meets the lower threshold.

My final point is that, in a number of cases, the victims are police officers. I know that there has been a lot of discussion in this committee about fairness, and the Scottish Police Federation has raised its view in that regard, but I repeat: in a number of these cases, the victims are police officers.

Can we go on to the issue of training?

The Convener: No, not at the moment. I am in the chair and I will determine who gets to ask questions. I will always protect committee members' ability to ask questions.

I will bring in Ms Chapman.

Maggie Chapman: If there is time, I will come back to the training issue, because I am interested in that.

Chief constable, I want to pick up on the point that you made about the fact that many of the victims are police officers. Under the new regulations, what are the consequences for victims and survivors of some of the more serious gross misconduct cases, especially with regard to the accelerated proceedings? How will their views be appropriately sought and their wellbeing protected?

Chief Constable Farrell: In the proposals, there are, for the first time, provisions and safeguards relating specifically to the way in which victims and witnesses are able to provide evidence in this process. I will give an example scenario, because I think that it provides a good illustration of the process. There could be a case involving domestic abuse or sexual violence that does not proceed to the criminal court or that goes to court but ends in a not guilty verdict. We might look at that and decide that, given our lower threshold, and set against the standards to which police officers need

to conduct themselves, we will pursue the case through misconduct proceedings.

The provisions in the regulations allow for the same safeguards as in the criminal court, where a vulnerable victim can give their evidence remotely behind a screen. There are strong provisions to ensure that our process is trauma informed and focuses on the victim and ensures that they have a voice, and that we give victims confidence that the hearings have protections and they will not be in a position in which they are facing the person that they are saying has perpetrated an offence against them.

Maggie Chapman: To be clear, those provisions are not currently in place.

Chief Constable Farrell: That is correct.

Maggie Chapman: I might come back to that issue, depending on time, but I want to ask a question about disclosure of evidence. We have heard quite strong views about situations in which there has not been full disclosure, and the accused person has not seen the allegations or the evidence against them, so they cannot build an effective defence. The principle that we would expect—indeed, the principle in our court system—is that full disclosure is always the way forward. Why have police officers had to go through judicial reviews to get full disclosure of evidence?

Assistant Chief Constable Ratcliff: With a misconduct or gross misconduct investigation, the current regulations—and, indeed, the proposed regulations—require that a subject officer be served with a regulation 10 assessment of their conduct, which details the specific allegations against them. Right from the outset, before the investigation can begin, the officer is served with paperwork that sets out the allegations very clearly. If other allegations or matters come to light as the investigation goes on, or elements emerge that show that the allegations are not correct, the officer will be served with amended allegations. Therefore, right through the process and right through the investigation, they will be aware of what they are being investigated for. At the end of the investigation, the investigating officer will compile a full report setting out all the documentary evidence, the productions, the witness statements et cetera. To all intents and purposes, the process resembles that for a criminal case.

As for judicial review, I would probably turn to the outcomes of police appeals tribunals over the past couple of years. Of the 132 gross misconduct hearings that have been held, only nine—circa 4 per cent—have gone to, and been upheld at, a police appeals tribunal, and in none of those has there been any finding that suggests that disclosure had not happened. It is really important to point out that, in the majority of those cases, the appeals tribunal agreed that the officer was guilty of gross misconduct, but the issue was the disposal of the chair rather than the finding on the conduct itself. From my perspective—and, indeed, from a regulatory perspective—subject officers are, at every point in the process, fully aware of the allegations and are provided with all the evidence against them.

Maggie Chapman: But we have heard evidence that that is not the case. That might be how the process should work, but it is not how it is operating in every circumstance. I wonder whether the new regulations give an opportunity to strengthen that sort of thing or whether they just elide it completely and pretend that there is no issue.

Assistant Chief Constable Ratcliff: I still do not agree that there is a lack of disclosure. However, I agree that the new regulations build in additional checks and balances. The new regulations provide for a pre-hearing discussion in which any legal debate or question—or, indeed, any other matter—can be raised. That allows any discussions to be had in that forum, and it is a step that is not included in the current regulations. If officers have raised this issue as a concern, I would say that the new regulations address it.

Neil Gray: In addition, I think that everybody will understand that, when it comes to the disclosure of information, we need to be mindful of evidence from victims, witnesses and, potentially, informants and the need to protect their interests, too. A balance needs to be struck. We need to ensure that the information that ACC Ratcliff has referred to is available—and the regulations contain enhancements that will ensure greater disclosure and the sharing of more information—but we must also be mindful of the protection of victims, witnesses and, indeed, informants. That is a particularly pertinent point that I do not think has come to light in the evidence thus far.

Maggie Chapman: We have heard that, in equivalent regulations in England and Wales, there is a harms test to ensure that the process does not cause additional harm to the alleged perpetrator, or to victims and survivors. Because we do not have an equivalent test in either the current or the new regulations, we do not know whether that issue is being dealt with effectively.

Neil Gray: The conduct regulations already contain provisions that allow information documents to be withheld where disclosure would cause specified forms of harm. That is broadly comparable with the arrangements that operate in England and Wales. In other words, there are provisions in the regulations that allow for the process that Ms Chapman is asking for.

Maggie Chapman: I would just reflect back that the evidence we have heard is that those are not effective—the provisions may be there, but they are not effective in preventing harm.

I will pick up on something that you said in relation to training for non-legally qualified chairs or presenting officers. In response to a question from Pauline McNeill, you said that you would be prepared to work with the committee to assess what more might be required in that area. Can you elaborate on that?

Neil Gray: I should have said in my answer that this is an operational matter for the police, so I cannot predetermine what that looks like and I would need to work with the chief constable on it. I have heard what has been said. I also heard the position that the chief constable set out on the substantial experience and standing that the officers bring to the table when chairing the hearings. It might therefore be fairer for the chief constable to comment on your question. From a Government perspective, I am, of course, willing to work with the committee on what that could look like and how it could be reviewed. However, given that it is an operational matter, it would be more appropriate for the chief constable or ACC Ratcliff to confirm what that could look like.

The Convener: I can bring you in for a final question, Ms Chapman.

Maggie Chapman: I will let the witnesses respond, and that can be the final point.

Chief Constable Farrell: Lynn Ratcliff can describe the measures that we put in place to ensure that there is no conflict or bias. She can also describe in detail the current training and the preparation that we have already done in anticipation of the new regulations.

Assistant Chief Constable Ratcliff: I will be quick; because I am conscious of time, convener.

If the new regulations go ahead, we would obviously look to design a new training course. We have already had initial discussions with senior counsel about what that course might need to look like in order to cover any provision in the regulations.

On the two days that have been referenced, it is important to point out that that is not just two days of input on regulations from professional standards departments; it includes input that has already been received from senior counsel, the Scottish Police Federation, the external solicitors who represent some of the subject officers, and experienced chairs. That is backed up by regular continuous professional development days throughout the year and by practical arrangements to support the chairs in and around the hearings space, including support at the hearing with a legally qualified assessor.

On independence and bias, compliance with the existing regulations is a heavily regulated process, as it would be for the proposed regulations. We are a national organisation of 16,500 officers, so we have sufficient resilience across our three command areas and our departments to almost guarantee that the chair of any gross misconduct hearing—or any misconduct hearing—will be removed from, will be distant from and will not have previously worked with the subject officer. Indeed, that condition will be taken forward in the proposed regulations, should they be passed.

Officers have the right, under the current regulations and the proposed regulations, to object to the appointment of any chair because of questions or fears that they may have around impartiality. Also, every chair of a misconduct hearing or meeting is required, in both existing and future arrangements, to declare their impartiality by formally signing a statement that they are impartial and independent. There could be a judicial challenge if that was found not to be the case—

The Convener: The question on training is very important. You seem to suggest that a process is under way through which training will be brought forward. Can you give the committee a timescale for when that will happen? I do not think that we want to be giving a blank cheque. I would be keen to understand what the working timescale is for that.

Assistant Chief Constable Ratcliff: The original proposal, before the debate on the motion to annul came into play, was that the regulations would go before Parliament later this month. We are working to a three-month timeframe beyond that to develop, set out and start to deliver the new training.

With regard to the proposals that have been set out around examining that training, I would not want to speak on behalf of the chief constable, but we would be more than happy to participate in any process related to that, including looking at what we might want to include in the training, how we build it, and the scrutiny around it.

The Convener: We are tight for time, but, before I hand over to Ms Bland, I want to touch on the issue of independent chairing, which has been debated and commented on. My question might be best directed to Ms Dunlop, who is the lawyer representing the Scottish Government. Am I right in thinking that independent chairing would require primary legislation, or is it provided for within the regulations? There seems to have been a bit of debate and confusion on that. Could you clear that up, Ms Dunlop?

11:00

Amanda Dunlop (Scottish Government): Section 10 of the 2025 act gives senior officers an additional right of appeal, which is laid as part of the package of commencement. There is a right of appeal in addition to dismissal or demotion.

The Convener: That is in respect of senior ranks. My question, which I should have clarified, is about all ranks. Would that require primary legislation, or has provision been made in the regulations?

Amanda Dunlop: It would require further primary legislation to give the same right to non-senior officers to have a legally qualified chair in the first instance.

The Convener: Thank you for that helpful clarification.

Amanda Bland: Good morning—it is still morning. I have a question for the chief constable. I am trying to understand why you, as the chief constable, cannot remain responsible for maintaining standards while independent and legally qualified chairs determine gross misconduct cases. One line of thinking is that, surely, independent chairs would offer a degree of protection for senior officers, because it would remove potential allegations of bias. Given the close and complex ecosystem of professional and personal relationships within Police Scotland, which I appreciate that Lynn Ratcliff has touched on, how can the public and officers be confident that internally appointed hearing chairs will always be impartial when dealing with their colleagues? Having independent chairs would remove any concerns.

Chief Constable Farrell: The proposals that have been subject to consultation set out that legally qualified chairs would be appointed for cases involving chief officers, and that the chief super within Police Scotland would be appointed for those involving chief superintendents and other officers through the lower ranks. We have described some of the measures that are already in place in order to ensure that there is no bias. Police Scotland has not taken a strong view that is contrary to the proposal that is on the table. We already have a number of safeguards in place in our current arrangements, which will continue. On Lynn Ratcliff's point, the number of gross misconduct hearings that there have been and the number of legal challenges that have been made to the police appeals tribunal are very small.

Amanda Bland: Would it be fair to say that, out of the 132 gross misconduct cases, some people would resign, or would remove or end the gross misconduct? Am I correct in saying that the figure of 132 cases does not go all the way, so it is a bit misleading?

Chief Constable Farrell: I will give you some broader figures. Since 2024, 839 assessments and 160 gross misconduct cases against officers have been progressed. To your point, 28 of those officers resigned prior to those proceedings and, of those 160 cases, 132 remained. Those cases went to proceedings and nine were subject to appeal at the police appeals tribunal. As my colleague said, most of those appeals related to the sanction—the change by the appeals tribunal was the sanction, from dismissal to final written warning. A couple of the appeals related to legal issues. Some key stakeholders that have been at the committee are of the view that our approach since 2014 has been in some way intrinsically biased and that something is unfair, but that is not borne out by the data.

Throughout the process, the officer has legal representation. If we had an opportunity to talk about the process, I would point out that there are challenges in preparing for the hearing, and we take those on board.

Amanda Bland: Do you agree that, if we asked officers, we would find that not all of them but many of them are not convinced of that argument? The data is one thing, but it is also about the perception of bias and the effect that that has on proceedings.

Chief Constable Farrell: We have described the data. Often, officers are legally represented, as is their right, so there is legal challenge throughout the process. I have described the data on cases that finally got to a police appeals tribunal. Over and above that, there is scrutiny by the Scottish Police Authority through the complaints and conduct committee. There has also been scrutiny by His Majesty's Inspectorate of Constabulary in Scotland in relation to conduct, and the committee has heard from Craig Naylor on that.

I know that you have spoken to some officers, and I suppose that, if an officer is found to be guilty, human nature suggests that they are likely to have a view that there is some bias. However, we have described to the committee in detail the checks and balances, and the opportunities that officers have—

Amanda Bland: Yes, you have. I am conscious of time, because I have questions for the cabinet secretary.

The Convener: Carry on, Ms Bland.

Amanda Bland: Cabinet secretary, I want to go back to victims' rights and public confidence, which you have talked about. Surely, complainants also deserve the reassurance that serious misconduct allegations will be determined by somebody who is independent of the police organisation. What do you say to victims who are not convinced that proceedings will be fair?

Neil Gray: Assistant Chief Constable Lynn Ratcliff has clearly outlined how the process is fair. For instance, the senior officers are subject to greater public scrutiny, which I do not think would be warranted for other federated ranks. Also, there is the issue of timeliness and ensuring that victims are supported through the process. That is being improved through the regulations to ensure that witnesses, victims, complainers and informants can be treated fairly.

There is a reason why the Home Office has moved away from the independent chairs model for the federated ranks. I am not sure whether that has been covered in evidence, but the Home Office believes that the chief officers should be responsible for the conduct of officers. The issue of having independent chairs for federated ranks is not a question that is before the committee today, because the differential employment status and the responsibilities that are statutory obligations were legislated for on the formation of Police Scotland, and the model that we are discussing was created by the 2025 act.

The same system is in play for other regulated workplaces. The General Medical Council, in health, and the General Teaching Council for Scotland, in education, have the same processes in play. It goes back to the point about having fairness for all, including victims, and ensuring the timeous advancement of the process.

Amanda Bland: It is interesting that you mention other organisations. Do you agree that the police is unique in that, to become a senior constable, someone has to go through the ranks? Other people do not come in from the national health service, say, and become a chief superintendent but, in the NHS, somebody could come in at a senior rank from, say, the police.

Neil Gray: No. In the process to achieve consultant status, there is—

Amanda Bland: There is a uniqueness about the police. If you are comparing—

Neil Gray: I dispute that. You must go through the process of training and gaining experience in order to move through the qualified ranks in the health service as well.

Amanda Bland: Okay, so we differ on that.

The Convener: Ms Bland, can you ask your final question? Ms McNair and Mr Macpherson are both looking to ask questions.

Amanda Bland: My final question is, is there a potential within the system that some officers could be looked after and others not—it works both ways—in terms of bias?

Neil Gray: No, I do not believe that that is the case. The chief constable has set out the provision of that the necessary checks and balances. There is the initial hearing and there is further evidence sharing as well as the misconduct hearing. Following that, the officer has a right to appeal and, ultimately, has the right to judicial review. Police Scotland must ensure that the evidence before such a hearing is robust and merits such a process. If it does not, it is clearly subject to legal challenge, and the chief constable has already set out where that can take us. If the situation that you describe were the perception or, indeed, the reality, there would be the opportunity for legal challenge through various routes.

Marie McNair: Good morning. I want to take you back to the issue of independent, legally qualified chairs. Obviously, we are being asked today to vote through these regulations. Cabinet secretary, you have referenced the procedural differences between England and Wales, and it is important that we do what is right for the folk in Scotland. If the evidence suggests that, after implementation, public confidence has not improved, would the Government revisit the question of independent chairs?

Neil Gray: That is an interesting question. I do not think that any process is beyond review or beyond checking in on. I would support having a process of reviewing how the new process has worked. However, today, the committee is being asked to not annul the regulations, so that they can be passed at a plenary session, not vote them through. The point is that the regulations should be enacted in order to implement what was legislated for in the 2025 act.

If Parliament or this committee wants to have a process of review and re-examination of the position, that is fair, and there would be a role for His Majesty's Inspectorate of Constabulary in Scotland in carrying out such a review. I would be open to that consideration.

Marie McNair: That gives me some reassurance.

Ben Macpherson: I want to come in on what Ms McNair has just emphasised. There is a degree of agreement among stakeholders that the current regulations and arrangements are not optimal and that we want to improve them. That is why the 2025 act was passed by Parliament and the proposed regulations are set to be implemented under the negative procedure. There is a shared understanding that the regulations will bring about significant improvements, and there is also a shared appreciation among those with an interest in the regulations that we want to arrive at the best and fairest arrangement.

What has exercised me is the fact that, in the decade that I have been serving as an MSP, I have not encountered the degree of debate and

engagement on a piece of secondary legislation as I have seen in relation to these ones. Cabinet secretary, you have undertaken to be at least open to the idea of reviewing how the regulations are implemented and how they function. As a parliamentarian, it would reassure me significantly if we were not saying that this is the end of the road for consideration of the process, even for this parliamentary term, and that we will continue to work together to optimise the system, which is difficult to arrange.

11:15

Neil Gray: I agree with the deputy convener that there has been significant engagement. I also reiterate Mr Lee's point about the engagement that has gone on throughout the process, from the construction of the bill until its enactment and now with the consultation on the regulations.

As Mr Kerr said, people—including parliamentarians and representative organisations—are entitled to change their minds. However, some of those minds have changed at a late stage, despite the significant engagement that has gone on. I recognise Mr Macpherson's point and am not inured to it, which is why I am happy to look at what can be done regarding review. The deputy convener has suggested that that could happen within this session of Parliament and I am happy to take that idea away and look at it. My suggestion is that His Majesty's Inspectorate of Constabulary in Scotland is best placed to carry out that review because it is independent of Government, which would satisfy colleagues.

I know that the deputy convener understands this, but it is worth putting on the record that that if we were to move to having independent legal chairs for all ranks—a proposal that I reiterate is not before us today—that would have significant additional resourcing implications for the legal services. The chief constable has set out how many cases have been heard. If we had independent legal chairs chairing hearings, we might need different legal representatives to consider appeals. I put that on the record in advance of any review but am happy to commit to such a review being carried out to ensure the confidence of the committee, Parliament and the public that the regulations are doing what we intend to do which, as the deputy convener has set out, is to uphold the highest standards of policing and to ensure that there is a fair process to assess conduct.

Ben Macpherson: I welcome those remarks.

Can either the chief constable or the assistant chief constable emphasise the improvements that the regulations will make to the length of time for which people will be under investigation? We have received feedback that the current position means that people are waiting for a long time, during which rumours can spread.

The Convener: I will ask just one of you to answer, because we are tight for time.

Assistant Chief Constable Ratcliff: We are conscious of the delay, part of which comes from not everything being within the gift of Police Scotland because some matters involve the criminal courts.

One of the key aspects of the delay is based on something that has become a misnomer. I know that there has been much discussion about the idea of 35 days. If an officer is convicted in court and we start the clock on the day of that conviction, there is often a gap that means we have to wait, sometimes for weeks, between conviction and sentencing, but that sentence is a key part of the conduct investigation that has to take place. There is then a 28-day appeal period that Police Scotland must, quite rightly, wait out. Even with a guilty conviction and a defined sentence, the current regulations mean that we must then carry out a full assessment of the conduct and, as I explained to Ms McNeill earlier, the subject officer must be allowed to comment on the allegations. An investigating officer has to be appointed and must do a full investigation and compile a full report which must be determined on by an assistant chief constable. All of that takes time.

Once all that has been done, the 35-day period begins. The officer is served their misconduct pack and the current regulations oblige them to respond to that within 10 days. Those are the first 10 of the 35 days. They can then, as we discussed, submit to the chair any objections that they might have about impartiality, and they have three days in which they can do that. There is then an often lengthy process, involving professional standards and the subject officer's representatives, to agree on witnesses. There are 10 days for that part of the process, but it invariably runs over.

The packs then have to be served on the chair and the assessor, and then the subject officer is required to be given 15 days' notice of hearing. The key numbers are 10, 10 and 15, which equate to 35 days. However, that does not take account of the required investigation, which I have just outlined, nor of the other steps in that multistep process.

One of the key things that the proposed legislation does is truncate those timescales quite considerably through the accelerated hearings that we have spoken about.

The Convener: Thank you, assistant chief constable.

We are well over time in this session. I remind members that we pre-agreed a time and, in the future, I want us to stick to that. It only works if we all work as a team.

I go back to Mr Kerr for one final question before we move to the open debate. Perhaps we will get into these matters there, but Mr Kerr can ask a very brief question now.

Stephen Kerr: You are very kind, convener. The Angiolini review recommended independent legal chairs for all ranks facing charges of gross misconduct. I have a simple question for the chief constable. Why should you be entitled to an independent, legally qualified chair when an officer under your command who faces precisely the same allegation is not entitled to the same? What is your explanation for the disparity?

Chief Constable Farrell: The proposal was that chief officers would be subject to legally qualified chairs. I have described in detail how I will ensure that a proposal on the table for chief superintendents to chair other panels, as we already have in place a series of measures—

Stephen Kerr: I am sorry to interrupt. I understand that. In the interests of time, I am asking you why you feel that you should be entitled to that while other ranks are not.

Chief Constable Farrell: I am commenting on the proposals that are on—

Stephen Kerr: I know, but I am asking you to comment on the disparity in the two tiers.

Chief Constable Farrell: I am commenting on what—

Stephen Kerr: I know, but I am asking the questions.

Chief Constable Farrell: We have talked in detail about the measures that are in place. The cabinet secretary has talked about—

Stephen Kerr: So, you cannot give me an explanation as to why you should have that, but other ranks should not.

Chief Constable Farrell: I am commenting on—

Stephen Kerr: No, you are talking about systems. I am asking for your response, as the—

Chief Constable Farrell: I am talking about how, with the proposal on the table, which—as you have said—is for two different arrangements, I can assure—

Stephen Kerr: So, your answer is that you are entitled to that, but other ranks are not.

Chief Constable Farrell: I have described to you the checks and balances that already exist and will continue to exist with these new regulations.

The Convener: Thank you, chief constable. We are at the end of our time for the evidence session. I thank the chief constable and ACC Ratcliff for appearing before the committee.

I suspend the meeting briefly to allow colleagues from Police Scotland to leave, and then we will move to the open debate on consideration of the motions.

11:23

Meeting suspended.

11:24

On resuming—

The Convener: Agenda item 4 is consideration of two motions recommending annulment of the Police Service of Scotland (Conduct) Amendment Regulations 2026 and the Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026. The motions were lodged by Stephen Kerr on 26 October. Given the close connection between the two instruments, I propose that we have a single debate on the two motions. I invite Stephen Kerr to speak to and move motions S7M-01724 and S7M-01725.

Stephen Kerr: I begin by publicly thanking police officers the length and breadth of Scotland for their service to us all. We depend greatly on them and on their service and their integrity, and in the vast majority of cases that can be counted on. That is the reality of Police Scotland. I am grateful for everything that police officers do, and I think that I speak for us all in saying so.

I disagree with the Cabinet Secretary for Justice in respect of the uniqueness of the police officer's role. Given our commitment to the Peel principles, the nature of a civilian police force means that police officers stand in a unique position in our society.

I acknowledge the considerable work that has gone into preparing the regulations and, to be clear, there are provisions that I welcome. We all want misconduct to be dealt with promptly, we want the highest possible standards of conduct in Police Scotland, and we want the public to have complete confidence that police officers who fall short of those standards will be held accountable.

However, we must also be absolutely certain that the system is fair. I listened carefully to the evidence that we received not just today but at other meetings, and particularly to the evidence from the serving and former police officers who met us privately, and I found some of what we heard deeply troubling. We heard about

investigations lasting for months and sometimes years. Officers described feeling isolated and abandoned and, in some cases, being treated as though they were already guilty before their cases had been properly heard. We heard about the consequences for their mental health, their marriages, their children and their families. Those are obviously not minor inconveniences. Some of the experiences that were described to us have been life shattering.

An allegation is not a finding of guilt, and an officer is entitled to be treated fairly until the facts have been established. That is not a concession; it is a fundamental principle of justice. I was particularly struck by the evidence about the distinction between misconduct and gross misconduct. We have been given figures that suggest that the proportion of allegations that were initially assessed as potential gross misconduct increased from 12 per cent in 2022 to 25 per cent in 2025. That is a remarkable increase, and it raises serious questions about whether the threshold is being applied consistently and proportionately and about whether the understandable determination to uphold standards is, in some cases, leading to a presumption of guilt.

I take Calum Steele's evidence very seriously. He brings enormous experience and knowledge of policing, and his concerns about the pressure on those who are involved in disciplinary proceedings deserve careful and thoughtful consideration.

For me, the fundamental issue remains unresolved. As we have just heard from the chief constable, the regulations would leave us with a two-tier system. Senior officers—that is, those at or above the rank of assistant chief constable—would have independent, legally qualified chairs for gross misconduct hearings, while officers of other ranks would not.

11:30

Instead, serving police officers will continue to chair proceedings involving complex legal arguments, contested evidence and decisions that can end careers. As we have heard in the past hour, we were told that the training for those chairs amounts to two days, supplemented by additional support. I do not question the integrity or good intentions of the officers, but is that really an adequate basis for determining something with such profound consequences? I cannot see how fairness can mean one thing for a chief constable and something different for a constable on the beat.

The Angiolini review recommended independent, legally qualified chairs across all ranks, and Rob Hay and David Kennedy were both clear in their evidence that a requirement for independent chairs should apply across all ranks. We should listen carefully to what they told us, because they represent all of Scotland's serving police officers, and I hope that that weight of evidence and concern registers with us.

I recognise that these matters were considered during the previous parliamentary session, but whatever consideration they were given then, we now have evidence before us that was not examined in this level of detail previously. That is the point that I made to the cabinet secretary earlier. We would be failing in our responsibility as parliamentarians if we did not take the evidence seriously.

I understand the Government's desire to make progress, and I recognise that annulment would delay some improvements that are necessary and welcome. I do not dismiss that as a concern, but neither can I dismiss what I and we have heard from officers whose lives and families have been profoundly affected by such proceedings. My concern is that, once the regulations are approved, we will all simply move on. They will go into the drawer, the drawer will be locked and, despite everything that we have heard, we might never return to these questions. That would be a mistake.

Even this morning, in response to Ben Macpherson, the cabinet secretary talked about a review conducted by HMICS. We had a review from HMICS in May. It was a fairly damning report about discipline and conduct. The report contained 50 recommendations, and not one of them has been actioned, so I ask my colleagues to consider whether it is our responsibility to conduct the review before we even allow the legislation to come into force. I believe that that is our responsibility and that it would be wrong to ask someone else to do that down the road, when we have the opportunity here and now to address the issues that we have been confronted with during our evidence collection.

I am not arguing against reform. I am asking my committee colleagues to give us the time to get this right. We owe that to the public, police officers and the families of the police officers whose experiences we have heard about. For those reasons and others that time does not allow us to elaborate on, I ask colleagues to support the motions in my name.

I move,

That the Criminal Justice Committee recommends that the Police Service of Scotland (Conduct) Amendment Regulations 2026 (SSI 2026/276) be annulled.

That the Criminal Justice Committee recommends that the Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 (SSI 2026/277) be annulled.

The Convener: We move to the open debate. A number of colleagues wish to make short contributions, starting with Maggie Chapman.

Maggie Chapman: I start by saying that I support meaningful reform of misconduct procedures, but I am cautious about changes that could weaken independence, fairness or public confidence in police accountability. There is an important distinction to be made. I am not opposed to making misconduct proceedings quicker or more effective—there are good reasons to do exactly those things—but I am concerned that reforms must not make it easier for the police to regulate themselves without sufficient independent scrutiny. That sits alongside something that we have talked about before—the importance of public trust and confidence in the police and the implications of moving to a two-tier system for misconduct hearings.

The relationship between the police and the communities that they serve depends on policing by consent, and I am still not sure that we fully understand the consequences for that of the proposals before us. Police officers must be treated fairly, but the police must also be accountable to the public they serve. Those are not competing objectives—genuinely fair, independent and transparent disciplinary systems protect good officers as well as protecting the public. However, policing by consent depends and relies on trust, and that trust depends on people believing that misconduct, whoever is responsible for it, will be investigated and dealt with fairly.

Unfortunately, we have a binary choice in front of us today, which does not allow us to get into the nuance of some of the issues that we have unpacked. In my view, an important test for the regulations should be whether they strengthen public confidence in policing. There is also a question of how we can credibly tell the public that we have created a genuinely independent and accountable system when, for the vast majority of officers, the people judging their conduct will be serving senior police officers. I am still not sure that we have an answer to the question of why the process should be different for different ranks.

I am also of the view, however, that we should acknowledge the much-needed changes that the regulations will make in some areas. For instance, there are changes not only to improve the experience of survivors and witnesses in reporting misconduct and going through the process of having that misconduct investigated, but to give them more direct support as they do so. I know that we understand that, whatever our feelings about the regulations, going through that process as a witness, as a complainant and as a survivor can be brutal.

Justice being seen to be done is also important. We have not talked much about transparency in all this. Some of the reforms in the regulations are welcome, although I am not sure that they go far enough. In my view, that adds to the sense that we want to come back to the regulations, even if they go forward today or in subsequent full parliamentary proceedings.

I will ask the cabinet secretary some questions directly, to which I hope that he can respond in his contribution. On the point about fairness, if independence is important enough to warrant having legally qualified, independently appointed chairs for senior officers, why is that same principle not considered important for misconduct hearings involving ordinary constables? Surely public confidence in the disciplinary process should not depend on the rank of the officer who is being investigated. I would welcome an explicit answer, not about what the regulations say but about why the cabinet secretary would answer by referring to fairness in the way that he did.

I also ask what mechanisms the cabinet secretary considers necessary to independently monitor and review the effectiveness of the regulations, should they come into force, and whether he is satisfied with the answers that have been given today about training for non-legally qualified chairs. How will he ensure that we can monitor that and monitor any concerns about the capability, skills and experience of non-legally qualified chairs or presenting officers?

Finally, if the regulations were annulled, either today or in subsequent weeks, what would be the consequences? I am talking about the consequences for those who are accused of misconduct and, importantly, for victims/survivors and witnesses of misconduct. We have heard a lot about the consequences of the new regulations coming into force, but what exists in the current regulations that we really can no longer tolerate?

I will leave my comments there.

Amanda Bland: I wish to raise serious concerns about the two instruments that are before the committee, which amend the misconduct procedures for police officers across the ranks. Fairness, independence and equality must apply to every police officer, irrespective of rank. As proposed, the arrangements will risk creating a two-tier system in which some officers have independent, legally qualified chairs for misconduct panels while other officers, who are covered by the general conduct regulations, do not have the same safeguard.

Dame Elish Angiolini's independent review specifically recommended that gross misconduct hearings across all ranks should include an independent, legally qualified chair, an

independent lay member and a policing member. My question is this: why should an officer who is facing an equally serious allegation receive less independent oversight, simply because of their rank?

There is also a significant disparity in legal representation and funding. Officers who are represented by the Scottish Police Federation rely on its voluntary legal fund, which is financed through member subscriptions, while superintendents and chief superintendents have separate insurance arrangements, and the Scottish Police Authority assumes responsibility for chief officers' legal costs once a misconduct or gross misconduct panel is confirmed. The practical ability to defend oneself should not depend disproportionately on rank or the funding arrangements available. The regulations raise legitimate concerns about equality of arms in access to justice.

I also have concerns about the procedural changes, including non-legally qualified individuals having to determine complex legal arguments, the reconsideration of decisions, the role of presenting officers and the acceptance of written evidence without an appropriate opportunity to challenge it. Those provisions risk undermining procedural fairness, increasing legal disputes, expense and delay, and raising questions about the right to a fair hearing under article 6 of the European convention on human rights. A misconduct system must command public confidence, but it must also be fair, independent and trusted by all the officers who are subject to it, and actual or perceived bias must be properly addressed.

I therefore ask the Scottish Government to bring forward a revised legislative framework providing for independent, legally qualified chairs, alongside independent lay and policing members, for gross misconduct hearings across all ranks, in line with Dame Elish Angiolini's recommendations. I recognise, from what I have heard this morning, that extending those arrangements to officers who are covered by the general conduct regulations could require further primary legislation. I ask for further clarity on that, and I ask the Government to commit to introducing such legislation if it is required, alongside any necessary revised regulations.

I also ask the Government to address the disparity in legal funding and to ensure fair access to legal representation for officers across all ranks. If the Government were unwilling to provide a clear commitment to resolve those inequalities, I would support annulment of both instruments in their current form.

Ultimately, fairness and independence in police misconduct proceedings must not depend on rank. Every officer deserves the same fundamental safeguards.

Pauline McNeill: I, too, put on record my thanks to all those who gave evidence to the committee, and I thank the cabinet secretary and those from Police Scotland for their time.

First, it is unfortunate, looking back, that Dame Elish Angiolini's "Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Final Report" is six years old but we are only now seeing the regulations, and a lot has changed. I fully support the views of the Government and the chief constable on increasing public confidence in policing, and for that reason I would be happy for us to pass some of the regulations without question.

There has been a lot of debate about numbers, and I am not sure that we have got to the bottom of that yet. Police Scotland reported that there are 52 live gross misconduct cases, and there were 424 assessments. That number is important, because it has been suggested that, if there was an independent legal chair for all officers, it would have to cover the 424, but that is unclear to me—it might just be the 52.

11:45

Fourteen officers were sacked this year for gross misconduct. That number is up, which is a sign that not everything in the current regulations is wrong. Maggie Chapman is right to raise the question of public confidence versus fairness. We have to decide where the balance lies in that regard.

I am pretty concerned about the bar for misconduct being too low. I note that there were seven cases that the Scottish Police Federation took and won. It filtered out the cases in which it felt that the bar was too low, and it won them all.

I understand the practicalities around independent chairs. As a practical question, aside from the question of fairness, I asked whether we would have enough people to appoint. However, the aspect that offends me most of all is the provision for accelerated misconduct hearings. We heard from many police officers who described their experience—we are talking not about criminal cases but about misconduct cases. There has been no attempt in the regulations, or in any other sphere that I can see, to fix the delay in misconduct cases. That bothers me.

It is almost as if everything has been thrown at the fast track for dismissal of officers where there has been criminal behaviour—and rightly so, to improve public confidence—but there is nothing in these regulations to alleviate the concerns about the current scandal of delays, with officers waiting

several years just to have their case heard. That says to me that there is an unevenness in the way in which the regulations have been approached.

I mentioned in my lines of questioning regulation 16(c), which refers to a presenting officer. This is a much more adversarial process, obviously, but consideration could be given to gross misconduct before an investigation has been completed. In whose book is that a fair process?

On the question of training, we have had commitments that that will be looked at, but I would have preferred it if that had been addressed before the regulations came before us today. I am not content with the minor issues around the removal of verbal warnings and the extension of warnings up to five years—that seems extraordinary. I could be wrong—I will stand corrected if I am—but I do not know of any other such provisions.

On the publication of the outcome of misconduct hearings, the Scottish Police Federation is very concerned about that on behalf of its members, because not enough consideration has been given to safeguards. We know that, in these times, if allegations are put out in public that are then not proven, those allegations are still out there, so I do not think that that has been given enough consideration.

On the fast tracking of serious criminal cases, we have had to wrestle with some contradictory evidence. We heard from Lynn Ratcliff, who went through the matter in some detail, but we heard other evidence to suggest that the procedure does not require to wait until there is an appeal hearing or sentencing hearing, and that there could be a quicker process. It was suggested that that could be done in 35 days. The committee has to wrestle with those contradictory pieces of information and decide what to do about them.

In conclusion, although parts of the regulations need modernisation, it gives me cause for concern that there is such a wide gulf of disagreement between the Scottish Police Federation, the Association of Scottish Police Superintendents and the Government. Had the disagreement simply been on the appointment of independent legal chairs, I would be less concerned. I know that I got an answer to my question about engagement.

However, according to the Scottish Police Federation, there was a lot more close working on the 2014 regulations than there has been on those that we have before us. Again we have contradictory information on which to form a judgment. Even though I disagree with some of the content of the regulations, I would be much happier if there had been less disagreement with the regulations among the rank-and-file officers.

As Stephen Kerr rightly pointed out, if we do not recommend annulling the regulations today, we have some promises that we can pursue, but the regulations will come into force and that will be it. This is therefore a big decision for the committee.

The Convener: No other colleagues have sought to catch my eye, so before I ask the cabinet secretary to respond, I wish to take part in the open debate as a member of the committee. I start by saying how much I respect Stephen Kerr and value his contributions as a parliamentarian, and I mean that with all sincerity.

I have been very honest with the cabinet secretary and the Government about what I think about the Government's initial position, which is that the regulations were passed during the previous parliamentary session and that therefore the committee should allow them to pass again. That might be an unfair characterisation, but it is how I have interpreted its position based on the written correspondence. I am a stout defender of any committee not being bound by its predecessor and of robust scrutiny, and I welcome the time that we have taken to go through this process.

I will be honest and say that, as I have gone through the evidence on this and considered it sincerely, I have come to a position on it. I want to explain how I got there. However, before I do that, I say that I deeply regret that, although paragraph 30.8 of the Angiolini review, which was crystal clear about many things, says,

"There is a strong case for combining these two sets of regulations into one. That is a matter for the Scottish Ministers to consider but combined legislation would in my view be more straightforward and user-friendly",

that was not added as one of the formal recommendations that are listed on page 455 of the review. The committee will want to know why that is, and I find myself regretting the fact that, in what is otherwise an excellent report, there is no clarity about that. That has left a degree of ambiguity, which has caused the need for this debate.

The regulations are not perfect. The data on regulation 8 of the Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 is self-evident, as our colleagues in the DPLR Committee have noted. The Government has committed to come back and look at that.

Colleagues have pressed the Government on a number of points and, before the cabinet secretary responds to the debate, I want to remind him that this is not a case of the committee approving the regulations; there is a motion to annul them, which has been lodged under the negative procedure. However, I accept that the decision that is made today will have an impact.

I want a clear commitment from the cabinet secretary, on the record, about the issues relating to training. I do not consider today's training to be at all adequate, so I would like to hear a clear commitment from the cabinet secretary on that. In his winding-up remarks, I would also like him to address the issues with bias and conflicts of interest, and we need far more detail in the guidance for forming conflict-free panels.

When he is winding up, I would also like the cabinet secretary to be absolutely clear about the post-implementation review, because I am alive to the point that Stephen Kerr made about this not being an issue that can be put in a drawer and locked away. There is consensus that it needs to be considered more seriously.

I also ask the cabinet secretary to touch on the issue of vetting in his winding-up remarks, and I would like an undertaking to report back on how vetting and misconduct processes interact. I appreciate that there are judicial review proceedings on that but, as an act of good faith, I would still like a commitment from the cabinet secretary to come back to the committee at the appropriate time about it.

However, I will summarise where I have landed on this. Annulling the regulations would not create a scheme that is radically different from the one that is due to come into force on 26 November. As I have considered the evidence—and I have done so very sincerely and for a lengthy period of time—I have been mindful that no witnesses have defended the status quo. The SPF, the ASPS, the SPA and HMICS all criticised the current system. They disagreed on the remedy, but they did not disagree on the need for change. That is where the point that Ms McNeill made, about the committee being in an invidious position, is coming from.

There is also the issue that annulment would block some of the reforms that the staff associations have asked for. With something of a heavy heart—because I consider him a friend—I cannot support Stephen Kerr's motions to annul, but I can support the sentiment that he has expressed, which is that this cannot go into a drawer and be locked away. I very much expect to hear that from the cabinet secretary as he winds up. At this juncture, I will hand over to him.

Neil Gray: Thank you very much, convener. I will seek to turn to each contribution in turn.

First, Maggie Chapman spoke about the importance of public trust, and I would rest on the position of public trust. As the convener just said, if the committee recommends today that the regulations be annulled, we will continue with the current provision, and I remind the committee that there are 80 serving officers on suspension, in the vast majority of cases for allegations of sexual misconduct or domestic violence. We need a position that ensures that, when officers are convicted—11 officers currently have a conviction—there is a process that garners public confidence that they will be swiftly removed from Police Scotland. I think that everybody is in agreement with that part. If we recommend annulment today, we will return to a position under the current regulations in which Police Scotland is struggling to remove those officers.

Stephen Kerr: However, of course, the current situation would still be governed by the existing regulations.

Neil Gray: That is correct, and those regulations—

Stephen Kerr: So, nothing changes.

Neil Gray: Having those regulations means, as we have heard from ACC Ratcliff, that there is a process that must be followed in order to go through further misconduct proceedings, beyond a criminal conviction, in order to remove an officer. As we have seen, that process can be frustrated, delayed or paused, with serving officers taking up to a year to be removed from post. We must weigh that very heavily.

Stephen Kerr: Will the cabinet secretary give way?

Neil Gray: I will see whether I can do so further in this process.

The second point that Ms Chapman asked me to address has been at the foundation of the debate. With respect, I think that she understands that the question of whether we have independent legal chairs is not before us today; she is looking for a justification for independent legal chairs being put in position for senior officers and not for other ranks. I have detailed some of the reasons for that in my evidence, as have the chief constable and ACC Ratcliff.

First, at the foundation and institution of Police Scotland, the position was accepted, and in fact legislated for, that senior officers had different legal responsibilities and accountabilities. They were employed by the Scottish Police Authority and were accountable to it, while other ranks were employed by and responsible to the chief constable. Secondly, I accept the convener's criticism of the suggestion that just because something has been legislated for, it shall be. We have gone through detailed scrutiny that has refuted the idea that that is the Government's position and has, I think, provided credibility for the Government's reasons for coming forward with its position. The 2025 act legislated for the framework that we are now seeking to bring forward in regulation and see enacted.

I would also make a point about the suggestion that senior officers having an independent legal chair makes their position easier or means that they are treated differently. I would contend that the independent legal process, which is conducted in public, offers greater scrutiny of those officers than is the case for other ranks.

There is also the ability to appeal for the federated ranks, which allows for that independent legal position. Safeguards to protect federated officers from perceived bias or conflict are built into the regulations. Therefore, my response is that it is not a question of fairness, because I think that the system is fair, and that the system that we are proposing is fair, but it also has a legal and statutory basis, upon which we are legislating.

12:00

A question was asked—by Amanda Bland, I think—on whether there would be a need for primary legislation to move to the position that I think Mr Kerr is asking for, which is to have independent legal chairs for all ranks. That would require primary legislation and there would be legal considerations as to the process for that, as well as questions on proportionality and the resourcing that would be required in the legal profession, as the onus would be put on the Lord President to find independent legal representation at all stages—at first consideration, at hearing and at appeal. Substantial additional resources would be required, which would be disproportionate to what we are considering.

Pauline McNeill: You touched on the question of fairness. In relation to accelerated misconduct hearings that are not about criminal matters, are you satisfied that it is fair that a case might be considered for that process before an investigation has been completed?

Neil Gray: That was answered by the chief constable and ACC Ratcliff. Again, I offer the fact that safeguards are in place. I think that Ms McNeill is suggesting that there could be a perception of malicious intent to remove an officer on an accelerated timetable. However, Police Scotland would need to have a legal and evidential basis on which to take forward that process, and there would be potential for it to be legally tested at appeal or judicial review. Police Scotland, to ensure that it is legally protected, would need to make sure that it had the evidence to pursue those particular grounds.

The third element that Ms Chapman raised was about an independent review, which is a point that the convener also wishes to discuss. I am more than happy to give a commitment on that. Obviously, I would need to consult Mr Naylor, who is His Majesty's chief inspector of constabulary in Scotland, but I am confident that we can bring forward a review of the regulations and their operation, and that that can be reportable to the committee so that it can be scrutinised, within a timetable. I am happy to write to the committee on that to offer what the timetable could be, pending further discussion and dialogue with His Majesty's chief inspector of constabulary. That would provide reassurance that we can assess the system and ensure its workability, so that we do not end up in the position that England and Wales have ended up in. They introduced independent legal chairs but had to retreat from that, for understandable reasons that have been put in the public domain.

Maggie Chapman's fourth point was on training, which is another issue that the convener mentioned. The police representatives—the chief constable and ACC Ratcliff—confirmed that there is a process to be gone through to determine the requisite training. I give the Government's commitment to engage on that. To ensure that the issue is adequately reviewed, I will take to the chief constable the convener's view that two days of training is inadequate, which the convener has put very directly on the record.

It is an operational matter for the police to ensure the adequate training of its officers for their operational duties, but we heard from Police Scotland a willingness to engage on that point. I must be honest with the committee and say that it is beyond my powers to direct on that. However, we heard from Police Scotland and the committee that there is willingness to engage on that and to ensure that the requisite training is in place. However, I must also stress the point that the chief constable made about the seniority, experience and people management requirement of officers of those ranks, and the judgments that they undertake daily. That in itself should provide some comfort, but I recognise the point that has been made on training, and we will come back to that.

Ms Chapman also asked about the consequences of recommending annulment today and of the regulations not coming into force. It would mean that we would lose the ability to more quickly resolve the most serious cases and we would maintain a position in which the Police Authority has oversight of the misconduct of senior officers, rather than hearings having independent legal chairs and being held in public. We would lose the opportunity to have better support for victims, witnesses, informants and complainants throughout the process. Witnesses would lose access to new support arrangements, including the ability to participate remotely, which are intended to improve accessibility and reduce barriers to participation and are particularly important for vulnerable witnesses or for those who might otherwise be reluctant to engage.

As a society, we have made significant progress towards having trauma-informed and supportive processes in our justice system to ensure that people can come forward and that their concerns and complaints can be heard. The regulations will take us further towards ensuring the highest standards of policing and provide stronger rights for complainers to be kept informed, including when proceedings conclude. There will be earlier identification of concerns about misconduct, strengthening organisational learning and accountability. The regulations will also increase efficiency by ensuring that hearings are not unnecessarily prolonged. That applies to the fast-track process that Ms McNeill set out and to officers themselves, although she will understand that some delays to some proceedings are caused by dispute or delay on the part of the officer who is being complained about.

The regulations include measures that will strengthen the overall fairness and robustness of proceedings, and those measures would not be taken forward if the regulations were not in force. The introduction of presenting officers will create a clearer separation between the investigation, the presentation of evidence and the final decision. Annulling the regulations would not allow for the tackling of delays caused by non-engagement and we would see cases being timed out or being frustrated because of a lack of engagement.

As the convener and Mr Kerr have set out, the regulations include a range of improvements on the current regulations and we would lose those if the committee were to recommend annulment today.

I have already covered some of the issues raised by Ms Bland, but I have not yet been able to cover the issue of the legal costs of senior officers being met by the SPA while those of officers at chief superintendent rank are met by insurers. That happens because we do not have sufficient senior officers to pay into the type of pool that is paid into by officers who are members of the Scottish Police Federation and therefore have a form of trade union representation, making them similar to workers in other walks of life. We have only 13 senior officers and is not possible for them to have the same sort of legal fund that is available because of the voluntary payments made to the federation. It is important to ensure that there is legal fairness.

Ms Bland also asked about having legal chairs for cases dealing with all ranks, but that would require primary legislation. We must also consider the fact that that system was previously in place in England and Wales but that they have now moved away from that.

The Convener: Please wind up, cabinet secretary, because we need to move to summing up. Please be as brief as possible.

Neil Gray: Pauline McNeill asked a number of questions, including one in particular about why verbal warnings are being removed. That is based on the fact that the guidance on employment law from the Advisory, Conciliation and Arbitration Service has been updated. She also voiced concerns about how long proceedings are taking, but I think that I have covered most of that.

Turning to your asks, convener, I have covered the fact that Dame Elish Angiolini suggested the possibility of independent legal chairs for all ranks. However, that was pursued by the Home Office and has now been withdrawn. I understand the point about the need for clarity, but I go back to when Dame Elish Angiolini gave evidence to your predecessor committee in 2024, when she said that she was content with what was being legislated for in relation to the framework, which was a differentiated system of independent legal chairs for senior officers but not for federated officers.

I take your point about two days' training not being adequate, so we will take that away and work with Police Scotland on it. With regard to the guidance on confirming and ensuring no bias and no conflict, the regulations take us further forward in that sense by having a presenting officer and a chairing officer, but I am happy to look at the guidance to ensure that, in addition to what Police Scotland has already set out in evidence, we can provide the necessary transparency that you are looking for.

I have covered the point about the post-implementation review, and I will approach Craig Naylor and come back to the committee on that. I also commit to coming back to your point on vetting.

The Convener: Thank you, cabinet secretary. I call Stephen Kerr to wind up the debate and indicate whether he wishes to press or withdraw the motions to annul.

Stephen Kerr: Thank you, convener. Drawing comparisons between Scotland, England and Wales may be handy in this instance in the mind of the cabinet secretary. However, I remind him that there are 43 police forces in England and Wales—39 in England and four in Wales—and that there is one in Scotland, so there is a different dynamic in the way that we set up our policing system.

Neil Gray: The member will understand that the UK Labour Government is taking forward policing reforms to reduce the number of police forces in England and Wales.

Stephen Kerr: The reforms will mean that there will be fewer police forces, but not one. We have one, and some aspects of the dynamic of having a single police force are important in the consideration of these matters as they pertain to Scotland and the Scottish Parliament. I think that it was one of my colleagues who said that we should do what is right in the Scottish context, which is the whole point of our having a Parliament here in the first place.

The cabinet secretary has talked about what we will lose by annulling these Scottish statutory instruments. I respectfully argue that we will not be losing anything, because we can recover the best bits of the SSIs.

Neil Gray: Today, we have heard differing opinions on a number of areas. We have sought to take a position that satisfies as many perspectives as possible. Given the extensive engagement in the lead-up to the act passing in the first place and, indeed, to the regulations, this has been the route through which we have sought to garner sufficient consensus. It is not clear to me how returning to the matter would change the consensus arrived at, because the member himself has set out where there are things that he agrees on and other committee members do not.

Stephen Kerr: That is the whole point—Pauline McNeill made that point several times. The consensus that the cabinet secretary thinks he has does not exist. We have heard compelling evidence. This morning, a letter was delivered to our inboxes by the Scottish Police Federation, with a well worked-out argument about why the SPF would like us to press the pause button and look at some aspects of the regulations again before we proceed. The committee took evidence from Rob Hay from the Association of Scottish Police Superintendents, and he was very explicit about his concerns. Here is a surprising turn of events—I defend people's right to have a second look at what they have said previously about something and decide whether, in retrospect, they ought to have been more cautious. Frankly, I hope that Neil Gray would agree with that approach, which I think is sensible if we believe in having a Parliament that legislates on the weight of the evidence presented. When evidence is presented, we might occasionally have to change our minds. [*Interruption*.] I assume that the cabinet secretary is interrupting me to welcome that.

Neil Gray: Of course, anybody is entitled to change their mind. I said so in my evidence. I quoted the Scottish Police Federation, at the passage of the 2025 act, suggesting that it opposed having independent legal chairs to come in for federated officers. The federation did not believe that impinging upon the role of the chief constable in having responsibility for the discipline and conduct of officers was the right thing to do. I have not heard why that position has changed.

12:15

The Convener: Mr Kerr, please begin to wind up.

Stephen Kerr: I will wind up. There is a lot of—

Pauline McNeill: Mr Kerr, will you take a short intervention from me?

Stephen Kerr: Okay.

Pauline McNeill: You are the mover of the motions. Did you envisage what would happen if they were not agreed to? What were—or are—you expecting? I am wondering what your thoughts are.

Stephen Kerr: I am grateful for the opportunity to use this as a concluding thought. My motivation is that I want reform and I want to keep the good parts of the regulations. I do not want us to be reckless and move through the process without the appropriate due diligence. Fortunately, the convener has been amenable to that and I am grateful that he has been.

I do not envisage that we will lose anything from this. I envisage that we will gain some time and the opportunity to build a new consensus—I point to the cabinet secretary—with the Scottish Police Federation, the Association of Scottish Police Superintendents and other stakeholders, so that we can start with the regulations in a good place. They are not in a good place today. That is why I ask colleagues to press the pause button. I do not want to throw anything out but rather to press the pause button and allow us, as parliamentarians, to do our job of reviewing—rather than subcontracting it to another body, however worthy and esteemed it may be. We have our job to do and we should do it today.

With those remarks, I conclude.

The Convener: I appreciate that, Mr Kerr, and I appreciate colleagues' thoughtful contributions to that debate.

Mr Kerr has indicated that he wishes to press his motions to annul.

The first question is, that motion S7M-01724 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

We do not have electronic voting in committee. It is like the old days.

For

Bland, Amanda (Central Scot and Lothians West) (Ind)
Kerr, Stephen (Mid Scotland and Fife) (Con)

McNeill, Pauline (Glasgow) (Lab)

Against

Linden, David (Glasgow Baillieston and Shettleston) (SNP)
Macpherson, Ben (Edinburgh North Eastern and Leith) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

Abstentions

Chapman, Maggie (North East Scotland) (Green)

The Convener: The result of the division is: For 3, Against 3, Abstentions 1.

As there is a tie, I must exercise a casting vote, under rule 11.8.4(b) of standing orders. My casting vote is to vote against the motion.

Motion disagreed to.

The Convener: The second question is, that motion S7M-01725 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Bland, Amanda (Central Scot and Lothians West) (Ind)
Kerr, Stephen (Mid Scotland and Fife) (Con)
McNeill, Pauline (Glasgow) (Lab)

Against

Chapman, Maggie (North East Scotland) (Green)
Linden, David (Glasgow Baillieston and Shettleston) (SNP)
Macpherson, Ben (Edinburgh North Eastern and Leith) (SNP)
McNair, Marie (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Motion disagreed to.

The Convener: That concludes consideration of the instruments.

12:19

Meeting suspended.

12:25

On resuming—

Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026 [Draft]

The Convener: Item 5 is consideration of an instrument that is subject to the affirmative procedure. The purpose of the Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026 is to make GPS electronic monitoring legally available for certain court-imposed bail conditions in the sheriffdom of Tayside, Central and Fife. The pilot would not be time limited and its impact would be evaluated.

The regulations add circumstances in which an approved GPS device may be used for a court-imposed electronic monitoring requirement. The new circumstances apply where a sheriff, sheriff principal or summary sheriff in the sheriffdom of Tayside, Central and Fife has imposed a monitoring requirement in relation to a specified aspect of pre-conviction or post-conviction bail. The regulations are expected to apply to solemn and summary cases, before and after conviction, and GPS monitoring may be used alongside radio-frequency monitoring where appropriate.

The regulations also widen the circumstances in which monitoring information may be shared for local authority functions. That will allow information to be shared for relevant reports made available by a local authority to a court, a procurator fiscal or the Lord Advocate, as well as for the relevant supervision, advice and guidance.

The Delegated Powers and Law Reform Committee considered the instrument on 3 November and made no recommendations in relation to it.

We will now have an evidence session on the instrument with the Cabinet Secretary for Justice and supporting officials. We will then proceed to a short formal debate on the motion.

I welcome back Neil Gray, the Cabinet Secretary for Justice. We are joined by Graham Robertson, public protection unit head, and Jamie MacQueen, from the legal directorate, both from the Scottish Government.

I invite the cabinet secretary to make a brief opening statement.

Neil Gray: Thank you for welcoming me back. Colleagues will feel that I have never been away.

I am grateful for the opportunity to discuss the draft Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026. Electronic monitoring has been available in Scotland since 1998, and around 2,800 people are currently monitored on any given day. Of those, more than 900 are bail cases monitored by radiofrequency technology.

Radiofrequency technology remains effective and has different capabilities to GPS. Our approach to piloting GPS seeks to assess the relative capabilities of each technology. The regulations, alongside the negative instrument that was laid on the same day, will enable the wider use of GPS technology in the next phase of electronic monitoring in Scotland.

The related negative instrument, the Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026, will amend existing regulations on approved devices to expand the range of approved monitoring devices that are available to a court to include a GPS personal identification device, a mains charger and a portable charger.

Alongside those regulations, the instrument that we are discussing today limits court-imposed GPS monitoring to compliance with bail conditions in the sheriffdom of Tayside, Central and Fife, where we have committed to piloting GPS-monitored bail.

The pilot is judicially led, with the full support of justice partners and the Scottish Government. I record my sincere gratitude to Sheriff Principal Gillian Wade KC, who is leading the development and implementation of the pilot within her sheriffdom.

Decisions on whether bail is granted, what conditions are imposed and whether electronic monitoring is appropriate remain matters for judicial discretion in each case. The regulations do not alter that; they simply provide an additional tool.

To conclude, our approach in Scotland has been to take an incremental approach to the development of GPS technology. We are aware of the challenges that some jurisdictions have had. Regulations permitting the use of GPS within home detention curfew were approved by your predecessor committee in 2025. Ahead of today's session, I shared with the committee a recently published Scottish Government process evaluation of the first phase of GPS use in Scotland. The lessons learned from its use in relation to home detention curfew give us sufficient confidence to proceed with a further pilot, which the regulations, if approved, will enable.

12:30

The Convener: I invite colleagues to put questions to the cabinet secretary. As we agreed in the committee's pre-briefing, the first batch of questions will come from Ms Bland.

Amanda Bland: I will try to keep my questions short. Do we have an exact start date?

Neil Gray: That is to be determined by the sheriff principal, as it is led by them. We expect that it will be in the new year.

Amanda Bland: Okay. I understand that the roll-out will be phased, but do you have a firm timetable for it?

Neil Gray: As I set out in my opening statement, the roll-out will be determined on the basis of judicial decision making. At the point at which the sheriff principal agrees that it will start, it will be open to the judiciary in the sheriffdom to consider the additional tool of GPS-monitored bail.

Amanda Bland: In relation to exclusion zones, are there individually assessed digital boundaries for victims' homes and workplaces and, potentially, children's schools?

Neil Gray: That is an area that we can potentially expand through the use of GPS technology. The reason why we are seeking to move forward with an incremental process, as I set out, is that there have been challenges in other jurisdictions, as colleagues will be aware, to do with signal drift and the need to charge devices. That is why we want to test the approach and ensure—

Amanda Bland: Does that mean that there will be no exclusion zones?

Neil Gray: No. That is an additional part that GPS technology allows for. What I am saying is that we must test the capability of the technology to allow for that. That is why, in addition to the pilot on home detention curfew, which has been evidenced, we are providing the opportunity for a pilot on bail conditions to be part of the consideration as well.

Amanda Bland: Okay. Will the victim receive a real-time alert if the GPS device is tampered with or the battery is not charged and it runs out?

Neil Gray: I will bring in Mr Robertson to give some of the detail in a moment. The monitoring, whether it is done through GPS or radio frequency technology, will continue to happen in real time. That is why the resourcing of Police Scotland and justice social work is so important, because it ensures that we can do the monitoring successfully. Notification of victims where there has been a breach of bail conditions or HDC is already established, but I will bring in Mr Robertson to provide more detail on that.

Graham Robertson (Scottish Government): The current radio frequency service has the ability to notify victims if devices are used in their houses. The use of exclusion zones is a feature of the current service using the current technology, so it is not new. It is one of the strengths of the current service. The box operates in the inverse way to monitoring a curfew. You put it in a victim's house, it has a range around it, and it has a phone line directly to the victim. It will let them know straight away, so it enables safety planning.

That is one of the reasons why we need to proceed cautiously with GPS. There will not necessarily be a box in the person's house and we may not have their contact details. We need to proceed carefully to test whether it will be a safer and better option for victims, and part of that is to

understand where there are legitimate alerts that need further investigation.

Amanda Bland: To be clear, where there is tampering or a breach of an exclusion zone, the offender could be outside the victim's house and they would not necessarily know that. Is that correct?

Graham Robertson: At the moment, there are tamper safeguards in the devices. There is a Kevlar strip with a fibre-optic band through it, and if the person tampers with the device, that will be known to the provider. In most circumstances, if the person is in their house, you would not need to go near a victim. You could go and explore the circumstances of the tamper there. We have to consider carefully the psychological impact of telling victims about every aspect of the monitoring service and what might or might not be happening. It is not just about physical harm; it is also about psychological harm.

Amanda Bland: My point is that, on the question of whether the victim knows when there is a breach and that the offender could be very close to them, so the victim can get themselves to safety, the answer is no, that system is not in place.

Graham Robertson: That is the system that we have now.

Amanda Bland: Right. Okay.

Neil Gray: It is not an either/or. There could be scenarios where it could be both, and it will depend. It is important that when this is used is down to judicial discretion, rather than it being directed to be used, like any other element of bail conditions is.

The Convener: I will go to Ms Chapman for a question, and then I will come to Ms McNair.

Maggie Chapman: Following up on Amanda Bland's question, I had a question about civil liberties and human rights, but if the decision on monitoring is judge led and judge directed, I am satisfied with that.

There is a question about tampering or batteries failing or whatever, but there is also a broader question about the security of the system and its robustness against, for example, cyber attack. Can you give us more assurances on that?

Neil Gray: With any digital system, we must ensure that there are protections and safeguards against cyber attack—that will not be unique to this system. However, I take Ms Chapman's point. We are progressing cautiously and bringing forward a pilot to ensure that we are able to assess some of those concerns. The answers that Mr Robertson has provided about some of the system's potential limitations mean that this technology is not foolproof or beyond reproach. We want to test how the technology can work, particularly in relation to the possibility of tampering and the obligation for the individual to charge their device, which are differences between this technology and the radio frequency system, where there is not that requirement. There has been evidence in other jurisdictions of that being a particular challenge. However, a failure to charge the device, depending on the strictures that are put down by the judiciary, could and should be considered a failure to comply with bail conditions. There are clear implications as to what would happen if there is such a failure.

The Convener: Thank you, Ms Chapman. Ms McNair, were you looking to come in?

Marie McNair: Yes, convener. I am interested in finding out why this sheriffdom was selected.

Neil Gray: I will bring in Mr Robertson to respond to that, as he is closer to some of the discussions around that. We brought forward the intention to have a pilot. We wanted it to be in a sheriffdom, rather than nationwide, so that it could be done proportionately. There was a willingness on the part of the sheriff principal in this case to take part, for which I am very grateful. Mr Robertson has been closer to some of the discussions around the willingness to do that.

Graham Robertson: The selection came through engagement with the chief executive of the Scottish Courts and Tribunals Service, and then by writing to the Lord President. That sheriffdom was suggested, and, as it includes a mix of rural and urban areas, we think that it provides a good mix for the testing.

Marie McNair: I have one more question. What protections will exist in relation to the retention of locational data?

Neil Gray: In terms of data protection and the civil liberties element?

Marie McNair: Yes.

Neil Gray: They will be the same as with any other area where data is gathered. When that is done through radio frequency or radio monitoring, for instance, it must be done in line with the Scottish Information Commissioner's guidance on the retention and holding of that information by proportionate means.

Stephen Kerr: The question was asked about when the pilot begins, but when does it end?

Neil Gray: As the convener said, it is open ended. If the pilot is successful, our intention is to roll out the system further.

Stephen Kerr: It is open ended, so it might go on forever, basically. What is the timetable for

evaluation? At what point are you going to draw a line in the sand and make a decision?

Neil Gray: We would need to get to a threshold of evidence gathered on the effectiveness, which is why we cannot prejudge what the judiciary will determine with regard to what GPS technology usage can be. We could not sit here and—

Stephen Kerr: There will be an evaluation, will there not?

Neil Gray: Yes, of course it will be evaluated, but the point is—

Stephen Kerr: Do you know how far down the line that will be?

Neil Gray: We want to continue to evaluate the position. My point is that we cannot predict how many cases the judiciary will deem GPS technology usage appropriate for, so we cannot give a timetable for when that will happen.

Stephen Kerr: In the interests of time, I am asking the question simply to find out whether it works, because, ultimately, if it does not work the way that people think it is going to work, they will not use it at all. I am interested in exactly when you put a line in the sand. You are saying, "Yes, we have a pilot; it is open ended and, assuming that it works, it is effectively a permanent thing"—that is what it sounds like—but, really, my question is: when do we decide that it works?

Neil Gray: Yes. That is the point that I cannot give a definitive timescale for, because, if only one case is heard in the course of a year, we can assess on only one case. We need to ensure that there is sufficient evidence to assess the technology's effectiveness—that is why the pilot is open ended. However, clearly, we need to determine whether this becomes a substantive part of the justice system and is rolled out more widely.

Stephen Kerr: You say that one case is not enough, so the logical next question is: how many cases will be enough? These are basic things. If you were conducting any kind of business exercise, you would have some idea about timetabling and how many cases represented a good sample. Why do we not know that? It sounds bizarre that we do not know that.

Neil Gray: I do not want to prejudge or pre-empt in any way, and I do not want to place any expectations on the judiciary to have to utilise the technology. It is a voluntary process and an additional tool for the judiciary to use, so I do not want any undue pressure on the judiciary to feel that it must utilise the technology. That is the reason; it is not because we do not want to have an evaluation—of course we do. We will need to evaluate the pilot because the intention is that we will be able to roll out the use of the technology further.

Stephen Kerr: I suspect that you have answers to all these questions but that you just do not want to say them in public, so I will take that away.

Elsewhere in the judicial system, where is GPS monitoring being tried and how is it going? What is the evaluation process?

Neil Gray: It is being used for home detention curfew. That has been expanded in recent months, which I very much support, and part of the consideration of the expansion was about the utilisation of GPS technology to provide additional safeguards. As I set out in my opening statement, an evaluation has been conducted of the usage and the cases in which that has been taken forward. Part of the assessment also helps to inform—

Stephen Kerr: What is the assessment?

Neil Gray: The assessment is that, in these cases, it is an effective and proportionate usage. I have to say that it is a relatively small number of cases, but the report has been published and can be seen by the committee. I am happy to share that.

The Convener: This will have to be the last question.

Stephen Kerr: Yes. In your note, you acknowledge that this will potentially put further burdens on Police Scotland, which is already highly stressed in relation to front-line resources. I take it that it is fully involved in the planning for this. Are you taking any steps to alleviate the other burdens of Police Scotland to allow it to take up the slack in this area?

Neil Gray: Police Scotland has been involved in the process and is content with the arrangements we have in place. Mr Robertson has reminded me that the assessment of the HDC processes has been shared with the committee.

Stephen Kerr: Oh, okay, thank you.

The Convener: Thank you, Mr Kerr. We are way over our time, colleagues. I will speak to the committee in private session after the meeting about the amount of time that we have taken today, because it is not what we agreed.

As no other colleagues are trying to catch my eye, we move to agenda item 6, which is the formal debate on the instrument on which we have just taken evidence. I remind everyone that officials may not speak in the debate.

Cabinet secretary, please speak to and move motion S7M-01586.

Neil Gray: No further comments beyond the evidence are required, convener.

Motion moved,

That the Criminal Justice Committee recommends that the Electronic Monitoring (Use of Devices and Information) (Scotland) Amendment Regulations 2026 [draft] be approved.—[*Neil Gray*]

Motion agreed to.

Financial Services and Markets Bill

12:45

The Convener: Agenda item 7 is on the Financial Services and Markets Bill, which is United Kingdom Parliament legislation. We are considering a supplementary legislative consent memorandum on the bill, which is LCM-S7-8a. The purpose of the bill is to update the regulation of the UK financial services sector; modernise consumer protection and redress systems; streamline aspects of the regulated framework; expand access to credit unions; update the ring-fencing regime; enable action to support access to in-person banking services; strengthen measures to tackle financial crime; and update powers relating to crypto assets.

The majority of the bill concerns the regulation of financial services and markets, which is largely a reserved matter. However, it contains provisions that would allow changes to be made to legislation relating to the confiscation, seizure and forfeiture of crypto assets and other criminal assets. In LCM-S7-8a, the Scottish Government recommends that the Parliament gives its consent to the relevant provisions in the bill.

The original LCM and the supplementary LCM were considered by the Delegated Powers and Law Reform Committee at its meeting on 27 October 2026. That committee reported that it is content with delegation of the power in principle and with the choice of the affirmative procedure. The committee draws the following matters to the Criminal Justice Committee's attention: first, that only the Treasury or the secretary of state can exercise the power within the Scottish Parliament's legislative competence; secondly, that regulations will be laid before and scrutinised by the United Kingdom Parliament only; thirdly, that the Treasury or the secretary of state must consult with the Scottish ministers before making regulations that amend part 3 or part 5 of the Proceeds of Crime Act 2002; and finally that the regulations will fall within the scope of the UK statutory instrument protocol and will be notified to the Scottish Parliament only after becoming law.

We will now have an evidence session with the Cabinet Secretary for Justice and supporting officials, and we will then proceed to a formal debate on the motion. I welcome back Neil Gray, Cabinet Secretary for Justice, who is a season ticket holder at this committee. I also welcome his supporting officials from the Scottish Government: Fiona Buggy, head of proceeds of crime and economic crime, and Sarah Crawford, from the

legal directorate. As ever, I invite the cabinet secretary to make a brief opening statement.

Neil Gray: I am grateful for the opportunity to discuss the initial and supplementary legislative consent memorandums relating to the UK Government's Financial Services and Markets Bill. As you have said, convener, most of the bill concerns the regulation of financial services and markets, which is largely reserved. The Scottish Government and the UK Government agree that legislative consent is required only for the clauses introducing new powers to amend provisions relating to crypto assets. Those clauses will allow the UK Government to amend, through secondary legislation, powers in the Proceeds of Crime Act 2002 for the confiscation, seizure and forfeiture of crypto assets. At present, changes of that nature would require primary legislation and would therefore take considerably longer. The Proceeds of Crime Act 2002 relates to both devolved and reserved matters. The clauses in the bill also make provision in relation to terrorism legislation concerning reserved matters.

The Scottish Government and our operational partners support the provisions, which will help law enforcement agencies to respond to the rapidly changing crypto asset environment and make it more difficult for criminals to use digital assets to hide the proceeds of crime. That area was of particular interest at the recent meeting of the serious organised crime task force, which I was part of, where the need for us to address the business of organised criminality was discussed.

When the initial memorandum was lodged, we sought further assurances from the UK Government on how the powers would be used in devolved areas. The UK Government has provided assurances that the Scottish ministers will be consulted on substantive changes that are to be introduced by the powers, where they impact on devolved matters in Scotland. Given those assurances and the tightly defined scope of the powers, we are satisfied that devolved interests are appropriately protected. The Scottish Government therefore recommends that the Scottish Parliament gives its consent to the relevant provisions of the bill.

I am happy to take any questions.

David Linden: I have not had any prior indication of members wishing to ask questions on the issue, and I do not see anyone seeking to catch my eye.

I apologise, as I unintentionally misled the committee earlier. There will not be a formal debate on the motion—that was my doing.

As no members wish to make any comments on the LCM or on the supplementary LCM, do members agree that the Scottish Parliament should give its consent to the relevant provisions in the bill, as set out in the Scottish Government's draft motion?

Members *indicated agreement.*

The Convener: Is the committee content to delegate to me, as convener, the authority to finalise a short report on the matter for publication?

Members *indicated agreement.*

The Convener: That concludes our consideration of the instrument.

I will allow the cabinet secretary to go and get a well-earned cup of tea.

Neil Gray: Thank you, colleagues.

The Convener: Thank you, cabinet secretary.

Subordinate Legislation

Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2026 (SSI 2026/285)

Scottish Administration (Offices) Order 2026 (SI 2026/1097 (S.1))

12:50

The Convener: We continue with agenda item 8, which is consideration of two instruments subject to the negative procedure.

The first instrument is the Electronic Monitoring (Approved Devices) (Scotland) Amendment Regulations 2026 (SSI 2026/285). The instrument adds GPS-enabled monitoring devices to the list of devices that may be used to monitor compliance with certain court-imposed electronic monitoring requirements.

The Delegated Powers and Law Reform Committee considered the instrument on 3 November 2026. It made no recommendation in relation to the instrument, and no motion recommending annulment has been lodged in relation to the instrument.

As members have no comments to make on the instrument I propose that the committee makes no recommendations in relation to it. Are we agreed?

Members *indicated agreement.*

The Convener: The second instrument is the Scottish Administration (Offices) Order 2026. The instrument makes the new roles of clerk and deputy clerk of the sexual offences court office-holders in in the Scottish Administration, in the same way as holders of other offices in the Scottish Courts and Tribunals Service. The DPLR Committee considered the instrument on 10 November 2026. It made no recommendation in relation to the instrument and no motion recommending annulment has been lodged in relation to it.

Do members have any comments on the instrument?

Pauline McNeill: I was not really expecting this technical instrument in relation to the sexual offences court. Are there going to be more? I know that you cannot answer that, but can we ask?

The Convener: That is a fair point.

Pauline McNeill: I am asking because I opposed the creation of the sexual offences court, for reasons that I will not go into today, and I want to ensure that there is proper scrutiny of the issues I raised regarding the court, the rights of audience and so on. It would be helpful to know whether any more instruments on that will be coming down the line.

The Convener: I appreciate that you have a long-standing and well respected track record on the issue.

With the committee's permission, I propose that you delegate to me, as convener, the authority to write to both the Minister for Parliamentary Business and Veterans and the Cabinet Secretary for Justice to pursue the issue of whether we expect more such instruments. Are members content to delegate authority to me to do that?

Members *indicated agreement.*

The Convener: I appreciate that.

As no other members have comments to make on the instrument, I propose that the committee makes no formal recommendation in relation to the instrument, but that we follow up Ms McNeill's point in writing. Are we agreed?

Members *indicated agreement.*

The Convener: The committee has agreed to make no formal recommendation in relation to the instrument.

That concludes the public part of today's meeting. Our next meeting will take place on Wednesday 25 November. We will now move into private session for brief consideration of agenda item 9, so I ask those who are not committee members or committee staff to leave us.

12:54

Meeting continued in private until 12:57.

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