

JUSTICE 1 COMMITTEE

Wednesday 16 June 2004
(*Morning*)

Session 2

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JUSTICE 1 COMMITTEE

24th Meeting 2004, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mr Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

Marlyn Glen (North East Scotland) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Margaret Mitchell (Central Scotland) (Con)

*Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)

Helen Eadie (Dunfermline East) (Lab)

Miss Annabel Goldie (West of Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

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Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 3

Scottish Parliament

Justice 1 Committee

Wednesday 16 June 2004

(Morning)

[THE CONVENER *opened the meeting at 10:05*]

Subordinate Legislation

**Community Right to Buy (Forms)
(Scotland) Regulations 2004 (SSI 2004/233)**

**Community Right to Buy (Ballot)
(Scotland) Regulations 2004 (SSI 2004/228)**

**Community Right to Buy
(Specification of Plans) (Scotland)
Regulations 2004 (SSI 2004/231)**

**Community Right to Buy (Compensation)
(Scotland) Regulations 2004 (SSI 2004/229)**

**Community Right to Buy (Register of
Community Interests in Land Charges)
(Scotland) Regulations 2004 (SSI 2004/230)**

**Crofting Community Body Form of
Application for Consent to Buy Croft Land
etc and Notice of Minister's Decision
(Scotland) Regulations 2004 (SSI 2004/224)**

**Crofting Community Right to Buy
(Compensation) (Scotland) Order 2004
(SSI 2004/226)**

**Crofting Community Right to Buy
(Grants Towards Compensation Liability)
(Scotland) Regulations 2004 (SSI 2004/225)**

**Crofting Community Right to Buy (Ballot)
(Scotland) Regulations 2004 (SSI 2004/227)**

The Convener (Pauline McNeill): Good morning, everybody, and welcome to the 24th meeting of the Justice 1 Committee this year. It would be very helpful if members could check that their phones are switched off before we begin.

Item 1 is subordinate legislation. It looks as if we have quite a bundle of statutory instruments to deal with. There are nine in total, which are all subject to the negative procedure. I invite members to comment on any of the statutory

instruments, which relate to the crofting community right to buy and the community right to buy under the Land Reform (Scotland) Act 2003. We have before us for information an extract of the relevant report from the Subordinate Legislation Committee. Members will find that the instruments are mostly straightforward and deal with administration of provisions of the 2003 act in the nine applicable areas.

Margaret Mitchell (Central Scotland) (Con): I wish to put on record the well-documented fact that the Conservatives have opposed this legislation. I accept that the purpose of today's consideration is to fulfil the will of Parliament in putting the legislation through, but I want to record the fact that we were opposed initially to the principle of the legislation and remain so.

Mr Stewart Maxwell (West of Scotland) (SNP): The subordinate legislation deals, in effect, with something that has already been agreed by Parliament, as Margaret Mitchell has indicated. I am a member of the Subordinate Legislation Committee and can tell this committee that, although a number of issues were raised under virtually all the statutory instruments, they were mostly technical, and were to do with drafting. As is clear from the extract of the Subordinate Legislation Committee's report and its debate on the instruments, we felt that their underlying principles and objectives were not affected by minor technical drafting errors, most of which have been accepted by the Executive. The Subordinate Legislation Committee did a good job in pointing out the errors, which will, I hope, help to avoid similar errors in the future. Apart from that, the SIs are fine.

The Convener: In that case, is the committee happy simply to note the statutory instruments?

Members indicated agreement.

Petitions

HMP Peterhead (PE667)

10:08

The Convener: Item 2 is on petition PE667. I refer members to the note from the clerk, J1/S2/04/24/2, which sets out the background to the petition and details some of the related correspondence. The petition calls on the Scottish Parliament to investigate alleged discrimination against convicted sex offenders who are held in HMP Peterhead. The committee is invited to consider a number of options. Some lengthy paperwork is attached to the clerk's note. First, I invite general comments on the petition.

Mr Maxwell: The petitioner is trying to raise two points. The second, on in-cell sanitation, concerns all members of Parliament. Whether or not the sanitation facilities are in-cell, there should at least be access to night-time sanitation. I believe that the Scottish Prison Service is trying to deal with the question of access to sanitation, at least. It would be preferable to have it provided in-cell, but there is a problem in that, given the limits of old buildings such as Peterhead prison.

The other part of the petition is about access and covers issues around prisoners being in prisons nearer their homes and in low-security prisons or open prisons—whatever we want to call them. I think that the Scottish Prison Service's argument is absolutely correct. If prisoners are unwilling to take part in schemes to deal with their reoffending and the issue at hand, and might therefore still be a risk to the community, the Prison Service's view that a prisoner should be kept at Peterhead during that time is entirely reasonable.

Margaret Mitchell: I agree with and condone that approach. Prisoners' agreement to such programmes is a necessary step and if they do not agree to them, it is perfectly reasonable to keep them at Peterhead.

The Convener: Do members have any other comments on the petition? Is there anything that members would like to be clarified?

There are a number of options as to what we can do with the petition. We can consider any other issues that might arise from it, or we can agree that it does not merit further consideration. We could then respond to the petitioner, explaining the rationale for the decision.

There is one issue that I would like to follow up for general information; I would like to know about the SPS's approach to sex offenders so that we are clear about its policy. I know that the STOP

programme is valued and appears to be very successful, but it might be interesting to note what the SPS's overall policy is. For example, does every sex offender have to go to Peterhead? Would prisoners undertake other programmes in other prisons?

Mr Maxwell: I do not disagree with that, but we should say simply that the petition does not merit further consideration. I do not think that the points that have been raised are valid. I accept fully the Prison Service's explanation for its view and I do not think that we should take the matter any further.

The Convener: There seems to be general agreement that the petition should go no further. However, given that the committee is considering rehabilitation programmes, I would like to get information for the committee's benefit on the general approach in relation to the STOP programme and any other programme that the Prison Service has in mind. Do members agree to that?

Members indicated agreement.

Miscarriages of Justice (Aftercare) (PE477)

The Convener: Agenda item 3 is petition PE477. I refer members to paper J1/S2/04/24/3, which was prepared by the clerk. The paper sets out the background to the petition, which is from the Miscarriages of Justice Organisation, and the ample related correspondence, on the setting up of an aftercare programme for people who have been wrongfully incarcerated and who have served long prison sentences.

Do members wish to comment on the background to the petition or on the correspondence that has been received in response to it? The information that we have received is useful. We now know that a number of organisations have an interest in the subject; they have asked to be kept on board in respect of any consideration the committee might undertake. Are there any general comments?

Bill Butler (Glasgow Anniesland) (Lab): We could go with the first recommendation; it would be right and proper to forward the responses to the Scottish Executive and invite it to take them into account when it considers what steps to take next on providing a service for victims of miscarriages of justice. I know from a response to a recent oral question of mine to the Deputy Minister for Justice that that work is on-going. Yesterday, the convener and I made representations to the Minister for Justice in a positive meeting about how a service could be implemented after the matter has been discussed. Therefore, it would be appropriate to go with option (a) in the clerk's paper.

10:15

The Convener: I ask members to consider that proposal. It strikes me that the most important issue is that there seems to be the same provision for offenders and for those who have been wrongly incarcerated. No distinction is made between the two groups. That is the only issue that it is important we take up with the Executive. A clear distinction should be made between offenders and those who have been wrongly incarcerated. Safeguarding Communities-Reducing Offending makes the point well that rehabilitation programmes are clearly aimed at offenders and that the other group is just tagged on at the end.

Without getting into the technicalities of the situation of those who have been wrongly incarcerated, a distinction exists between them and offenders. If someone goes through the criminal justice system and, for whatever reason, has an appeal upheld, they are no longer an offender and the system should not treat them as such. That point is at the heart of what all the organisations say. As a matter of policy, the Executive should make that distinction clear. We got a positive response from the Executive, but it might be helpful for us to emphasise to it that distinction and to check whether it is on the same wavelength as us and whether it agrees that offenders and wrongly incarcerated individuals should be treated differently, although the rehabilitation programmes for both groups may take the same approach.

Mr Maxwell: I support what Bill Butler said. The clerk's paper gives us a couple of options. I do not think that it would be helpful to defer other consideration at this time—I do not see the point in doing that. It would be helpful and positive to send all the responses that we received to the Executive, given that it is considering the matter. If we want to influence that consideration, that would be the right thing to do. Therefore, I support Bill Butler's proposal to send the submissions to the Executive.

Margaret Mitchell: I agree. In particular, I agree with the convener's point about making a distinction between offenders who undertake rehabilitation programmes and people who seek rehabilitation programmes following a miscarriage of justice. Such a distinction should be clearly made although, as has been said, the process of rehabilitation for the two groups may have many common factors. I would be happy for that to be included under option (a).

Margaret Smith (Edinburgh West) (LD): I agree with what colleagues have said. In any contacts that members have had with the Executive, have they had any indication about a timescale for the Executive's consideration? The

minister's response is short, sweet and succinct. It may be positive, but it lacks detail.

The Convener: I do not think that we have any information on a timescale. As Bill Butler said, he and I have a pre-existing interest in the matter in association with MOJO. In our meeting with the minister yesterday in our individual capacities, we expressed the same interest that the committee has expressed. The minister agreed to meet with MOJO, which we requested on behalf of that organisation.

We have drawn out in this discussion that the responses from the Royal Courts of Justice advice bureau, SACRO and Helping Offending Prisoners' Families are also important. The Executive could consider its overall approach if we go with option (a) and forward all the responses to the Executive. We can include a covering note that encompasses the committee's feelings; it would just be a summary of our debate. We can also include a question about the timescale. I suspect that there is no timescale yet and that the Executive is just trying to take in the representations and consider an appropriate response.

Bill Butler: It is fair to say that the work is, as far as we were able to discover, on-going. I hope that its course will be completed early, but we do not yet know whether that will be the case. Therefore, perhaps we should ask the Executive whether it can be a bit more definitive about the timescale.

Margaret Smith: I would prefer that we ask that question and say seriously that we want the matter to be moved on as quickly as possible.

The Convener: Okay. There are no other comments. Option (a) is agreed to. Is the committee agreed that any further correspondence or consideration from the Executive should be brought back to the committee?

Members indicated agreement.

Dangerous Driving and the Law (PE29, PE55, PE299 and PE331)

The Convener: The next item is consideration of petitions on dangerous driving and the law. Petition PE29 is from Alex and Margaret Dekker, and petitions PE55, PE299 and PE331 are from Ms Tricia Donegan. I refer members to the relevant committee papers. We have dealt with the petitions in the past, so members should be reasonably familiar with their contents and consideration of them so far. There are several options for the committee to consider.

We received a letter from the Crown Office late yesterday evening, although I have not had the chance to go through that response. I do not think that we have yet had all the information that we have asked for; therefore, members may want to

ensure that they have received all the responses that they have asked for, including the one from the Crown Office. I am happy to pass the letter around, but members will need to see it formally.

Margaret Smith: Is it something that we could deal with next week? That would give us a chance to read it.

The Convener: I invite the committee to have a general discussion on the petitions now, as they are on the agenda. That would not prevent our continuing consideration of the issues in the petitions at another meeting when we have a fuller picture. Other information is still outstanding, including the statistical information on road deaths and how it is being collated. The Home Office consultation paper on the review of bad driving is expected soon, although we have no date for that and do not know its contents. However, although we are still missing some information that the committee might need, that does not prevent our discussing the petition this morning.

Michael Matheson (Central Scotland) (SNP): I apologise for my late arrival. Under option 17(a) of committee paper J1/S2/04/8/4, there are five issues relating to information that we are seeking. It would be helpful to know whether the letter from the Crown Office addresses those and whether that information has been provided. If it has not, we should continue to pursue the matter with the Lord Advocate and the Executive.

This has been a long-continuing issue that the committee has considered at various times. I recall that, when the Department for Transport or whatever down in England was carrying out a review or a piece of research, there was concern about the lack of Scottish input into that process. The committee has continually expressed concerns about that. The Home Office is about to issue a consultation paper for its review of dangerous driving and the law, so it is crucial that we remain involved in the process and continue to monitor what is going on. We should probe the Executive to ensure that it is fully involved in the consultation exercise and that the specifically Scottish aspects of the issue are taken into consideration. Failure to do so may mean that we will end up back in the same situation, with a consultation and research having been done that have not taken Scottish aspects into proper consideration.

I support options (b) and (c) under paragraph 17 of committee paper J1/S2/04/24/4. We should pursue the issue and ensure that we continue to monitor and press the Executive on what it intends to do and what part it intends to play in the consultation exercise. I say that against the backdrop of the statistics that were published yesterday, which show that the number of road traffic offences has increased significantly. I also

understand that the number of deaths that are caused by drink driving has increased from, on average, three to seven a year. There is an on-going issue that merits the committee's continuing involvement in and monitoring of the matter.

The Convener: Thank you. Does any other member wish to speak to the petitions?

Margaret Mitchell: I seek clarification on the options. This is clearly a very important and worrying aspect of the law that needs to be looked at in depth. What is the implication of option (a) of the clerk's paper? Would that mean that the committee would not have any more to do with the petitions? Would that mean that Parliament was saying that it is a reserved matter and that we are forwarding the petitions to Westminster for consultation? Although I would encourage people to participate in the Home Office consultation, I would not like to think that that would be the end of our involvement in the matter. If option (a) would spell the end of our involvement, I would have difficulty in supporting it; however, we might remove that aspect of option (a) and still encourage the petitioners to take part in the Home Office consultation. To follow options (b) and (c) would be my preferred way of handling the matter. It is an issue that people in Scotland feel deeply about, and rightly so. We should monitor the issue.

The Convener: I will clarify the position. The issues that we are now dealing with are much wider than those in the petitions. That often happens because it makes sense to include for discussion everything that is relevant to a subject. There is no reason why the committee cannot close its discussion of the petitions but continue to discuss any other matter arising out of the petitions as the committee sees fit, which can be distinct from the issues in the petitions. Often, we find ourselves going in new directions, although that can be useful and still be relevant to the petitioners—we would keep them involved. The alternative is to keep the petition running along with all the other issues.

Bill Butler: I would go along with Michael Matheson's suggestion that we pursue options (b) and (c), although I wonder whether it would be possible to pursue part of option (a) by writing to the petitioners to encourage them to respond directly to the Home Office consultation. In that way, the petitioners will be able to make representations via that consultation and we will still be able to deal with the devolved matters here.

Margaret Smith: I agree with that suggestion. We should not close the door on the matter, and I am a little uneasy about making a decision on it today when we have not seen the correspondence from the Crown Office that may or may not answer some of our questions. I do not think that we should close down our consideration of the

petitions until we have seen all the correspondence that we are to receive on the matter. We should do all that we can to ensure that the Executive takes a much more active role in the Home Office's consultation than it appears to have taken previously. This could be a good opportunity to advance some of the issues that we have all been concerned about.

The Convener: Michael Matheson made an important point about our being not really clear about the inclusion of the Scottish statistics. The liaison group on road accident statistics was to consider that matter at the end of May, but we have received no information about that. We need to know about that and about the status that the Home Office's report would have if the Scottish statistics were not included in it.

Margaret Smith: We must do everything that we can to ensure that the Scottish statistics are included in that report. We have already missed one opportunity on this in the past. Either the issue is a reserved matter, in which case the United Kingdom as a whole must be taken into account, or it is not, in which case we should be dealing with it ourselves. I do not think that we can allow the matter to fall between two stools.

10:30

The Convener: Michael Matheson mentioned drink-driving offences. Another issue that it strikes me might be important is that of roadside drug testing. I am sure that I read in the press recently that there has been a challenge to such testing. The previous Justice 2 Committee considered the matter briefly. Members of that committee volunteered Scott Barrie to do the roadside test, which involves touching the nose and so on, in one of the committee rooms.

Margaret Smith: Did he manage to do it?

The Convener: Yes.

There might be some issues that we can tag on to complete the picture, given that drug driving is directly relevant to dangerous driving.

Michael Matheson: The two main aspects are, first, the existing law and the way in which it is being applied and, secondly, the way in which the Crown Office deals with such cases when it proceeds with them. It is evident from the notes that accompany the first petition that cases are still being referred to the sheriff courts rather than to the High Court. That was an issue that we raised originally. There are issues about the consultation paper and the possible review of the law, but there are also issues about how the Crown Office and Procurator Fiscal Service is dealing with such cases. For example, is it keeping the victims' families informed? Is it taking the cases to the

High Court? Even the Lord Advocate's response indicates that that is not yet happening to the extent to which I would like it to happen.

The Convener: As no one else wishes to speak, I will summarise where we are. I think that there is general agreement with option (a) in paragraph 17 of the note from the clerk, which suggests that we highlight the issues that have been raised in the on-going correspondence with Scotland's Campaign against Irresponsible Drivers—SCID—and that we keep the petitioners informed

"of the forthcoming publication by the Home Office of the consultation paper on the review of dangerous driving".

In order to give a response, we still need to find out whether the Scottish statistics will be included in that report.

By pursuing option (b), which is

"to monitor developments in the devolved aspects of dangerous driving",

we would deal with Michael Matheson's point about the correspondence from the Crown Office and our understanding of its practice to indict cases involving drug driving in the High Court.

Option (c) suggests:

"In monitoring developments in this area, the Committee could consider following up on information awaited from the Executive, the Crown Office and the Department for Transport."

Those options represent our continuing work on the petitions. If members agree, that is where we will draw the line on the work that is to be done. We will obviously keep the petitioners informed of what we are doing. Do members want to write to the Executive and the Home Office on the subject of the Scottish statistics?

Members indicated agreement.

The Convener: I think that we are agreed that that represents the committee's on-going work as a result of the petitions. I suggest that members need to make a decision about the petitions. Given that we have enough to do, I suggest that we close our consideration of the petitions and do the work. Technically, if we do not do that, we will keep open our consideration of the petitions for ever. I think that we have agreed where we want to draw the line on the work that we need to do. That work will come back to the committee and the petitioners will be kept informed. There is a distinction between doing that and keeping the petitions going.

Margaret Mitchell: That suggestion is sensible. The whole idea of petitions is that they are acted on. As that is happening, it seems sensible to close our consideration of the petitions and to get on with the work on the issues that the petitions raise.

Michael Matheson: That is fair enough. However, it would be helpful if the clerks prepared a paper to update us on where we have come from, the issues that we have received information on and those on which information is still outstanding and to relate all that to the relevant points in the petitions. That will give us a clearer picture of the gaps and what we still have to do to allow us to continue our work on this issue.

Margaret Smith: I would feel happier if we could continue this discussion at next week's meeting as that would allow us to receive the clerks' papers, read the Crown Office's response and make a final decision on the petitions. I would also like the petitioners to be kept informed of our work on this matter.

The Convener: I have already made the point that as the committee carries out its work it will keep the interested parties—in this case, the petitioners—informed as a courtesy. The committee might feel happier to defer the decision on whether to keep the petitions live until we receive the Lord Advocate's correspondence. I have no preference either way; however, if we do not make a decision on this matter and draw a circle around the work that we want to do, we will have to deal with every petition at every meeting. That said, if the committee is minded to agree to Margaret Smith's suggestion, I have no problem with that.

Margaret Smith: If the clerks can prepare a paper for next week's meeting, we will have all the information before us and will be able to make a decision then.

The Convener: In that case, we will really need to wait until we have received all the missing information. We have received the Lord Advocate's letter, but we are still waiting for other information that we asked for. Obviously, I have no control over when that information will arrive. We will see what we have received by next week; however, as I have said, if we do not make a decision, we will have to keep revisiting the petitions at every meeting.

Mr Maxwell: I appreciate Margaret Smith's position on this matter. Of course we would like to see all the information that we have asked for before we close the petitions. However, as we have acknowledged that we will not receive all that information and have agreed that the petitions have merit and that we will take our work on them forward by writing to the minister and the Executive on a variety of issues, I do not think that keeping them open adds anything to the process. Indeed, I would be very surprised if we received the outstanding information by next week. I cannot see the benefit of waiting until we receive that information before we close the petitions. As Margaret Mitchell pointed out, the petitions'

purpose is to get us to take on the work, which is what we have agreed to do. We should simply draw a line here and move forward.

Bill Butler: I agree with Stewart Maxwell. Without rehearsing his comments, I think that it would be appropriate formally to close the petitions now.

Margaret Smith: It would have been helpful to have found out the information that we were still waiting for and who was supposed to have supplied it before we make that decision. However, I am happy to defer to the committee's majority decision.

The Convener: Given our work load on the other petitions that we have to deal with, it is only sensible that we draw a line around the work that we think we should carry out. However, I reassure you that the committee will not be prevented from adding anything that is necessary or helpful to our list when we receive the outstanding information.

Margaret Smith: I am content with that.

The Convener: We have agreed to close the petitions and to consider the missing information as soon as we receive it, and have decided what work we will do as a result of the issues that the petitions raise.

Media Working Practices

10:39

The Convener: We move on to item 5, which is consideration of the clerk's note on working practices for the Justice 1 Committee when dealing with the media. The Conveners Group has recently published guidance on this matter and it has been suggested that it would be helpful for committees to agree media working practices. I invite members to consider the suggestions set out in the paper.

Bill Butler: What is set out in the note from the clerk is sensible and practical and I see no controversy in it. I commend the commonsense approach that has been suggested to the committee.

Margaret Smith: I agree with the contents of the note. It is useful to have set out the suggestion that media conferences should be done by

"members representing the political mix on the committee."

It is also useful to remind conveners that they have a particular role in representing their committees, as opposed to representing their own personal views. It is useful to have that set out as an agreed position.

Mr Maxwell: It is useful to have on record where we stand on such issues. They came up in a previous Conveners Group paper, of which I was aware because it was also sent to deputy conveners. I have no objections to paragraphs 1 to 5 of the note, but I wish to raise a minor point of clarification on paragraph 6. The second sentence of that paragraph reads:

"If expressing a view, the Convener will endeavour to distinguish clearly between a view given in a personal capacity and one given on behalf of the committee."

I think that that should be expressed more strongly. I am not just talking about the convener, but about any committee member who is asked for their opinion. If we are speaking on behalf of the committee, that should be made absolutely clear; if we are speaking on behalf of our party, that should be made absolutely clear. The media are sometimes a little bit lazy in distinguishing between party points of view and points of view from the committee. This is more likely to concern the convener than anyone else, but if any of us are in such a position, we should do more than just "endeavour to distinguish" the views that we are conveying; we should try to make it absolutely clear whose views we are conveying. I know that that might not always be possible, but I would like that sentence to be stronger than "will endeavour to distinguish".

Bill Butler: We could just take out "endeavour to", which would mean that that phrase would become "will distinguish".

Members indicated agreement.

Bill Butler: That was a fair point, which had slipped past me.

Michael Matheson: Like other members, I think that the paper before us is common sense and is helpful. I imagine that it will be useful for the convener to have something to refer to, which details the role that she has in dealing with the media on behalf of the committee. Like Stewart Maxwell, I think that a convener should take a strong line and distinguish clearly between their own view and their committee's view. That is the key point: it is all about making that distinction, and to "endeavour to" do so is not strong enough.

I understand the problem that you sometimes have when dealing with the media, convener. The media sometimes tend to manipulate things. You might comment in a personal capacity, but you could be written up as speaking as convener. Such things inevitably happen. We might deal with them differently in future, but I think that it would be helpful to strengthen paragraph 6 by removing "endeavour to".

The Convener: I do not have a difficulty with that suggestion. It is sometimes difficult to make the distinction when dealing with the broadcast media. If I agree to do a live interview in a personal capacity and am sitting in the studio with the lights blazing, and the interviewer starts by saying, "As convener of the Justice 1 Committee", it can be difficult to judge, in the few split seconds that are available, whether to point out that I am not there to answer questions in that capacity. It should be recognised that some difficult occasions arise when members do not set themselves up as representing the committee's view. I take the general point that has been made, which I think is an important one.

Margaret Mitchell: The general point covers committee members, not just conveners. We are often invited to comment as representatives of the Justice 1 Committee. The same responsibility should be on all committee members to clarify that they are giving their personal view or speaking on behalf of their party, rather than representing the committee's views on the matter concerned. It goes wider than the conveners.

The Convener: The paper is designed to convey that, while identifying the fact that, generally, the convener is more likely to be in that position—and, perhaps, the deputy convener, although to a lesser extent.

There are other media-related issues that are important. In the past, I have taken issue with the

media office on its lack of a proactive stance on committee reports. I do not mind saying that there are one or two reports for which we have slaved our guts out and on which the media office has not been proactive enough, but it is taking steps to rectify that. It must be understood that the media office's job is to work on behalf of the committees as well as on behalf of the institution of the Parliament.

There might be ways in which we as committee members are able to maximise the profile of our work, and it is important to feed that into the system. For example, the timing of the publication of our reports can be important. That is a decision about which I would normally be consulted, but perhaps the committee should be made aware of that.

When is our stage 1 report on the Emergency Workers (Scotland) Bill due?

10:45

Alison Walker (Clerk): It is due on the Friday of the last week before the recess.

The Convener: We might not have any choice about that, but committee members can see why we might get slightly less—or slightly more—coverage when we issue the report.

Margaret Smith: I concur with your comment about the media office's approach in the past. I think that we now have a member of staff who is meant to work on the media profile of the committees, which has improved things slightly. However, I concur that, in the past, the Parliament has not been as proactive as it could have been in pushing forward some of the reports that committees have produced or in investigating all the options. That is not just about getting stories in the usual Scottish newspapers; it is about trying to place notices in journals and magazines, for example. In the past, the media office has not done the background work that it could have done on behalf of the committees.

A lot of the work that we do in the committees is unsung. It means a lot to members, takes up a lot of members' time and results in some very good reports and a lot of good cross-party working, but to see months of work disappear without trace can be frustrating. As well as having guidance on the committee's media working practices, the media office should have working standards, to which it must adhere, on how it deals with committee reports. I have been involved in important reports that were not published in time to make any impact on the press at all, and that is rather disrespectful to the work that committee members do.

The Convener: That is a good point.

With the removal of "endeavour to" from paragraph 6, is the committee satisfied with the contents of the paper?

Members indicated agreement.

Margaret Smith: There was some discussion about whether paragraph 6 should be extended to all members. We could change the start of the final sentence of that paragraph to begin "If any member, including the convener, is speaking on behalf of the committee". I agree with comments that colleagues have made that it is useful to get clarity for all committee members.

Bill Butler: We could say that members will follow the same convention.

Margaret Smith: We just need to change the beginning of the final sentence of paragraph 6 to "If any member is speaking".

Margaret Mitchell: That guidance is more important for the convener and the deputy convener, because there is more of an assumption that they will give the committee's collective view, whereas a member might only reflect the discussion. There is a little bit of a distinction, and each situation should be taken on its merits, depending on what is being commented on. Perhaps all committee members should be mindful of the guidance, but there is a distinction between members and the convener or deputy convener, who are authority figures on the committee and could be considered to be giving the definitive view.

Mr Maxwell: I understand Margaret Mitchell's point, but I also agree that, if any of us is speaking to the media, we should make it clear whether we are speaking as an individual or as a committee representative. I do not know whether this suggestion is helpful, but rather than amend paragraph 6 further, perhaps we could add a new paragraph 7 that says that committee members should ensure that they distinguish the capacity in which they are speaking. Something along those lines could be added that effectively makes the point that the practice applies to all of us. We could also make the point that Margaret Mitchell made about conveners being much more likely than anybody else to be called on to do that job.

Michael Matheson: Margaret Mitchell has raised an issue that we should perhaps consider more carefully. When a committee is considering a matter, there could be a clear divergence of views on an issue among members and we could, for example, end up with a minority report. As a committee member, I might wish to express my view on that minority report or on whether there is a difference of opinion in the committee, whereas the convener will speak for the committee in a

given media role. At media conferences, for example, if there is a collective committee view on a report, all committee members who are present at that media conference should express that view. However, there will be occasions on which there are differing opinions. To some extent, conveners have a slightly different role, although they might have their own personal view. There is a danger that, if we enforce the proposals on committee members, individual members could be compromised when there is a divergence of views. Perhaps we should consider matters more carefully before we simply apply what the paper proposes to all committee members.

Bill Butler: I understand the point that Michael Matheson is making, but I think that it is dealt with in paragraph 6. I agree with Stewart Maxwell, who suggested that there should be a new paragraph 7, which could say something like, "All members should follow the above convention," which is clearly stated in paragraph 6. That paragraph states that the convener must

"distinguish clearly between a view given in a personal capacity and one given on behalf of the committee."

A member would therefore have to do the same and follow the same convention. If the committee was split on an issue, they would be able to say that they were not giving the view of the committee, but that they were giving their own view as one of the majority or as one of the minority. I think that that would meet the danger.

Mr Maxwell: I agree with Bill Butler. I understand where Michael Matheson is coming from, but the two paragraphs that we are discussing—if there are to be two paragraphs—are not intended to shut down the ability of an individual member to speak. The purpose is simply for members to explain in what capacity they are speaking. That is the distinction that we are trying to make.

Michael Matheson: Was the paper drafted by the Conveners Group with the intention of applying the proposals to all committee members, or to conveners?

The Convener: The paper arises from the Conveners Group's discussion of general guidance to conveners. We are dealing with media working practices because we have not had any discussion on them to date. The paper was prepared by our clerks.

Michael Matheson: I wonder whether it would be helpful to know whether other committees are applying things in the same way. There is a danger that one committee could be applying the convention while our committee is not. The same approach must be taken by all committees. If a member moves to another committee, they might think that the same rules will apply, but they could

find out that they do not. It would be helpful to get clarification on that matter.

The Convener: That is a good point. Is the wording that has been selected in paragraph 6 for guidance? Taking that matter back to the Conveners Group is all that can be done.

Michael Matheson: We could get clarification on that matter.

Margaret Smith: I presume that the suggested change of taking out the words "endeavour to" will have to be taken back to the Conveners Group, too.

Michael Matheson: I do not think that that has to be done.

Margaret Smith: With respect, Michael, if an agreed wording has come from the Conveners Group—

Michael Matheson: Is that wording from the Conveners Group?

The Convener: We would have to suggest to the Conveners Group that the guidance be changed.

Margaret Smith: Can we change it, or does the Conveners Group have to do that?

The Convener: We would have to suggest to the Conveners Group that the wording of paragraph 6 should be firmed up in the way in which members wish. A distinction has been drawn between the convener and other members of the committee. However, the same convention would apply to other members, although the situation would be less likely to arise.

Bill Butler: So we would feed in both proposals to the Conveners Group, to ensure that there is a uniform approach.

The Convener: That is all that we can do.

Mr Maxwell: I will not disagree with what has been said, but I understand that these are not hard-and-fast rules. They are merely suggestions about the way in which committees should approach this matter. It is for individual committees to adopt them, not adopt them or amend them. We could adopt or change the proposals as we wish.

The Convener: You are right to say that this is guidance—all members know what that means. At issue is whether the committee wants to have wording in paragraph 6 that is different from the wording adopted by all other committees, which is possible.

Margaret Mitchell: The point is not that a convener may be asked more frequently to give a view on behalf of the committee, but that they hold a position that may be seen as more authoritative

and that their view may be more likely to be regarded as the collective view of the committee. Consequently, there is a greater responsibility on the convener. In certain circumstances, there is a responsibility on other members, but by definition their view will be the view only of a committee member and will not be accorded the same status as the convener's view. That is why there is a distinction between the two. The same guidelines apply, but they apply more stringently to conveners, who are seen as authoritative figures.

The Convener: I am clear about the distinction that has been drawn, but the question is what we should do with the guidance.

Michael Matheson: We must get clarification of whether the guidance will apply across all committees. I take on board the point that this is guidance and that it is for committees to decide whether they adopt it. However, there is potential for confusion between one committee and the next about the media rules and guidance that are applied. I would find it helpful if, before we made a decision, we asked the Conveners Group to consider the suggested amendment and to provide clarification on the application of paragraph 6 to committee members. A third issue is the application of the guidance across committees. Members of different committees will end up being confused. If members move to other committees, they will have no idea what guidance applies. Instead, they will refer to the guidance that applied to their previous committee.

Bill Butler: I echo those remarks.

Margaret Smith: I, too, echo most of what has been said. It is important that guidance of this sort should be applied on, dare I say it, a corporate basis and that there should be uniformity across committees. We should do whatever is necessary to get that uniformity, so that there is no question of people saying that they did not understand what they were meant to be doing or that they thought that the guidance applied to them differently to the way in which it applied when they were members of another committee. We must ensure that once the guidance is in place members know exactly what they can and cannot do. They will then know what rules and guidance apply if they transgress in any way.

The Convener: We have two choices: we can take the non-corporate route or the corporate route. I have no difficulty in expressing to the Conveners Group the committee's view that it would like some amendments to be made to the guidance, if that is still possible. However, I would be opposed to our adopting rules for dealing with the media that are slightly different from those adopted by other committees. I am clear about Margaret Mitchell's point that conveners—and to a lesser extent, deputy conveners—will be seen as

more authoritative figures and that everything that they say will be taken to represent the committee view, unless a distinction is made between committee views and conveners' views as individual members. I am clear about the spirit of what is proposed and that the convention would apply to any other member, if the situation arose. However, I would have difficulty with our using wording that is different from that used by other committees.

Bill Butler: As you suggest, you could feed in the matter to the Conveners Group. After we have heard what it says, we can discuss the issue. If the group agrees both to the suggested amendments and to their uniform application, that is fine. If not, we can discuss what it says.

The Convener: We will feed in the suggestions to the Conveners Group.

Item 6 on the agenda is consideration of our stage 1 report on the Emergency Workers (Scotland) Bill. At a previous meeting, the committee agreed to consider its draft report in private. We will move into private session to allow that discussion to take place.

11:01

Meeting suspended until 11:05 and thereafter continued in private until 12:40.

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