JUSTICE AND HOME AFFAIRS COMMITTEE

Wednesday 21 June 2000
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
23rd Meeting 2000, Session 1

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Kate MacLean (Dundee West) (Lab)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Pauline McNeill (Glasgow Kelvin) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

THE FOLLOWING MEMBER ALSO ATTENDED:

Angus MacKay (Deputy Minister for Justice)

CLERK TEAM LEADER

Andrew Mylne

ACTING SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 1

Scottish Parliament

Justice and Home Affairs Committee

Wednesday 21 June 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:34*]

The Convener (Roseanna Cunningham): Good morning, everyone. I advise the committee that a fair number of negative statutory instruments that have been laid recently are likely to be referred to us to deal with. I will not read out their titles, but about seven of them are headed our way some time soon. I warn members that they will pop up on our agenda shortly.

I am not sure whether I have said this before, but at the conveners liaison group I suggested as a possible topic for committee business in the chamber this committee's report on the Carbeth hutters. We cannot have that debate before the summer recess, because the Executive needs time to frame a response to the report. I have indicated that I do not think that we will require more than an hour and a half to debate it.

Phil Gallie (South of Scotland) (Con): I remind you, convener, that I was a dissenting voice in that report.

The Convener: I am sure that you will remind us of that if there is a debate in the chamber. I wanted simply to advise members of possible future business that would relate directly to them. Committee business is a rather special kind of chamber business, and we will have to see how it goes.

I believe that the Abolition of Feudal Tenure etc (Scotland) Act 2000 is to be published any day now, if members wish to get their signed copies framed as a memento. That is tangible evidence of work that has been done.

Regulation of Investigatory Powers (Scotland) Bill

The Convener: I move,

That the Justice and Home Affairs Committee consider the Regulation of Investigatory Powers (Scotland) Bill at Stage 2 in the following order: sections 1 to 28, long title.

Motion agreed to.

Bail, Judicial Appointments etc (Scotland) Bill

The Convener: I move,

That, if the general principles of the Bail, Judicial Appointments etc. (Scotland) Bill are agreed to at Stage 1 and the Bill is referred to the Justice and Home Affairs Committee for Stage 2, the Committee consider the Bill at Stage 2 in the following order: sections 1 to 11, the schedule, section 12, long title.

Motion agreed to.

The Convener: We have to do it this way because, as members know, the stage 1 debate on the bill will take place tomorrow afternoon, between 3.30 pm and 5 pm, and the deadline for amendments at stage 2 is 5.30 pm the following day. That means that we are likely to have to deal with amendments to the Bail, Judicial Appointments etc (Scotland) Bill next Tuesday morning. We are clearing the ground for us to go straight on to that.

Petition

The Convener: Members have received a note from the clerk on petition PE212 from the District Courts Association. I thought it appropriate to include the petition on the agenda for today's meeting. Any member of this Parliament is at liberty to take up the point in the specific form requested by the District Courts Association and to submit an appropriate amendment at stage 2 of the Bail, Judicial Appointments etc (Scotland) Bill. We need only take note of the petition. Are members happy with that?

Members *indicated agreement.*

Regulation of Investigatory Powers (Scotland) Bill: Stage 2

The Convener: I will remind members of the procedures for stage 2, with which you are probably already familiar. I welcome the Deputy Minister for Justice and his Executive team, which is slightly different this time. Members should have a copy of the marshalled list of amendments, which was made available this morning. You should also have a copy of the bill and the groupings.

Amendments will be called in turn from the marshalled list and will be called in that order. It is important to remember that the committee cannot move backwards in the marshalled list. There will be one debate on each group of amendments. I will call the proposer of the first amendment in the group, who should move that amendment and speak to all the amendments in the group. I will then call other speakers, including the minister and the proposers of other amendments in the group.

Other amendments in the group should not be moved during the debate. If, at the end of the debate, the member who moved the lead amendment does not want to press it to a decision, they should seek the agreement of the committee to withdraw it. If any member of the committee disagrees when I put the question on an amendment, there will be a division by a show of hands. It is important that members keep their hands raised to allow time for the count to take place. When I call an amendment, if the member who proposed it does not wish to move it, they should say, "Not moved".

I will put the question on each section of the bill at the appropriate point. Before I do so, I am happy to allow a short general debate on the section if people want one. That would be useful in allowing discussion of matters not raised by the amendments. If any member wants to oppose agreement to a section, I will consider whether to allow a manuscript amendment to leave out the section to be moved.

Section 1—Conduct to which this Act applies

The Convener: I call Michael Matheson to speak to and move amendment 6, which is grouped with amendments 7, 8 and 10, also in Michael's name, and amendment 9, in Phil Gallie's name.

Michael Matheson (Central Scotland) (SNP): The purpose of amendment 6 is to clarify whether this part of the bill refers to an individual as the person who is under surveillance or the person who is undertaking the surveillance.

Amendment 7 seeks to clarify whether intrusive surveillance is to be carried out directly in relation to anything taking place within a residential premises or a private vehicle. I would welcome clarification from the minister on that point.

Amendment 8 seeks to make clear that surveillance devices that are mainly for the purposes of identifying the location of a vehicle are defined under direct surveillance and are governed by section 1(2) of the bill.

Amendment 10 seeks to clarify the definition of the types of devices that are required to be used in intrusive surveillance. At present, the section focuses on the quality of information that is gathered from a surveillance procedure rather than the nature of the information that could be provided by undertaking a certain form of surveillance. The amendment will ensure that it is necessary to demonstrate whether a device is capable of providing information of the same quality. I would like the minister to clarify that point.

I move amendment 6.

Phil Gallie: The wording that follows "unless" in section 1(5) is restrictive and unnecessary. If anything is discovered by a device that is placed outside the vehicle or the home that reveals information that would be of use to the surveillance operation, it should be accepted as valid. The words after "unless" should be deleted.

On amendment 7, I would suggest that the wording of the bill as it stands would be preferable. The wider interpretation that is offered by the bill would be more appropriate. If we accepted the amendment, we would build in a facility that would allow someone to escape justice on a technicality.

The Deputy Minister for Justice (Angus MacKay): I am grateful for amendment 6, which seeks to clarify the definition of intrusive surveillance. My advice, however, is that the word "individual" does not need further qualification since the surveillance involving the presence of an individual means someone who is carrying out surveillance as defined in section 27(2). Section 1 must be read in conjunction with section 27(2).

Amendment 7 is helpful as it attempts to clarify the definition of intrusive surveillance. However, again, my advice is that this section does not require any further qualification as it must also be read in conjunction with the definitions supplied in section 27(2).

09:45

In relation to amendment 8, I point out that anyone driving or walking along a road is able to see where vehicles are coming to or going from and that, therefore, drivers do not have a high

expectation of privacy in that respect. For that reason, we believe that it would be inappropriate to class the tracking of the movements of a vehicle as intrusive surveillance.

The use of surveillance devices such as directional microphones is the subject of amendments 9 and 10. Our view is that a balance must be struck between protecting the privacy of the individual and not hindering the work of law enforcement operatives. The quality of detail that might be obtained from the use of such devices depends on a number of factors, including the type of device, the amount of background noise and how busy the area is.

While in some cases the quality of information might be of a sufficiently consistent and high level for it to be classified as intrusive, in other cases the information gained might be little different from that which could be picked up by a casual observer. For that reason, the decision about whether the use of such devices should fall into the category of intrusive or directed surveillance is best made on a case-by-case basis, bearing in mind the capability of the devices and the location and circumstances in which they are intended to be used. It might well be that a device that is capable of delivering extremely high-quality information when used close to a target will produce less useful material when used from a distance than a less sophisticated device used at the same range.

It is important to remember that provision is made for commissioners to oversee the use of such surveillance techniques to ensure that they are not being abused.

Accordingly, I invite the members to withdraw their amendments.

Michael Matheson: With regard to amendment 6, the minister referred to section 27(2). I would like him to clarify what he was saying about the part in that section in relation to the definition of an individual.

Angus MacKay: It appears to us that the definition that is being sought by those amendments is sufficiently clearly set out by section 27(2) and its reference to subsection 27(3), which is set out beneath.

Michael Matheson: I am not necessarily convinced that it sufficiently defines an individual in distinguishing the person who has undertaken the surveillance and the person who is under surveillance. It refers more to the person who has undertaken the surveillance. The reason for amendment 6 is to have greater clarity about the difference between the two individuals.

Angus MacKay: I also refer Mr Matheson to section 1(3)(a). If that is read in conjunction with section 27(2), it has the effect that the individual present is the person doing the surveillance. Does that satisfy the intention of his amendment?

Michael Matheson: Section 1(3)(a), to which you referred, states that surveillance is intrusive if it

"involves the presence of an individual, or of any surveillance device".

Angus MacKay: If you read that paragraph in conjunction with section 27(2)—

Michael Matheson: I see where the minister is coming from, but I believe that putting something in the bill would make the intention of that clear.

Angus MacKay: I hear what Michael Matheson is saying, but our view is that it is sufficiently clear.

Phil Gallie: On amendment 9, I would like the minister to go into more detail as to when he believes that the device that is placed in the circumstances described in section 1(5) should be considered to be intrusive.

Angus MacKay: It would only be considered intrusive when the quality of information being produced was equivalent to that which would have been produced by an intrusive device. It would have to consistently produce such information. Were it not the case that such information was being produced consistently, it would not be regarded as being intrusive, because it would not produce information of equivalent quality.

Phil Gallie: If information were to become available as a consequence of that device being placed and it had not previously been considered to be intrusive surveillance, would that information be lost to the people seeking information?

Angus MacKay: We are trying to predict as best possible in advance what quality of information will be produced. It is not always possible to determine because, as I set out in my earlier argument, local circumstances—

Phil Gallie: Sorry, minister. I cannot hear you.

Angus MacKay: I am not hearing well this morning either, convener. I am not sure whether there is a problem with the microphones.

The Convener: Move closer to the microphone. I think the problem occurs when you turn your head to speak to someone. We are all subject to the same problem. Just keep looking at me, minister. [*Laughter.*]

Angus MacKay: If you hold up the cue cards, I will read them.

I am trying to remember the point that Phil Gallie was making.

Phil Gallie: It is okay, I have a tape under the table.

Angus MacKay: I think that Phil Gallie referred to the quality of information that would be produced by a different type of device, the use of which might not initially be intended to be intrusive surveillance, but which produces information of a quality that might have been produced by intrusive surveillance. I was making the point that at the time of authorisation there would, of course, be a requirement for appropriate authorisation to take place, depending on the type of surveillance that is intended. It is difficult to predict what local variations might produce in terms of the quality of information that is available, regardless of the device that is being used, because several factors might interfere with the quality of the supply of information and the consistency of that information.

For those reasons, we think it is important that the legislation should proceed as we have set out to allow flexibility, but to have appropriate safeguards. The key point is the initial circumstances in which authorisation takes place. For all three types of authorisation an appropriate individual, as set out in the bill, must be satisfied that the surveillance is required, is proportionate and is taking place in relation to serious crime. At the point when that authorisation is being sanctioned, the appropriate individual would have to be satisfied that the types of surveillance were proportionate.

Phil Gallie: I accept that and I recognise what the minister has said. I do not know what kind of device would pull in this additional information, but if additional information came to light when such devices were used that demonstrated that a crime—or crimes—was going to be committed, I would hate action to be stopped because the surveillance documentation did not meet the requirements. I would like an assurance that that would not happen.

Angus MacKay: That would not be the case under the terms of the legislation. That information would still be usable.

Phil Gallie: In that case, I am quite happy.

Gordon Jackson (Glasgow Govan) (Lab): I think that Phil Gallie has got it the wrong way round. This provides flexibility rather than puts a straitjacket on it. It makes it easier and I think that the police would agree with that.

I will put my lawyer's hat on and say to Michael Matheson in relation to amendment 6 that I do not think that it does read in the way that he is saying. Section 1(3) states:

"involves the presence of an individual, or of any surveillance device".

When you take "individual" or "surveillance device", it is a package; it is the method of surveillance. The definition of when surveillance is intrusive includes surveillance with an individual or a device. It is clearly the thing that is doing the surveillance, whether it is a person or a thing. It could never read as the individual who is being looked at.

That interpretation would not make any sense anyway, because obviously you could have surveillance on premises when there was no one there. The premises could be empty. If one reads the section, it defines surveillance by an individual or a device. I cannot imagine in my wildest dreams a legal argument that would say that the individual was the person who was being looked at rather than the thing that was doing the looking.

Michael Matheson: As Gordon Jackson has put his lawyer's hat on, as a non-lawyer and being cynical about lawyers, I am sure that I could find another lawyer who would interpret this in another manner.

Gordon Jackson: I doubt it.

Michael Matheson: I think that we should have greater clarity.

Phil Gallie: Christine Grahame is another lawyer who would sign up to the view that has been expressed.

The Convener: Whether or not you are cynical about lawyers, it has been known for lawyers to disagree occasionally; otherwise, we would never have any court cases. Unless the minister wants to say anything else, the ball is in Michael Matheson's court, so to speak.

Michael Matheson: I have nothing else to add.

Amendment 6, by agreement, withdrawn.

Amendments 7 to 10 not moved.

The Convener: I call amendment 11, which is in the name of Michael Matheson.

Michael Matheson: The primary purpose of this amendment is to clarify the way in which this bill will interface with other legislation that stands at the present time. One of the examples that has been highlighted, in relation to covert human intelligence sources, is that provisions under section 40 of the Criminal Law (Consolidation) (Scotland) Act 1995 require a person who receives information in the course of their trade, profession, business or employment that suggests that someone is guilty of something such as money laundering to disclose that information to the relevant authorities.

In such an instance, once this bill has been enacted, would that person be classed as a covert human intelligence source? If so, would they come under the provisions that will be contained in the Regulation of Investigatory Powers (Scotland) Bill?

I move amendment 11.

10:00

Angus MacKay: The bill defines a covert human intelligence source as someone who

"establishes or maintains a personal or other relationship"

specifically for the purpose of obtaining information about a person without that person knowing, and then disclosing the information to the police or an another authority. The two parts have to be taken together. It is therefore unlikely that the relationship established in the circumstances envisaged by the amendment could be said to be specifically for the purpose of obtaining information.

It should also be borne in mind that the purpose of the bill is to provide a legal framework for actions where a public authority might infringe the right to privacy of an individual. I would not accept that the seeking of information on, for example, suspected money launderers by those who had access to such information would normally constitute an infringement of anyone's privacy. However, if there were circumstances in which it was thought that privacy could be infringed and in which relationships were established for the specific purpose of obtaining information, the public authority concerned would be prudent if it ensured that it was acting within the terms of the bill. However, I do not see any need to make specific provision in relation to the possibility that Michael Matheson raises. That would be an unlikely category, I think, of covert human intelligence source.

In any event, because of section 26 of the bill, the person would not be acting unlawfully if he or she were acting in accordance with another enactment. So the short answer to your question is no.

Gordon Jackson: That was a long answer.

Angus MacKay: I wanted to give as much information as I could.

Michael Matheson: It was a ministerial no.

The Convener: It is all relative.

Michael Matheson: I would like have one thing made clear. If the use of a covert human intelligence source had come about because of something such as money laundering, and if the public authority thought that it was prudent and appropriate to do so, could actions be covered with this legislation?

Angus MacKay: Yes—provided, as I said, that the relationship was established for the specific purpose of obtaining information.

Michael Matheson: And if the public authority thought that it was appropriate?

Angus MacKay: Yes.

Michael Matheson: I would like to withdraw the amendment.

Amendment 11, by agreement, withdrawn.

Section 1 agreed to.

Section 2—Lawful surveillance etc

The Convener: We now come amendment 12, to be moved by Euan Robson. It is grouped with amendments 13 and 14, in the name of Michael Matheson, amendment 15, in the name of Euan Robson, and amendment 55, in the name of Michael Matheson.

Euan Robson (Roxburgh and Berwickshire) (LD): As the committee will recall, I have some anxiety about the extent of exemption from civil liability. With amendment 12, which is linked to amendment 15, I am seeking clarification that there will be some recourse for third parties who are inadvertently entangled in a surveillance operation or in any action covered by the powers in the bill.

As I read section 2, those empowered by the bill appear to be exempt from civil liability to third parties. If an innocent bystander suffers some form of loss, he or she should have some form of redress. That is what the amendment attempts to ensure. I understand that the word "incidental" is key to all this. However, even if I have misunderstood section 2 and there is indeed an opportunity for someone to claim damages in certain situations, I am concerned that the tests for that will be so high, and the legal argument so intense, that the person will be deterred from making a claim.

Amendments 12 and 15 stand together; they attempt to make it clear that third parties can obtain redress.

I move amendment 12.

Michael Matheson: Amendments 13 and 14 seek, to some extent, to achieve something similar to what Euan Robson has proposed. Amendment 13 seeks to ensure that a covert human intelligence source will be immune from civil liability for actions that are carried out between the time when a decision to cancel an authorisation is taken and the time when that decision is intimated to the source in writing. As the bill stands, such a source is not necessarily provided with the protection required.

In section 2(2), what is deemed as "incidental" is not clear. An innocent third party who suffered some form of injury or loss as a result of a surveillance operation would therefore be deprived

of the right to pursue any form of civil action. Amendment 14 seeks to provide a narrower definition in respect of civil liability.

Amendment 55 seeks some clarification on the weight that the codes of practice will carry. I would be grateful if the minister provided some detail on that. It is not clear whether, if a person fails to comply with the code of practice, that person will be liable to criminal or civil proceedings.

Angus MacKay: Amendments 12 and 15 would have the effect that an officer would not be liable for civil claims from the target of the operation, but would be liable for claims from anyone else. The problem with the amendments is that, in many cases where such situations might arise, the incidental conduct will have occurred in relation to a third party. An obvious example of such an occasion would be when trespass occurred. It is possible to imagine many occasions when it would be necessary to cross a third party's property while running a surveillance operation. Our view is that such operations could be seriously hindered if they could be frustrated by the actions of third parties. It could even be the case that the third party was connected in some way to the object of the surveillance—for example, if the property were owned by a wife, husband or parent.

It is worth making some further points on that topic. Criminal liability is not exempted under the bill; we are discussing civil liability. Deciding whether a civil liability had been incurred would be left to the courts, as the properly independent arbiters. It is not possible to set out in the legislation what "incidental" means, because it would not be possible to allow for all the circumstances in which surveillance could take place.

The nature of those operations and of the agencies involved means that, at all times, the operations seek both to acquire useful information and to remain covert. This relates to the so-called nasturtium amendment of Euan Robson—determining whether liability could be incurred if nasturtiums were trampled and destroyed on someone's property. It would not be in the interests of the agency if property were to be destroyed in that way, because it would risk prejudicing the covert nature of the operation. I therefore stress that agencies would, at all times, seek to ensure that operations remained covert.

The Convener: I do not want to leap in on Euan Robson's behalf, but to talk about nasturtiums is perhaps to trivialise the matter.

Angus MacKay: Nasturtium was the word that Mr Robson used in earlier discussions.

The Convener: Following your own examples, I could imagine a situation in which some very expensive piece of property was either let free or trampled on. For example, someone might breed pedigree puppies that were either let free or killed. There might be more serious instances of incidental damage than a few plants being trampled on.

Angus MacKay: I was just coming to that point. During an earlier discussion, Mr Robson gave the example of nasturtiums to illustrate the concerns that he has. The point of the provision is that it will be for the court to decide whether, on the facts of a particular case, any damage that has taken place has been incidental and is immune from civil liability. We think that the courts are unlikely to regard serious acts of negligence as incidental conduct. The same applies to acts involving criminal liability.

Amendment 13 seems to go further than the original provision in the bill. It provides for immunity for any action by a covert human source during a period between cancellation of the use of the source and informing the source of that fact. There is no immunity for any act by a covert human source before cancellation of the authorisation to use a human source, and I do not see any reason to provide for immunity after cancellation.

Amendment 14 creates the same problems as those mentioned in relation to amendments 12 and 15, in that it removes the cover for incidental conduct. However, it would provide immunity for breach of duty of confidentiality arising out of any conduct that is lawful under the bill.

Amendment 55, in Mr Matheson's name, addresses a different point and relates to the code of practice. The code will have a statutory basis and will set out in greater and more practical detail the provisions of the bill. However, we do not think that the test of whether surveillance is lawful should be whether it has conformed in every respect with the bill or the code, but it should be whether an individual's right to privacy has been interfered with in a way that is not compatible with their fundamental rights under the European convention on human rights. The amendment would undermine that approach.

Michael Matheson: I am willing to accept that immunity might be the wrong term for what is suggested under amendment 13. However, what would happen if between the point at which an authorisation was cancelled and the point at which the covert human intelligence source was informed of that, the source undertook something that was seen as illegal? What would be the implications for the source?

Angus MacKay: That would be unlawful and would be challengeable before the commissioner.

Gordon Jackson: I do not have too much problem with the provision, although I can

envisage difficult litigation as to where the boundary lies. I am not being facetious, but I would like to flag up one point. Section 2(2) states:

"A person shall not be subject to any civil liability . . . which—

(a) is incidental to any conduct that is lawful . . . and

(b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question."

I suspect that no human brain can unravel that. I defy anybody, regardless of whether they are experienced in reading law books, to read that once and tell me what it means. Having read it umpteen times, I think that I know what it means, but it will definitely not get the plain English award. It is almost unintelligible. By the time you get to the end of the first line, you have disappeared off somewhere and do not know where you are. Angus MacKay will tell us what it means, because someone has just told him. I suggest that we draft that provision in such a way that a normal human being is able to understand it.

The Convener: I think that that excludes ministers.

Angus MacKay: Thank you.

Gordon Jackson: I am not saying that the provision is wrong, simply that it is written in such a way as to be almost unintelligible to a normal person.

Angus MacKay: I am grateful for being excluded from the category of a normal human being. I take the point that Gordon Jackson makes, and we will examine whether changes can be made, but I cannot give any undertakings. Gordon of all people will know that the precision, and sometimes the imprecision, of legal language, can have great import.

Gordon Jackson: I appreciate that the minister cannot give a commitment to change that. It was just a thought.

Christine Grahame (South of Scotland) (SNP): I am grateful to Gordon Jackson for his previous point. I had struggled to understand section 2(2) and decided that there must be something lacking in me, but having heard that Gordon's brain has struggled with it as well, I feel much comforted.

Minister, I want to return to your comments on amendment 14. You have conceded that the phrase "incidental to" is quite vague and may be defined only by cases before the courts. I submit that amendment 14 clarifies that for you and narrows it down to

"a breach of duty of confidentiality arising out of"

any conduct that is lawful. It is important to define liability as specifically and narrowly as possible. Would the Executive consider re-examining the issue and whether there might be a better way of defining liability?

10:15

Angus MacKay: We think that the definition contained in the amendment is far too narrow and would unduly restrict the possibility for operations to take place successfully and to be concluded. The point of using the term "incidental to" is that it allows the courts, as independent arbiters, to take a view on what is legitimately incidental and what is not. I am willing to hear further arguments in the discussion of the bill before stage 3, but I would find it difficult to be persuaded that there is a clearer way forward that does not unduly hinder the purpose of the bill.

Euan Robson: I am so pleased that I used the gardening analogy in discussions with the minister. I understand from what he is saying that he feels that there is nothing that is not competent about the amendments and that they are technically sound. It is their effect that he does not like. This is a question of balance. I take the view that greater weight should be given to the rights of the individual citizen. If an operation is covert—and that is the real objection to making it subject to civil liability—the claim will be made after the event. If a claim is made, the authorities might be inclined to settle quickly and out of court, rather than go through a legal process.

I repeat that demonstrating that damage was not incidental will be a high hurdle for individuals to clear. I am concerned that the hurdle is so high that individuals will not be inclined to initiate civil liability proceedings.

If relatives' interests are damaged and they are innocent bystanders, I do not see why they should be excluded, just because they happen to be a relative of the subject who is being surveyed. In a few instances, there might be difficulties with the relative discussing what has happened with the person who is under surveillance, but again, that will happen after or during the event. It will mean that the authorities exercising the powers given to them under the bill will take particular care to avoid damage to third parties.

I tend to the view that the provision detracts from the rights of the citizen to too great an extent. I should be interested to hear whether the minister has any further comments.

Phil Gallie: I would like to make a point about amendment 13. The suggestion is that the person who is providing a service to the state or whomever under a surveillance order can be charged by a third party with having committed an illegal act, despite the fact that he is acting under

that order. I have much sympathy with amendment 13, in the name of Michael Matheson. I believe that it provides the cover that should be due to such an individual. It concerns me slightly that the minister said that no such immunity is offered to anybody who is considered to be a covert source. Obviously, that cannot be dealt with under amendment 13.

Angus MacKay: Protection from criminal liability is extended to no one under the act and protection from civil liability is extended only for incidental activities or actions. As far as I can determine, this discussion turns on the term "incidental". I have not argued that the amendments are not competent or technically incorrect. I accept what Euan Robson says. There is a balance to be struck between the need to allow agencies to carry out surveillance operations properly—for the purposes set out under the bill—and the rights of individuals, which might be infringed, to a greater or lesser extent, from time to time.

Agencies do not conduct operations in a spirit of doing absolutely whatever it takes to glean the information, regardless of the consequences. By their nature, operations need to remain covert for some time after surveillance has taken place. The agencies do not want to alert individuals who are under surveillance to that fact because that would defeat the purpose of the operation. Causing substantial damage to property is one way of indicating that activity has taken place, so agencies strive to avoid that at all times. Also, my understanding is that if a civil action takes place, the burden of proof of the incidental nature of the activity will lie with the agency, not the individual who seeks redress.

Christine Grahame: When is the authorisation valid? There is some civil liability protection while someone is acting as a covert intelligence source. That makes it plain that the cancellation is valid—there is a deadline for it—when it is intimated in writing to the human intelligence source and a different level of protection comes into play. That is what we are getting at.

Angus MacKay: We will come to validation of authorisations later in the bill. The discussion that we have then might well allay some of the concerns about when liability is and is not present.

Christine Grahame: That is what this is about—where the line is drawn.

Angus MacKay: We will deal with that later in the bill.

Phil Gallie: Can the minister be precise on that, because it is important? Michael Matheson has to make up his mind whether to press his amendment.

Angus MacKay: My contention is that we will deal with the matter later in the bill in a manner that sets out adequately when liability is and is not in place. The bill specifies that quite clearly. We will write to Phil Gallie on the point that he made about amendment 13. We might be able to make the situation a little clearer.

The Convener: We have exhausted that matter. Euan Robson has moved amendment 12.

Euan Robson: I seek leave to withdraw the two amendments.

The Convener: Amendment 13 has not been moved yet; we will deal with amendment 12 at the moment.

Euan Robson: I seek leave to withdraw amendment 12, but I serve notice that I will think about the matter further; I reserve the right to return to it at stage 3.

Amendment 12, by agreement, withdrawn.

Amendment 13 not moved.

Amendment 14 moved—[Michael Matheson].

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Gallie, Phil (South of Scotland) (Con)
Jackson, Gordon (Glasgow Govan) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

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

Amendment 14 disagreed to.

Amendment 15 not moved.

Section 2 agreed to.

Section 3—Authorisation of directed surveillance

The Convener: We move to amendment 1, which is grouped with amendment 2, both of which are in the name of Michael Matheson.

Michael Matheson: I am sure that the minister is well aware of the arguments about this issue, as they were rehearsed during the stage 1 debate by me and, I think, by Gordon Jackson.

Section 3(3)(d) provides for authorisation

"for any purpose . . . which is specified for the purposes of this subsection by an order made by the Scottish Ministers."

The provisions in paragraphs (a) to (c) are wide and allow authorisation of directed surveillance for a whole range of things. We have not heard any argument for ministers requiring additional power to make other forms of authorisation. The Association of Chief Police Officers in Scotland, in its evidence to the committee, could not specify an occasion when it thought that such a power would be appropriate, not because it was critical of the bill, but because the provisions in paragraphs (a), (b) and (c) seemed sufficient to provide for any form of authorisation. Will the minister detail why Scottish ministers require the additional power?

I move amendment 1.

Angus MacKay: Subsection (3)(d) covers contingency measures. At no time have we said that we can envisage specific circumstances. If we could, we would legislate for them under paragraphs (a), (b) and (c). However, there are other purposes for activities that would be compatible with the ECHR, but which have not been included in the bill, in particular, for example, the protection of morals and the rights and freedoms of others, as set out in the ECHR. We cannot think of a situation in which we would need to undertake activities for those purposes at present, which is why we have not specified them, but it is not inconceivable that circumstances could develop in which we would need to act for those purposes. The ECHR caters for that eventuality.

The additional power for Scottish ministers is not unconditional; it is very much conditional. Any proposal under subsection (3)(d) would require an affirmative resolution to be brought before Parliament. Parliament would have to agree that before the power could be exercised. If Parliament was unsatisfied with the argument being put by ministers, it could vote against the affirmative resolution.

Michael Matheson: Will the minister clarify the point about the protection of models?

Angus MacKay: Yes. We need to refer to the European convention on human rights, which specifies the purposes for which certain activities can take place that would otherwise be seen to contravene human rights. The ECHR sets out a series of conditions, one of which is the protection of morals. Another is the protection of the rights and freedoms of others.

Michael Matheson: Morals. I thought that the minister said models.

Angus MacKay: That would be interesting, but it does not exist under the ECHR.

The Convener: I am no clearer about what is meant by the protection of morals and the other one. What was it?

Angus MacKay: Protection of the rights and freedoms of others.

The Convener: Why are they not simply spelt out in the bill?

Angus MacKay: I mention those as examples of areas where, in future, it is not inconceivable that something might be required to take place. We are not saying that we specifically want to extend the provisions on those grounds. We are simply saying that it is possible that something might emerge in future. We do not want to build an absolute power for ministers to authorise activities into the bill, but we want to retain the possibility for the Executive to bring specific proposals before Parliament at a later date. Parliament would, of course, be perfectly free to reject those proposals if it felt them to be inappropriate.

Gordon Jackson: I must be frank. I am not keen on subsection (3)(d). I do not like putting a catch-all like that in one little bit. I am a little encouraged by the fact that the proposal must be passed by an affirmative resolution of Parliament. I am not hugely encouraged by amendment 17, which says that an order made under the subsection would have to conform with the ECHR, because everything that the Executive does from now on must conform with the ECHR, so the amendment seems to be somewhat superfluous.

I am even less keen on subsection (3)(d), having heard the minister's explanation about protection of morals and of the rights and freedoms of others. That would depend on the Government of the day. Now, on balance, I quite like the Government of the day—

The Convener: The minister will be relieved to hear that.

10:30

Gordon Jackson: I might not like the Government of tomorrow or 10 years from now. The idea of a catch-all that would allow resolutions to be laid before Parliament—possibly with reasoning about the protection of morals—does not fill me with a great deal of enthusiasm. I do not like the catch-all for situations in which the only specifications that can be considered are such things as the protection of morals or the rights and freedoms of others. If anything was ever—not now, but perhaps 10 or 20 years ahead—open to abuse, that sounds like it.

I will not vote for Michael Matheson's amendment 1 now. However, the whole Parliament might want to consider whether we should give the Executive that catch-all provision. I

am not hugely enthusiastic about it, but that is not saying anything new. I was not enthusiastic about it at stage 1 either. As I said, I will stop amendment 1 now if I have the power to do that, but I would certainly like it to be reconsidered, as I do not care for section 3(3)(d) very much.

Christine Grahame: Again, I am following in Gordon Jackson's shadow. As members know, I have raised this point during evidence sessions and I have never been given an example that satisfied me. I have never been happy about it and I have never heard a good explanation. Subsection (3)(d) is a blank cheque and I do not like blank cheques. The Executive amendments are rather like a comfort blanket being offered to the Justice and Home Affairs Committee, but I do not find comfort in it.

We are left with vagueness. With legislation that intrudes into private life, as this does, we must be specific about where the legislation can kick in. The bill is not specific about that, to put it mildly. Like Gordon, I am unhappy when morality raises its ugly head, because one person's morality can be another's immorality. If an occasion arose when there was a requirement for something else, I have no doubt that the Executive could introduce emergency legislation at a trot.

Angus MacKay: May I answer that point?

The Convener: Phil Gallie wants to comment first, but I will come back to the minister.

Phil Gallie: I am going to embarrass the minister and be absolutely unhelpful by saying that I approve very much of the comments that he has made.

The Convener: That is what Gordon Jackson is worried about.

Phil Gallie: The minister aims for a degree of flexibility and I accept that. On Gordon Jackson's comments about future Governments, I suspect that the Government that he fears will come to power in about 18 months' time. That apart, we must have confidence in the democratic system under which we operate and I do not believe that section 3(3)(d) poses a threat to the extent that Gordon suggests.

I think that Gordon Jackson has attempted to cop out today. If he does not support Michael Matheson's amendment his words mean absolutely nothing. If he supports it and the Government does not like the fact that Michael's amendment has been supported by the committee, there is nothing to stop the Government lodging another amendment at the next stage. On that basis, Gordon would have a chance to rethink. However, by accepting amendment 1, he would be backing up his own words and ensuring that the Government takes action and at least rethinks the situation as we go along.

I have confidence that this Government and the next Government will conform to decency. On that basis, I will back the minister's words.

The Convener: I am not surprised that Gordon Jackson would like to reply to that.

Gordon Jackson: I feel as if I have gone through the looking glass. Phil Gallie is urging me to vote for the opposite of what he wants. I am not copping out; I am making my position clear to the Executive. I do not like it, but I am prepared to allow time for thought and reconsideration to see whether there is a better solution. I do not like what I am getting, but if anyone thinks that I am copping out, I tell him or her categorically that I am not. I do not like section 3(3)(d) at all, but this might not be the time to change it.

Michael Matheson: There have been some strong contributions and several members are unhappy. I was not sure whether I wanted to press my amendment until I heard Phil Gallie's contribution, which has, to some extent, persuaded me.

I hear what the minister says about contingency, but I hoped that the Executive would clarify why it requires the power in section 3(3)(d). I am not at all convinced by what Angus MacKay has said today. I ask the minister to take on board the comments of committee members and whether he will reconsider the issue with a view to introducing another amendment at stage 3. At that point, we can consider whether the bill provides sufficient safeguards, in light of the concerns that have been expressed by the committee.

Angus MacKay: The short answer is no. Michael Matheson is asking the Executive to reconcile two fundamentally different things. He wants us introduce specific proposals under the bill—which we are trying not to do—and to leave the possibility of introducing proposals in relation to unforeseen circumstances at a later date.

We are quite explicit about this and we have nothing to hide. We accept that this is a general power, but it is not a general power for the Executive, as has been suggested. It is a general power for Parliament, which remains sovereign in relation to the proposals. The affirmative resolution must be discussed and agreed by Parliament. If Parliament is not satisfied with the instrument, it will rightly vote against it.

Morals and the rights and freedoms of others are contained in the European convention on human rights. It was interesting to hear such a passionate defence of the ECHR from Phil Gallie in these circumstances, compared with his position on the ECHR in other circumstances.

Phil Gallie: It was about flexibility.

Angus MacKay: Those considerations are set out in the European convention on human rights. The Executive is not proposing to specify the protection of morals and of the rights and freedoms of others. We are saying simply that the ECHR sets out the rights of individuals. We must have regard to what is acceptable or unacceptable under the bill in relation to those rights. The ECHR itself is a moving picture that is subject to interpretation and challenge by case law. We do not know how it will evolve in the coming months and years.

Section 3(3)(d) is not a catch-all power for ministers; I cannot emphasise that strongly enough. It is simply a device to allow Parliament to consider an affirmative resolution at a later stage, if that is thought appropriate. If Parliament votes against it, it will not happen.

Pauline McNeill (Glasgow Kelvin) (Lab): The bill contains the phrase "an order". Can you clarify what that means?

Angus MacKay: Which part of the bill are you referring to?

Pauline McNeill: Section 3(3)(d) contains the phrase "an order". Is it defined somewhere that an order always comes to Parliament?

Angus MacKay: At present, the power under section 3(3)(d) would require a negative resolution. We are proposing an amendment later in the bill that would mean that an affirmative resolution was needed. That would mean that Parliament would have to support a measure rather than not oppose it, as would be the case with a negative resolution. We are strengthening that provision later with a further amendment.

Gordon Jackson: It is amendment 16.

Angus MacKay: The proposals would have to come before Parliament. They could not be authorised by any other means.

The Convener: Michael Matheson has a decision to make.

Michael Matheson: In light of the strong views that some committee members have expressed, I shall move my amendment.

The Convener: You have already moved it. You mean that you want to press it to a vote.

The question is, that amendment 1 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Gallie, Phil (South of Scotland) (Con)
Jackson, Gordon (Glasgow Govan) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)

The Convener: The result of the division is: For 3, Against 7, Abstentions 1.

Amendment 1 disagreed to.

The Convener: We move now to amendment 16, in the name of Angus MacKay, which is grouped with amendments 17, 20, 21, 33, 34 and 61, all of which are in the name of the minister, amendment 63, which is in the name of Michael Matheson, and amendments 65 and 66, which are also in the name of the minister.

Angus MacKay: Amendments 16 and 20 change the parliamentary procedures that enable ministers to add to the purposes for which directed surveillance or covert human intelligence services may be authorised, from negative to draft affirmative procedure, as we discussed in the previous debate. That would enhance the level of parliamentary control with regard to those provisions. I hope that that meets the committee's concerns in relation to the power.

Amendments 17 and 21 specify that any additional purposes specified in an order would be compatible with those outlined in article 8 of the ECHR. That restricts the purposes that may be added to for protection of morals and for the protection of the rights and freedoms of others. Other purposes are set out in the convention, but they fall within areas that are reserved under the Scotland Act 1998.

The amendments are designed to address some of the concerns that were raised by members of the Justice and Home Affairs Committee and both the Subordinate Legislation Committee. As the aim of the bill is to ensure that the use of surveillance techniques is compliant with the ECHR, for ministers to introduce additional purposes that were not compatible with the ECHR would defeat the purpose of the bill. It would also be ultra vires of the Scotland Act 1998 for ministers to do so. For that reason, if the committee considers it appropriate, amendments 17 and 21 may be deemed unnecessary. In those circumstances, I would be happy not to press the amendments.

Amendments 33 and 34 relate to the order in section 9 of the bill, which relates to the specification of the matters that a notification of

authorisation for intrusive surveillance must contain. For example, we would wish to specify that any authorisation should include details such as the name and address of the targets, the type of crime that is suspected, what it is hoped will be achieved and the outcome of a risk assessment. However, there is a potential problem in that the draft affirmative procedure set out in section 9(2)(c) would not work in circumstances where the bill obtains royal assent in late September, yet is required to be in force from 2 October. Accordingly, the amendment makes provision for the order to be subject to a 40-day procedure on the first occasion that it is used. That would mean that the first order should cease to have effect after 40 days, beginning on the day that the order was made, unless, before the end of that period, it was approved by a resolution of the Scottish Parliament.

Amendment 61 is designed to rectify an error in drafting of the order-making power, which enables ministers to re-designate as intrusive acts that are currently classed as directed. The amendment provides that the power should be subject to affirmative procedure.

Amendments 65 and 66 are consequential amendments.

Amendment 63 calls for all subordinate powers in the legislation to be subject to affirmative procedure. That goes beyond the recommendations of the Subordinate Legislation Committee. Amendments 16, 20 and 21 change the provisions for subordinate legislation in every case that is considered appropriate by the Subordinate Legislation Committee. In its report, that committee supported the use of a negative resolution as appropriate for the orders contained in sections 4(2)(c), 4(4), 4(6)(d), 5(2), 15(8) and 16(4), as none of them extends the powers that are contained in the bill. Most of those powers are designed to place additional restrictions on the granting or use of surveillance techniques. The use of affirmative resolution in such cases should be avoided as it places an unnecessary legislative burden on Parliament. Therefore, I ask Michael Matheson to not move amendment 63.

I move amendment 16.

Michael Matheson: I have heard the minister's comments on amendment 63. I know that the minister is concerned about parliamentary time and the additional burden that an affirmative resolution would place on Parliament, but I would have thought that the orders to be made under this bill would be so important that it would be appropriate for Parliament to have the opportunity to examine and debate the matter if necessary. Apart from the potential constraints on parliamentary time, does the minister have any other reason why Parliament should not debate such regulations in full?

The Convener: Before the minister replies, I say that Parliament would have an opportunity to debate such matters, if a member lodged a motion asking for such a debate. It would not be mandatory.

Michael Matheson: It would not be by affirmative resolution.

The Convener: Under affirmative resolution procedure a debate is mandatory, but under negative resolution such a debate would take place only if a motion requesting that was agreed to. It is not strictly true to say that we could not debate a negative instrument.

Michael Matheson: I understand what you are saying, but I am calling for the statutory instruments to be made through affirmative resolution.

The Convener: Are you asking for such debate to be triggered automatically, rather than through a member's motion?

Michael Matheson: Yes.

10:45

Angus MacKay: You have just made the main point, convener. Whether we use affirmative or negative resolution, the matter must come before Parliament. The only question is whether a debate is held automatically. Any member can trigger a debate under the negative procedure by lodging a motion against the resolution. In any event, the Subordinate Legislation Committee supported and recommended the use of negative resolution simply because none of the sections referred to extends any of the powers that are contained in the bill. As I said, most of those powers are designed to place additional restrictions on the granting or use of surveillance techniques. In those circumstances I would be surprised if Parliament felt any great concern about not being able automatically to debate additional restrictions.

Christine Grahame: I am glad that you have made progress on amendment 16. If an order were laid in draft before being approved by a resolution of Parliament, what kind of time scale would be involved?

Angus MacKay: We do not have a ready answer to that question. Can we come back to you on that?

Christine Grahame: Yes. I would like an answer.

The Convener: We seem to have exhausted the discussion on that group of amendments.

Amendment 16 agreed to.

Amendment 17 not moved.

Section 3, as amended, agreed to.

Section 4—Authorisation of covert human intelligence sources

The Convener: We move now to amendment 18 in the name of Michael Matheson, which is grouped with amendments 19, 22, 26, 35 and 37, all in the name of Michael Matheson.

Michael Matheson: Amendment 18 seeks to clarify the standard of satisfaction that must be achieved before authorisation can be granted. Section 4(2) specifies the conditions that must be in place before an authorisation can be granted for the conduct or use of covert human intelligence sources. At present, that subsection requires only that the person granting the authorisation believes that the conditions have been fulfilled. Amendment 18 seeks to ensure that those conditions are sufficiently important that the person granting the authorisation is satisfied that the requirements have been fulfilled. Amendment 18 would place a greater burden on the person to ensure that the conditions under section 4(2) have been properly adhered to, rather than the person simply believing that they may have been adhered to.

Amendment 19 addresses the concern over the use of the term "case" in the bill. The amendment seeks to clarify the arrangements that will be put in place under section 4(6) to provide adequate supervision of a covert human intelligence source. Amendment 22 seeks clarification on the same point.

Amendment 26 seeks to establish the standard of satisfaction, which was referred to earlier. Amendment 35 concerns authorisation under section 20, the way in which such authorisation is granted and the standard of satisfaction. There are insufficient safeguards in specifying the authorisation under section 10 if the person granting authorisation only "believes" that the case is one of urgency. The requirement for such an authorisation should be greater and the person should be adequately satisfied that there is a question of urgency.

My final amendment in this group, amendment 37, seeks clarification from the minister on the requirements that must be satisfied before the surveillance commissioner can give approval to an authorisation to which section 10(1) applies. At present, an authorisation for intrusive surveillance cannot be granted under section 6, unless the information sought through the authorised conduct cannot reasonably be obtained by any other means. The surveillance commissioner should be satisfied prior to giving authorisation that the standard set in section 10(1) applies to the case before him.

I move amendment 18.

Angus MacKay: With regard to amendments 18, 26 and 36, the use of the word "believes" has to be read as implying that the surveillance commissioner honestly thinks that the specified authorisation criteria have been met. I am not aware that there is any material distinction in law between the words "believe" and "satisfied". For that reason I ask Michael Matheson not to move the amendments. They appear to be unnecessary because both words imply that the person is honestly of a particular state of mind.

Similarly, I ask Michael Matheson not to move amendments 19 and 22, as it is clear from the provisions of the bill that what is referred to is arrangements for the supervision of a covert human intelligence source. As such, the amendments are unnecessary.

Finally, I ask that amendment 37 be not moved, because section 10(3), which deals with the conditions that are necessary for the approval of authorisations for intrusive surveillance, refers back to section 6(2). Section 6(2) must be read in conjunction with section 6(3), which makes it clear that the conditions of section 6(2) can be met only if the information that it is necessary to obtain cannot be obtained through other means. The amendment of the bill to include a reference to section 6(3) in section 10(3) is therefore redundant.

Michael Matheson: May I refer to the issue concerning the term "believes"? To believe something is more ambiguous than to be satisfied about it. I may believe something without looking into it, but to be satisfied I would have to examine the matter. On that basis, "satisfied" provides greater clarity. It means that in order to be satisfied, the surveillance commissioner should examine a matter. The use of "believes" means that the surveillance commissioner could consider the matter, but not necessarily examine it in any detail.

Angus MacKay: I hear Michael Matheson's argument, but I am not sure that it would make a case in law. For an individual to take the view "I simply believe something" rather than "I have satisfied myself" is one thing, but for authorising officers to argue successfully that they believe a position to be correct, they would have to satisfy themselves—whether the wording that is used is "believes" or "is satisfied"—that they have enough information to assess whether they believe that the appropriate arrangements exist. We are arguing about semantics.

Christine Grahame: With respect, it is nice to have tidy legislation. You talked about being satisfied, so why not use the term "is satisfied"? "Believes" is not a legal term. Tests have been

applied to "is satisfied". As Michael Matheson said, the meaning of "believes" is completely different in common usage. You talked about the honest belief of the authorising officer. We trust, of course, that he would act in good faith, so that is not the issue. The point is that "is satisfied" is a legal term.

Phil Gallie: We should go back to the intention of the bill, which is that its measures are implemented only in the most serious circumstances, and against the most serious crimes. I do not want obstacles to be put in the way of law enforcement agencies, such that people who commit those serious crimes can escape conviction on technicalities. Does the word "satisfied" add any legal burden to the bill or to the authorising bodies? If it does, is it a word that the authorising individual may have to justify in court at a later date, irrespective of the evidence? If someone genuinely believes that something is right, and that it is right to go ahead with surveillance, that is good enough.

Gordon Jackson: I started off thinking that the amendments were just nit-picking—with all due respect to Michael Matheson—and that there was no difference between the terms. However, the longer I listen, the more I prefer "is satisfied" for the simple reason that it carries with it—and I am not saying that the minister is wrong legally—the idea that one has satisfied oneself. The tests are there, whereas you could believe something just because a nice policeman said it to you. I mean no disrespect to old colleagues. The commissioner could say that he believed something because, "Every time this man has come in the past, the tests have always been satisfied, and I trust this guy." The word "believes" does not have the same connotation that a person with responsibility is doing the checking. I think that "is satisfied" is a better phrase.

Pauline McNeill: I am also in two minds about the matter. There is legal precedence for the use of "belief". There is, in law, reasonable belief, honest belief and genuine belief. Whether the test is subjective or objective would require clarification, but either way, believing in or being satisfied about something is a subjective decision. It is clearly for an individual to decide whether they believe or are satisfied. One would have to clear up the type of test that "believes" is, because there is legal precedence for different types of belief.

Angus MacKay: Pauline McNeill has taken the words out of my mouth in respect of the subjective nature of both those particular terms. I am not sure that "satisfied" adds anything at all as a substitute for "believes". In an attempt to stop this becoming a continual round of "Call My Bluff", I undertake to go away and see whether we can produce something that satisfies members a little more, if that is possible. We can return to the matter later.

Michael Matheson: I do not know whether I should believe or be satisfied with what the minister has just said. However, I do believe that the term "is satisfied" provides greater clarity, therefore I should like to press the amendment.

The Convener: The minister has indicated that he will go away and examine the issue. Do you want to press the amendment in those circumstances?

Michael Matheson: Yes.

11:00

The Convener: The question is, that amendment 18 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
MacLean, Kate (Dundee West) (Lab)
Matheson, Michael (Central Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)

AGAINST

Gallie, Phil (South of Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 18 agreed to.

Amendment 19 not moved.

Amendment 2 moved—[Michael Matheson].

The Convener: The question is, that amendment 2 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Gallie, Phil (South of Scotland) (Con)
Jackson, Gordon (Glasgow Govan) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

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

Amendment 2 disagreed to.

Amendment 20 moved—[Angus MacKay]—and agreed to.

Amendments 21 and 22 not moved.

The Convener: I suggest that we have a brief adjournment. There are no cups of tea and coffee, however—we get those only in the chamber.

11:02

Meeting adjourned.

11:11

On resuming—

The Convener: I bring the meeting to order and call Michael Matheson to move amendment 23. It is grouped with amendment 24, which is also in his name.

Michael Matheson: Amendment 23 seeks to ensure that the security and welfare of the source are kept under review, both by the person who has day-to-day responsibility for dealing with the source and by the person who has either granted or renewed the authorisation. This provision, which should be on the face of the bill, would provide adequate protection for a person acting as a covert intelligence source. It would make it clear both to the person who has overall responsibility for granting authorisation and to the person who is dealing with the source on a day-to-day basis that they must give proper consideration to the source's security and welfare. I would welcome hearing the minister's view on this issue.

Amendment 24 is in a similar vein, but relates to a different stage in the process. It would ensure that before authorisation for surveillance is granted, the person considering the application is satisfied that arrangements have been put in place to protect the source in the event of cancellation of that authorisation. It is important that measures are taken at the time authorisation is granted not only to protect the source during the period for which surveillance has been authorised, but during the period immediately following cancellation of authorisation.

I move amendment 23.

Angus MacKay: Section 4(6) already deals with the requirements that must be met in the supervision of a covert human intelligence source. It stipulates that a person should have day-to-day responsibility for the "security and welfare" of the source. The authorising officer also has responsibility for general oversight of the use of the source. Those are two different functions. The Executive considers that section 4(6) is sufficient to ensure the "safety and welfare" of the source. There is also a danger that a confusion of responsibility might arise if more than one person were given responsibility for the day-to-day security and welfare of the source. For that reason, we call on Michael Matheson to withdraw amendment 23.

It is true to say that in many cases measures would be taken in the ordinary course of events to provide for the source's continuing security and welfare. However, in some cases that might not be appropriate. As amendment 24 recognises, it would be within the discretion of the authorising officer to decide whether continuing protection would be necessary, and for how long. We do not feel that the amendment adds any protection to that which is provided at present, so we ask Mr Matheson not to move it.

11:15

Gordon Jackson: I agree with the minister—I think that these amendments are unnecessary. I appreciate the sentiments behind them and the desire to protect and look after people, but I feel that they would add an extra and unnecessary administrative layer.

Michael Matheson: My main concern is with the issue raised by amendment 24—whether proper consideration has been given to the security and welfare of a covert human intelligence source after an authorisation has been cancelled. Although the people who authorise surveillance have a purpose at the time the surveillance is authorised, they may not fully consider the implications of the cancellation of the authorisation. The main purpose of amendment 24 is to make it more explicit in the bill that due consideration must be given to what happens after the cancellation of an authorisation. As the bill stands, that is not covered sufficiently.

Angus MacKay: I can see what Michael Matheson is driving at. I am not absolutely convinced, but I am willing to consider the matter further. There is a problem with the amendment as it is framed at the moment, because it refers to

"the person granting or renewing the authorisation".

That person may have moved on or retired. We will have to think about that; but we will consider the amendment further and see what we can do.

Michael Matheson: I ask to withdraw amendment 23.

Amendment 23, by agreement, withdrawn.

Michael Matheson: As the minister has agreed to consider the issue raised by amendment 24 for the stage 3 debate, I will not move it.

Amendment 24 not moved.

Section 4, as amended, agreed to.

Section 5—Persons entitled to grant authorisations under sections 3 and 4

The Convener: We now come to amendment 25, in the name of the minister.

Angus MacKay: The Executive announced at the meeting of the Subordinate Legislation Committee on 6 June its intention to submit an amendment. Amendment 25, I feel, addresses some of the concerns that have been expressed by members of that committee and this committee. It also addresses concerns that were raised during the stage 1 debate on 14 June.

The amendment names the public authorities that may authorise the use of directed surveillance and covert human intelligence sources. We hope that that addresses some of the concerns that were expressed by committee members. In the bill, it is possible to identify only those bodies that are legal entities. That is why the Scottish Executive as opposed to, for example, the rural affairs department of the Scottish Executive has been named. However, the departments and bodies in the Executive that need to be covered by the bill, with some examples of the types and purposes of surveillance activities that could be undertaken, are detailed in a table that has, I think, been submitted to the committee for its consideration.

Any list of public bodies that undertake surveillance activities is likely to change over time. That is why we think it appropriate that section 5 should provide for an order-making power that would allow ministers to add or remove public bodies from the schedule. The committee may wish to note that that power would again be subject to the affirmative procedure, meaning that it would have to be approved by the full Parliament.

I move amendment 25.

Christine Grahame: I would like to ask again about the time scales for orders. Amendment 25 contains a new subsection (5) for section 5.

Angus MacKay: The orders will be dealt with in the same way as any other order that is laid before Parliament. There are no special circumstances—

Christine Grahame: But the answer to my previous question was different. Is that correct?

Angus MacKay: No, I do not think so.

Christine Grahame: I think that I shall have to write to find out what you mean by this.

Angus MacKay: Yes, we will write to you on this issue.

Phil Gallie: The minister's amendment extends the list of recognised bodies but, at the same time, leaves flexibility. I am quite happy with it from that point of view.

The new Scottish Drug Enforcement Agency was specifically mentioned in debate. Will it be considered as part of the "police force" in the new subsection (3) in amendment 25? Should there not be a specific reference to the new agency, given its importance?

Angus MacKay: The SDEA, like the rural affairs department, which I mentioned as an example when I moved the amendment, is not a legal entity. It will fall within the domain of another legal entity. The Scottish crime squad carries out many activities on behalf of the Scottish Drug Enforcement Agency. We are giving some thought as to how we can encapsulate that in a way that has some meaning in law.

Phil Gallie: Are you saying that the SDEA will come under either "police force" or "National Criminal Intelligence Service"?

Angus MacKay: Yes, it would have to be authorised in that way.

Amendment 25 agreed to.

Section 5, as amended, agreed to.

Section 6—Authorisation of intrusive surveillance

The Convener: Amendment 26 has already been debated with amendment 18.

Amendment 26 moved—[Michael Matheson].

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

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
MacLean, Kate (Dundee West) (Lab)
Matheson, Michael (Central Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)

AGAINST

Gallie, Phil (South of Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 26 agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

The Convener: The minister is looking quizzical; did you want to say something about section 7?

Angus MacKay: No, absolutely not.

Section 8—Grant of authorisation in case of urgency

The Convener: We move on to amendment 27, in the name of Michael Matheson, which is grouped with amendment 28, also in the name of Michael Matheson, amendments 29, 30, 31 and 32, in the name of the minister, and amendments 36, 41, 42 and 44, in the name of Michael Matheson.

Michael Matheson: The purpose of amendment 27 is to restrict the circumstances in which applications referred to under section 8 can be considered and granted by persons other than

"the chief constable or the Director General of the police force or Service in question".

As the bill is currently drafted, section 8 would allow a departure from the normal procedure for the granting of any authorisation when it was "not reasonably practicable" to approach

"the chief constable or the Director General of the police force or Service in question".

I believe that the procedure should be departed from only in exceptional or unusual circumstances, and not simply when not departing from it might be considered administratively inconvenient.

Amendment 28 specifies the extent to which the director general of the National Criminal Intelligence Service can delegate his authority. At present, section 8 specifies that the minimum rank of the person to whom the chief constable can delegate authority is

"the assistant chief constable in that force"

but no such minimum level is designated for the director general of the NCIS. The section could be interpreted as meaning that the director general could delegate authority to anyone he chose, provided that person had been designated by the director general.

My comments on amendment 36 are similar to those I have already made about urgency. This amendment also seeks to restrict the type of cases to which section 10(2) would apply. The authorisation for intrusive surveillance should not be effective from the time it is granted merely in cases of urgency, but only in cases of exceptional urgency. I believe that that change would provide some continuity, should amendment 27 be agreed to.

Amendment 41 provides that authorisation may be granted or renewed orally only in cases of exceptional urgency. I would like the minister to clarify the definition of urgency in the bill. This amendment is necessary to ensure that obtaining oral authorisation is to be done only in cases of exceptional urgency, as opposed to what is currently proposed. Amendments 42 and 44 are consequential.

I move amendment 27.

Angus MacKay: Amendments 27, 36, 41, 42 and 44 try to qualify further when a case could be considered urgent. The Executive does not believe they are necessary. There is a reasonable parallel with similar, existing, urgency provisions for authorisations to interfere with property under the Police Act 1997—under which 337 authorisations have been given orally because of the need to act swiftly. The urgency provisions used in the absence of the authorising officer have been employed only in a further 19 cases. In Scotland, there has been only one oral authorisation. That strongly suggests that the urgency provisions have not been abused. We do not want to put further hurdles in the path of law enforcement officers reacting to fast-moving developments.

There will certainly be occasions when the police need to take urgent action to save lives or to prevent serious crime taking place, and we want police officers to take the appropriate action—whether it is exceptional or not. In any event, if the surveillance commissioner believes that an authorisation is not justified as stated on grounds of urgency, he or she can quash that authorisation. On that basis, I urge Mr Matheson to withdraw amendment 27.

Turning to the Executive amendments, we have obtained legal advice that suggests that the phrase

"to act in the chief constable's absence"

in section 8(6)(a), which provides for a designated deputy in the grant of authorisations in cases of emergency, can be interpreted as excluding situations where a vacancy exists. For example, if a chief constable were absent from duty, an assistant chief constable may, in his absence, act as his designated deputy. If, however, there is a vacancy for the post of chief constable, the bill as drafted would exclude the deputy from exercising the powers of the chief constable. Amendments 29 and 30 would correct that and allow a deputy to fulfil that function. It is important that that ambiguity is addressed.

The same argument applies to amendment 28. It is worth noting that the bill as drafted already provides, in section 8(6)(b), for the designated deputy of the director general of the National Criminal Intelligence Service to be the deputy director general, by reference to section 8 of the Police Act 1997, which establishes the position of deputy director general. Accordingly, I urge

Michael Matheson not to move his other amendments in this group.

Gordon Jackson: Michael Matheson and I have said that there must be a balance between control and giving appropriate power, and I have spent most of the morning on ensuring that there is proper control. This time, Michael's amendment is the other way round, and puts an unhelpful fetter on the law enforcement agency.

At the moment, law enforcement officers can obtain an oral authorisation if it is not practical, because of urgency, to obtain authorisation in the usual way. If we insert wording about exceptional or unusual circumstances, we would create an ambiguity and a fetter. There may be urgent situations that require action but which are not exceptional or unusual.

How would we define exceptional and unusual? Once a year, five times a year, 10 times a year? There may be occasions when there is some urgency and the public interest demands immediate action, but it has happened 10 times in the past year. The amendment would fetter the provision, which would be dangerous as it might stop the authorities acting in circumstances in which common sense would dictate that they should. I am all for putting controls in place, but I do not want to fetter the authorities. This amendment loses the balance.

11:30

Christine Grahame: Minister, you referred to the Police Act 1997 and its definitions of "urgency" and said that the same tests would be applied, but with surveillance privacy is much more intruded upon. Because the law is applied without the knowledge of the object of the surveillance, I suggest that the tests for urgency should be harder. That is why I support the condition that the powers should be used only in exceptional and unusual circumstances. We are talking about a situation that is not quite ordinary policing.

Angus MacKay: The Police Act 1997 authorises the police to enter an individual's private home and place there an intrusive detective device. There is a strong parallel between the two situations.

Christine Grahame: There is an exact parallel?

Angus MacKay: Yes.

Phil Gallie: On this occasion, I will go along with Gordon Jackson entirely. He laid out the situation well. I say that with regard to amendments 27, 36, 41, 42 and 44. I had some sympathy with amendment 28, but I suspect that the minister's explanation has satisfied Michael Matheson. If that is the case, I will go along with that.

Michael Matheson: I ask leave to withdraw amendment 27.

Amendment 27, by agreement, withdrawn.

Amendment 28 not moved.

Amendments 29 to 32 moved—[Angus MacKay]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Notification of authorisations for intrusive surveillance

Amendments 33 and 34 moved—[Angus MacKay]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Approval required for authorisations to take effect

Amendment 35 moved—[Michael Matheson].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
MacLean, Kate (Dundee West) (Lab)
Matheson, Michael (Central Scotland) (SNP)
McNeill, Pauline (Glasgow Kelvin) (Lab)

AGAINST

Gallie, Phil (South of Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 7, Against 4, Abstentions 0.

Amendment 35 agreed to.

Amendments 36 and 37 not moved.

Section 10, as amended, agreed to.

Section 11—Quashing of authorisations etc

The Convener: We now come to amendment 3 in the name of Michael Matheson.

Michael Matheson: As the bill stands, if the commissioner is satisfied that there are no reasonable grounds to continue authorisation, he can consider quashing the authorisation. The amendment seeks to clarify that that shall happen if there are no reasonable grounds for a continuation of authorisation and it is not in the public interest. The issue was raised in the stage 1 debate, as I am sure the minister is aware. I welcome his views on that point.

I move amendment 3.

Angus MacKay: I notice that section 11(1) begins:

"if the commissioner is at any time satisfied that"

and goes on to say "he believes that". However, I leave that to one side.

I appreciate the sentiments that lie behind the amendment, but there could be circumstances in which it would be preferable for the surveillance commissioner to have discretion to decide whether it was appropriate to quash an authorisation. I want to restate to the committee that in all cases—except those of urgency, which are subject to different arrangements—the commissioner would be required to give prior approval before any authorisation for intrusive surveillance took effect. That requires the commissioner to be satisfied, or to believe that there are reasonable grounds for believing, that the surveillance is necessary for the prevention or detection of serious crime and that it is proportionate to the objectives.

The amendment therefore relates to a situation in which such approval has already been given. For example, the commissioner may, in retrospect, decide that they are satisfied that, at the time of the granting of the authorisation or its renewal, there were no reasonable grounds for believing the surveillance to be necessary for the prevention or detection of serious crime, but it could transpire that the target was involved in serious crime none the less—that might even have been revealed by the surveillance itself. Therefore, the commissioner might decide that although the authorising officer did not have reasonable grounds for their belief at the time of authorisation, subsequent events suggest that the public interest would best be served by allowing the authorisation to stand.

The commissioner will be a senior judge and by virtue of section 91(2) of the Police Act 1997, he must be a person who holds or has held "high judicial office"—that means a judge of the Court of Session in Scotland or a judge of the High Court or Court of Appeal in England and Wales. I would expect the commissioner, as a senior judge, to take the appropriate action if he thought that the authorisation process was being abused. Given the possibility of the circumstances that I have outlined, it is my view that it is better to allow the commissioner discretion to act as necessary. I urge Michael Matheson to withdraw his amendment.

Gordon Jackson: I am happy with the minister's comments. In a funny way the amendment does the same thing, because it adds

"unless he considers that to do so would not be in the public interest".

I can see the point that the surveillance might have been wrong in the first place, but by the time the commissioner considers the matter the surveillance would already be under way. However, both approaches cover that. I am quite happy to follow the route of the bill, but I suspect it comes to the same thing in the end.

Michael Matheson: The second part of the amendment gives the commissioner the level of flexibility the minister suggests he should have. The amendment tries to strike a balance, working on the basis that the commissioner "shall" as opposed to "may". However, if he does not consider it to be in the public interest, he has an option to quash the authorisation. Amendment 3 tries to strike the balance that the bill overall is trying to achieve.

Christine Grahame: I had not thought of the example until the minister gave it. That makes me even more supportive of amendment 3, as it makes clear exactly when it would not be necessary to continue surveillance. The use of "may" does not make that clear. The amendment, by putting it in this way, makes it plain that authorisations would be quashed unless

"to do so would not be in the public interest (including for continuing operational reasons)".

That makes the situation much easier to understand.

The Convener: Do you want to respond, minister?

Angus MacKay: Not particularly. The point of having an independent commissioner of senior judicial standing is that they can exercise that discretion. The bill as drafted allows that to take place.

Michael Matheson: I have no further comments. The amendment provides that flexibility in its final phrase:

"in the public interest (including for continuing operational reasons)".

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Gallie, Phil (South of Scotland) (Con)
Jackson, Gordon (Glasgow Govan) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)

McNeill, Pauline (Glasgow Kelvin) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

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

Amendment 3 disagreed to.

The Convener: Amendment 4 is grouped with amendments 38 and 5, all in the name of Michael Matheson.

Michael Matheson: I am sure that the minister is aware of the concerns, which were aired in the stage 1 debate, over the destruction of records. Amendment 4 seeks to address one of these concerns. According to the amendment, the commissioner

"shall, unless he considers that to do so would not be in the public interest",

undertake the destruction of records. The amendment tries to achieve a balance.

Concerns have been voiced about the way in which records could be handled after an authorisation has been cancelled—not because they could be misused, but because the records could be held for a considerable time. I would welcome the minister's views on that matter, although they are probably similar to his views on amendment 3.

I move amendment 4.

Angus MacKay: My views on amendment 4 are broadly similar to my views on amendment 3. I have now noticed that the phrase that is used in amendment 3 is "unless he considers" rather than "believes" or "is satisfied that". However, let us leave that to one side.

Amendments 4, 38 and 5 are clearly aimed at trying to protect civil liberties, but they would not necessarily serve the public interest. In the stage 1 debate, the Deputy First Minister said that surveillance is often used to build up an intelligence picture, and that the relevance of each part of the picture may become clear only some time after that surveillance operation has been completed. It would therefore be difficult to specify in advance how the surveillance commissioner should approach each case. Even in cases in which the commissioner has decided to quash authorisation because they are satisfied that there are no longer grounds for believing that that was necessary for preventing or detecting serious crime, or was not proportionate to the objective, they could still accept that subsequent developments might mean that the intelligence that was produced might need to be re-examined and re-evaluated.

There could also be cases in which the commissioner had decided that there were not reasonable grounds for believing that the surveillance was necessary to prevent or detect serious crime as defined in the bill, but was aware that the surveillance had to do with evidence of crime that fell outside the definition. In those circumstances, the surveillance commissioner may well take the view that the public interest would lie in quashing the authorisation so that the surveillance would come to an end, but would allow the record to be used in evidence in relation to the lesser crime.

Bearing in mind that it is possible to imagine such problematic situations, the Executive would prefer to allow the commissioners—who are, as I have stated in previous amendments, senior members of the judiciary—to use their experience and discretion in deciding when it is appropriate to order the destruction of records. It is also worth noting that, in its evidence, the Law Society of Scotland agreed that the word "may" was preferable to "shall" in relation to the destruction of records, notwithstanding the points that have been made by Michael Matheson.

I invite Michael Matheson to withdraw amendment 4 and not to move amendment 5. The Executive would be willing to consider amendment 38 in principle, as we feel that it offers a useful protection of civil liberties.

Michael Matheson: I apologise for not referring to amendment 38 in my opening remarks. May I do so now, convener, in the light of what the minister has said?

The Convener: Yes.

Michael Matheson: I take on board what the minister has said, but will he consider the content of amendment 38 with a view to lodging something at stage 3? There is an issue about the retention of records, particularly for the purpose of a tribunal hearing: that the records should be retained for a period of time to allow the individual to make use of them in their own case.

11:45

Angus MacKay: We are sympathetic to the intent behind amendment 38. We propose to take it away, examine it further and lodge something for stage 3 that embraces the objectives of the amendment.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Gallie, Phil (South of Scotland) (Con)
Jackson, Gordon (Glasgow Govan) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)

ABSTENTIONS

Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 3, Against 7, Abstentions 1.

Amendment 4 disagreed to.

Amendment 38 not moved.

Amendment 5 moved—[Michael Matheson].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Gallie, Phil (South of Scotland) (Con)
Jackson, Gordon (Glasgow Govan) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)

ABSTENTIONS

Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 3, Against 7, Abstentions 1.

Amendment 5 disagreed to.

The Convener: Amendment 39, in the name of Michael Matheson, is grouped with amendment 48, in the name of Christine Grahame.

Michael Matheson: Amendment 39 gives the surveillance commissioner the right to

"disclose the fact of the authorisation and the order for destruction to the person who has been the subject of surveillance"

with reference both to records and to the fact that that person has been under surveillance.

Concern has been expressed that individuals would not be in a position to raise civil actions for breach of privacy, as they might never be aware that the surveillance has been carried out. My amendment seeks to address that balance. However, it may not always be possible for the commissioner to advise someone that they have been under surveillance, and the amendment seeks to give the commissioner the opportunity to advise an individual concerned that, in his view, authorisation has been granted in circumstances that are potentially actionable.

That goes back to the point of trying to achieve a balance, of taking into consideration whether surveillance was appropriate or not in the case of someone who knows that they were under surveillance, and also of taking into account the possibility that the surveillance may not have produced a result. It gives the power to the commissioner to inform that individual so that they may choose to take the matter up with the tribunal system.

I move amendment 39.

Christine Grahame: I appreciate that this is a tricky matter in a bill relating to surveillance, but the points that I raise in amendment 48 came from the matter of complaints to the tribunal.

I also went into the herbaceous border when I talked about

"binocular man among the lupins".—[*Official Report*, 14 June 2000; Vol 7, c 292.]

People can hardly go to a tribunal if they do not know that they have been under surveillance.

The matter was raised in the chamber at the stage 1 debate. Members of my party and of other parties felt that there was some merit in former surveillance subjects being notified, and I therefore lodged amendment 48. I want the Executive to consider this matter seriously in the light of ECHR obligations—and also because it may be the right thing to do, as Gordon Jackson has been saying.

The purpose of amendment 48 is to make it mandatory that the public authority, subject to scrutiny by the ordinary surveillance commissioner, either notifies or does not notify the subject of surveillance that they have been under such surveillance. The amendment contains caveats about the public interest, continuing operational reasons and so on. I know that this is a delicate matter but I feel that, in an open society and a new Scotland, as people keep calling it, it is important that this issue is addressed. The system should operate in a way that is fair to society and to the individual.

The tribunal system is not within the remit of this Parliament, and there is a right of appeal only in relation to procedures. I have not pursued this or thought it through, but my proposed changes would probably also involve changes to the codes of practice for local authorities. I would like to hear what the minister has to say about that, as I think that there is a measure of cross-party support for the thrust of amendment 48.

Angus MacKay: Whether it is appropriate, in certain circumstances, to disclose to a target that he or she has been the subject of surveillance has been one of the more significant issues to emerge from scrutiny of the bill. It was mentioned in the early deliberations and stage 1 report of the Justice and Home Affairs Committee and by the Deputy First Minister at the stage 1 debate, when he said that, in an ideal situation, we would prefer to be more open about targets and methods. Given the substantive nature of this issue in the bill, I would like to make a lengthy contribution to set out the Executive's position precisely.

It remains the case that it is extremely difficult to construct provisions that allow subjects to be notified of surveillance without creating the risk that continuing operations and valuable techniques could be compromised. Avoiding that risk is an important principle and one against which the Executive judges any proposed amendment. As we emphasised in our evidence and in the stage 1 debate, the purpose of the bill is to strike a balance between protecting human rights and enabling the police to use methods that are essential to preventing or detecting crime.

The provisions fully recognise that, by its nature, successful surveillance will not be detectable so, ordinarily, it will not be possible to challenge its use directly, as Christine Grahame has said. That is why independent oversight is essential, so that human rights are protected in practice as well as in principle. So long as the provisions of the bill are adhered to and surveillance is used for preventing or detecting crime, it is difficult to envisage notification of the target ever being in the public interest. That would give the subject of the surveillance knowledge that could be of value in evading surveillance in future, whether that information would be of use to the subject themselves or to others with whom they chose to share it. There could be no guarantee that the knowledge would not be put to that use. It is not clear to the Executive that the effect of amendment 48 would be to prevent disclosure in those circumstances, but I expect that, in any event, the committee would want to avoid disclosure of that kind for the reason that I have given.

There may be concern about the position of a member of the public who is improperly subjected to surveillance. That should not happen under the safeguards available, but the bill recognises that it may happen. First, I remind committee members of what should happen under the bill as it stands if a commissioner finds that there has been a contravention of the provisions in the legislation. Section 18 deals with that issue. In the event of the commissioner finding a contravention, he is required to make a report to Scottish ministers, unless the tribunal has already made a report to Scottish ministers on the same point.

The commissioner will also make an annual report to ministers, who will lay the report before Parliament after considering whether to exclude any material in the public interest. In fact, it is already existing practice for the commissioner to include in the annual report, which is sent to the Prime Minister and published by him, any instances in which procedures have not been correctly applied in the previous year. Although that will be a matter for the commissioner, we expect that he will continue that practice under the new regime.

Individuals also have recourse to the tribunal and, were they to make an application to the tribunal and were the tribunal to find that the provisions of the act had not been followed correctly, they would be informed of the tribunal's findings. Further to that, the tribunal will have the power to provide a variety of remedies, including an order quashing or cancelling any authorisation and an order requiring the destruction of any records or information relating to that person. Those remedies are in addition to the power to make an award of compensation or other order as the tribunal thinks fit. There is undoubtedly an opportunity for the individual to pursue redress.

That narrows down the area addressed by this group of amendments to those individuals who are unaware that they have been the subject of surveillance and are therefore not in a position to make a complaint to the tribunal. An individual could make a complaint to the tribunal even if he merely suspects surveillance. Unless that complaint is frivolous, it would be investigated. It is also worth noting that, if any of the products of surveillance were used in evidence against that person in criminal proceedings, the defendant would have a full opportunity to challenge that evidence. That challenge might include arguing that the surveillance was not carried out in accordance with the law.

I have already tried to describe the remedies that are available, but there are also reasons why the Executive believes that the amendments in this group, which we can see have been carefully thought out and seek to circumvent obvious pitfalls, would not be workable.

Let me deal first with amendment 39. It is difficult to understand the effect of that amendment, which appears to assume that the commissioner has a function under the bill that he does not have. The commissioner is required to approve authorisation. He may quash an authorisation if he is satisfied that there are no reasonable grounds for believing that the requirements in section 6(2)(a) or 6(2)(b) were satisfied, or if there are no longer grounds for believing that. However, there would not be any

civil liability connected to that decision, given the provisions of section 2(1), which provides that a person's conduct is lawful if it is in accordance with an authorisation.

For example, if a chief constable is mistaken in believing that an authorisation was necessary for the prevention or detection of crime, or that it was proportionate to what the police sought to achieve, the conduct of his officers may be held to be incompatible with article 8 of the ECHR, and therefore unlawful under the Human Rights Act 1998. A complaint for damages could be made to the tribunal in those circumstances.

Any decision by the commissioner to disclose surveillance activity on the grounds that he thought that it had given rise to civil liability would be likely to be prejudicial to any subsequent tribunal consideration of a complaint. In any event, we expect there to be few circumstances in which a commissioner decides to quash an authorisation for intrusive surveillance, but possible disclosure of an operation against a major criminal because of a technical breach of the legislation would not be proportionate or in the public interest.

Under amendment 48, there would be notification unless it was in the public interest that there should not be. The primary difficulty with this amendment, in our view, is that of deciding when the public interest is in favour of disclosure. That would be extremely difficult. Disclosure is a one-off event. It is not possible to retract or unwind disclosure once it has been made. At the same time, surveillance is unlikely to prove a negative. In other words, although surveillance might provide evidence that a subject is involved in crime, it will rarely show conclusively that they are not. That is especially true when dealing with sophisticated criminals who go to extreme and considerable lengths to conceal their activities. There will always be the possibility that, even when surveillance has not established any wrongdoing, future events may demonstrate that the subject is, in fact, either involved in criminal activity or has some connection to those who are. Disclosure would then lead to their becoming aware of law enforcement interest in their activities.

For those reasons, it is hard to see how or when a judgment about where the public interest lies could be made. The police could certainly be expected to take a cautious view of whether disclosure was in the public interest, not least because there would always be a cost to them in making public the type of subject they were targeting, their methods and their operational capability.

Meanwhile, no further information would be available to the commissioner, other than that from the police, on which to reach a view on whether disclosure was in the public interest. If a strict test were put on the police, so that they had to prove to the commissioner that it was in the public interest that disclosure should not be made, they would have a serious concern that the absence of immediate evidence of wrongdoing would be likely to lead to disclosure and the undermining of the value of surveillance as a technique with which to deal with serious crime.

I appreciate that I have given a rather lengthy response, but it is on an important point. For the reasons that I have set out, the Executive cannot support the amendments. We invite members to withdraw those amendments that have been moved and not move those that have not been moved.

12:00

Gordon Jackson: I find this matter very difficult. The minister will know that I flagged up the issue at stage 1, and said that the balance that we are trying to strike here is one of the hardest things that I have encountered. I have already been mocked in the press for the wonderful statement that

"The problem with all surveillance is that it is a secret."—[*Official Report*, 14 June 2000; Vol 7, c 268.]

but I do not apologise for saying that. I appreciate and sympathise with everything that the minister has said, but that is only one side of the coin.

I accept that almost all surveillance will be legitimate, will not be abused and will be a genuine attempt to target serious crime. I do not expect that, on every occasion on which surveillance produces nothing provable, the police should tell people what they have been doing—that would be silly and no police officer would expect me to come up with such an idea. There are operational reasons why, on most occasions, there should not be disclosure about the surveillance. On the other hand, we have been criticised in the press—not very advisedly—for giving a blank cheque to law enforcement agencies. I want to put on record that we are not doing that. However, there is still some danger of a climate of secrecy.

The minister says that wrong surveillance should not happen, but he concedes that it may. I will go further and say that it will happen, not because I am a cynic, although I may well be, but because things always go wrong and inevitably there will be occasions on which there is some degree of abuse. A citizen could be put under surveillance because of an unmalicious error of judgment—this is the cock-up theory rather than the conspiracy theory—by the law enforcement agency. An individual officer could decide to do something that is abusive, or someone could be abusive towards

Phil Gallie, for example, and could falsely tell the law enforcement agencies that he has been up to something, so that for sinister and unfair reasons he is put under surveillance. A citizen then suffers that intrusion for no good reason concerning any past or potential operation. If that happened to me, I would want to know about it. I have discussed this with other members, and some people have told me that they would not want to know about it.

Often the climate of secrecy exists for national security and operational reasons, but human nature being what it is, those who operate in that world like such a climate because they never have to reveal their mistakes. I am for the climate of secrecy where it is necessary, but I am against it where it exists simply to conceal things that have gone wrong. I do not know how to strike the balance. I am not persuaded that the amendments are the best way in which to strike that balance so I will not support them, but I will say what I said before—it is not a cop-out this time either.

Phil Gallie: It is not a cop-out this time.

Gordon Jackson: Thank you, Phil.

This is one of the most important issues in the legislation. I will be more than happy if, in one form or another, this matter is brought back at stage 3 for the whole Parliament to consider. We have to give the police the proper method in which to operate, but somehow ensure that, when people's civil liberties are infringed unjustifiably, that is not swept under the carpet. That is a difficult balance to strike, but the matter worries me and I think that we should reconsider it.

Scott Barrie (Dunfermline West) (Lab): I agree with everything that Gordon Jackson has just said. Christine Grahame is right to say that, when we debated the bill last week, there was a fair degree of support for something like her amendment from members of various parties. I am not sure whether these amendments, in particular amendment 48, do what we would like them to do in a way that is practical, but I think that this issue strikes at the heart of the bill. The committee's report flagged up the issue clearly; it was discussed in the debate last week, and we still need to wrestle with the problem. Maybe the most appropriate way in which to do that is to consider the issue again at stage 3, so that people have further time to consider ways of achieving the proper aims that Gordon has suggested that we should pursue.

Euan Robson: I will not add much to what the previous two speakers have said, except to say that, as the minister said, these are questions of balance. In the very few instances in which someone's rights are trampled on, there ought to be some form of redress for them. If they do not know that that has happened, somebody ought to tell them. I think that, with certain safeguards, the surveillance commissioner is best placed to do that. If the bill does not give him the power to do that, we ought to ensure that he is given the power to protect people on the occasional instances in which there are difficulties. That is not to say those difficulties will be intentional, although on very rare occasions they might be. There ought to be protection.

I cannot support the two amendments, because I do not think that they deliver what I want. Amendment 39 refers to circumstances giving rise to civil liability, but that imposes on the commissioner the duty to assess whether a civil liability would arise. The amendments have the right idea and, if they were correctly drafted, could achieve what we want to achieve. I believe that a way could be found to protect an individual in those rare circumstances in which abuse may occur.

Phil Gallie: What Gordon Jackson has said is totally different from what he said earlier, when he gave one side of the argument, identified with it, but then said that he would not support it in a vote. On this occasion, he presented a strong argument but took a balanced view and considered both sides of the argument.

I find myself in some difficulties on this question. There is some merit and substance in amendment 39, in that once the surveillance commissioner is satisfied that circumstances may give rise to civil liability, he "may" disclose information, but would not have to do so.

We should remember that the circumstances that are covered by the amendment include the destruction of any evidence that had been recorded. I do not expect that the minister will accept amendment 39 today in the precise form in which it has been lodged, but I hope that he will give some words of comfort to Michael Matheson by saying that we will reconsider the issue.

Pauline McNeill: I take on board the minister's comments. On balance, I support what has been said, especially about compromising valuable techniques. I agree that it is not always possible to conclude that someone who is under surveillance is innocent, but I have concerns about people who are clearly completely innocent and against whom an authorisation for surveillance should never have been granted.

I cannot support amendment 48 because it is simplistic to suggest that, at the end of a surveillance operation, the person who was the subject of the surveillance should be told. That could compromise what we are trying to achieve in the bill. On balance, I support the minister; but consideration should be given to what should be done when a person is clearly innocent and should never have been under surveillance in the first

place.

Angus MacKay: I would like to restate a point from my opening comments. It is extremely difficult to construct specific provisions that would allow subjects to be notified of surveillance without creating the risk that continuing operations and techniques might be compromised. From the Executive's perspective, avoiding that risk is extremely important. We would wish to test any amendments against that requirement.

I am not willing to say that we can meet some of the concerns that have been raised; however, between now and stage 3, we are willing to have further discussions to see whether we can make progress on this issue. I have to say that, from the Executive's perspective, it will be extremely difficult to accept amendments on this issue and I am not confident that we will be able to do so, but we are willing to have further discussions.

The Convener: How would the innocent, unaware subject ever be in a position to trigger a remedy?

Angus MacKay: If they were unaware, they would not be able to.

The Convener: That is the fundamental point. What is the point of the remedy if nobody is ever able to trigger it?

Angus MacKay: Many people will trigger the remedy. It is possible to envisage circumstances in which individuals might become aware that surveillance has taken place. For example, we have already discussed the consequences of being able to pursue a non-incidental action for civil liability. So there are circumstances—

The Convener: That example concerns a third party.

Angus MacKay: Yes—but it is absolutely clear that if a third party pursues a civil case, that will not be a matter that remains a great secret between the third party and the enforcement agency.

The Convener: My concern is for the person who is the subject of the surveillance.

Angus MacKay: That is the whole point of this debate. We are attempting to strike a balance.

The Convener: In truth, the fact is that those people will never be able to trigger the remedy.

Angus MacKay: Unless they become aware that they have been the subject of surveillance.

The Convener: But that is a secret.

Angus MacKay: They may well suspect that they are the subject of surveillance for one reason or another.

Gordon Jackson: Minister, everybody round this table appreciates your point about the Executive's priority being not to do anything that would risk operations. Round this table there is also a strong feeling that in some cases people should be told about operations. You have said that you find it difficult to envisage an amendment that could strike that balance. Perhaps Christine Grahame's amendment does not strike that balance, but I suggest that the Executive apply its mind to doing so. Otherwise, the danger is that it will get an amendment that is not as good as one that it could have drafted itself. The balance must be struck.

Angus MacKay: I have already said that we are willing to have further discussions between now and stage 3. We will consider the concerns that have been raised. We will have those discussions to see whether we can find a way of satisfying those concerns. I think that that will be difficult to do because of the difficulty of constructing a provision that satisfies the concerns and does not prejudice the issues that I have talked about. We have tried to ensure that the process by which authorisations take place, taken with the independence of the commissioner, who will be of senior judicial experience, safeguards the rights of individuals.

I accept that if what takes place is inappropriate, we are talking about redress after the fact. It is extremely difficult to deliver that. We are almost talking about two completely conflicting principles. However, we will have a stab at it. We will have discussions with committee members and others to see what can be done—but I repeat that I am not optimistic.

12:15

Christine Grahame: Throughout the passage of this bill, decisions will be made on what is or is not the public interest, and judgments will be made on what are operational reasons. Similarly, decisions will have to be taken on whether a party should be informed or otherwise. I am beginning to wonder whether it is simply the case that you do not want to have to tell innocent people who have been under surveillance—

Angus MacKay: No, that is—

Christine Grahame: Well, all right, but amendment 48 strengthens the bill. It also strengthens democracy. If amendment 48, or a similar amendment, does not become part of the bill, that will give rise to serious concerns among the public about how it will operate. If a person has been the subject of surveillance and it has been shown that that person is completely innocent, and if there are no public interest or operational reasons for not telling that person that he or she

has been under surveillance, it will be a comfort to the public to know that that person will be told. Most mistakes in life are a cock-up rather than a conspiracy. I can foresee some difficulties—for example, it is obvious that some people will resent having been under surveillance, but balanced against that will be the fact that at least people will know that they have the right to be told.

This is a serious matter. The resources that I had at my disposal in drafting my amendment were quite good, but the minister will have far greater resources at his disposal. I do not believe that he will not be able to come up with something that will satisfy the concerns.

Pauline McNeill: As a member of this committee I feel duty bound not to leave this without scrutinising it to the bitter end. On balance, I am still on the side of the minister and not on the side of the amendment, but I still have a nagging doubt that there could be another form of amendment to this bill that could satisfy us. For example, if it turned out that the wrong person had been placed under surveillance because of a mistaken identity, the person should be told. There may be other cases where, categorically, the person should be told—for example, if a surveillance operation had, beyond all reasonable doubt, concluded and there was nothing further to be gained from surveillance. Even a minor catch-all would be better than what we have at the moment, which is virtually nothing.

I will vote against the amendment, but I would like to press the minister a bit harder about having a dialogue with us, before the bill becomes law, just so that we can satisfy ourselves that there is not something else that we can do.

Euan Robson: If the surveillance commissioner is senior enough, experienced enough and wise enough to be able to quash an authorisation, why can we not extend that principle just a little further and say—taking account of all the points the minister has made about the disclosure of surveillance techniques and so on—that the commissioner could have the discretion, in occasional instances, to inform the subject of surveillance. Bearing in mind all the qualifications the minister wants to make, I cannot see why there is a difficulty with that.

Phil Gallie: My point follows on, to some extent, from what Euan Robson said. I want to emphasise once again the fact that the amendment would affect only a very small proportion of the individuals who come under surveillance. It would act as a comfort to the wider population, who recognise that in some circumstances things can go wrong and that that can become obvious to people around an individual who is under surveillance without being obvious to that individual. That comfort should appear somewhere in the bill, in case an error is made.

The Convener: Before the minister responds, I should point out that it is clear that we are not going to get much further. It is 12.20 and we will finish at 12.30. We may manage to deal with amendment 39 and one section to which there are no amendments, but amendment 48 is not likely to voted on until we meet in two weeks' time, as next week we will have to deal with the Bail, Judicial Appointments etc (Scotland) Bill. That gives us the opportunity over the next fortnight to look again at amendment 48 and to make further changes to the section it would insert without having to wait until the stage 3 debate. Even after today there will be a further opportunity at stage 2 to address this issue. Many points have been put to you, minister, and you will want to respond to some of them individually, but this issue will be debated again in the committee in a fortnight's time.

Angus MacKay: Given that we are running out of time today, it is helpful that we will not vote on this issue for another two weeks. The fact that some flexibility is built in gives us the opportunity to pursue the discussions to which I referred. Members should not confuse my pessimism about the possibility of reaching a satisfactory outcome with a lack of enthusiasm for doing so. I am happy to pursue discussions enthusiastically and to see whether progress can be made.

Christine Grahame is wrong to make a comparison with judgments on the public interest that are made elsewhere in the bill. Those judgments would not result in disclosure of the fact that operations had taken place or of the nature of the operations—the types of surveillance and so on. That goes to the core of the trade-off that we are being asked to consider making. This is an extremely important and unique issue in the bill.

A number of interesting points were made in the last part of the discussion. We need to establish—which we have not done so far—whether we are talking about people who are subsequently discovered not to have been involved in serious criminal activities, or people who have been improperly targeted. There is a distinction between those two groups. There may be other distinctions and other circumstances that should be taken into account.

The points that Pauline McNeill made raise a number of questions about who would make judgments and on what criteria. How do we define "beyond all reasonable doubt"? If the surveillance commissioner is intended to be something more than an office holder who approves actions, would that entail the systematic examination of every authorisation after the event to establish whether sufficient evidence was obtained, the warrant was properly authorised and the commissioner is satisfied that an operation was appropriate? That

raises a huge number of questions about the resources available to the surveillance commissioner, the time involved in giving genuine consideration to all cases and the criteria according to which judgments are made.

Those are just some of the issues that must be considered when trying to pull together provisions that make sense and safeguard the public interest. By the public interest I mean both democracy in the wider sense, as described by Christine Grahame, and the capacity of our investigatory organisations to prevent, detect and prosecute serious crime that threatens the fabric of our society. We are being asked to make an important trade-off, and it is difficult to see how we can do it satisfactorily. However, I am happy to engage in discussion of this issue over the next two weeks.

Michael Matheson: I ask to withdraw the amendment.

Amendment 39, by agreement, withdrawn.

Section 11 agreed to.

Section 12 agreed to.

The Convener: It is appropriate to conclude the meeting at this stage.

It is quite clear from the number of amendments that remain to be debated that there is little point in our trying to finish consideration of this bill at the beginning of next Tuesday morning's meeting before we commence stage 2 consideration of the Bail, Judicial Appointments etc (Scotland) Bill. It is my intention that at our next meeting we will proceed to stage 2 of the Bail, Judicial Appointments etc (Scotland) Bill, assuming the normal referrals are made and, after we have completed stage 2 of that bill, to come back to stage 2 of the Regulation of Investigatory Powers (Scotland) Bill.

I advise members that next week we have two slots reserved in addition to our regular slot on Tuesday morning—on Tuesday afternoon and on Wednesday morning. That means that next week we will definitely complete stage 2 of the Bail, Judicial Appointments etc (Scotland) Bill. Minister, you look as though you may have a problem.

Angus MacKay: I am just taking it all in.

The Convener: I hope that we do not need to use all three of those slots next week, but they have been reserved for us if that turns out to be necessary. As I understand it, stage 3 of the Bail, Judicial Appointments etc (Scotland) Bill must be completed before the summer recess. We will come back to stage 2 of the Regulation of Investigatory Powers (Scotland) Bill in a fortnight's time.

I remind committee members to submit draft amendments to the Bail, Judicial Appointments etc (Scotland) Bill as soon as possible. The only day on which they can be lodged formally is Friday, but if they can be got to the clerks as soon as possible that will allow them to do a considerable amount of the work before then. I remind members that amendments can be lodged only in person or in signed hard copy, unless they have already obtained authorisation for them to be submitted by e-mail by a third party.

I conclude today's meeting. Thank you for your forbearance.

Meeting closed at 12:27.

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