

JUSTICE COMMITTEE

Tuesday 4 September 2007

Session 3

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JUSTICE COMMITTEE 3rd Meeting 2007, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Paul Martin (Glasgow Springburn) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

*Margaret Smith (Edinburgh West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

John Lamont (Roxburgh and Berwickshire) (Con)

Mary Mulligan (Linlithgow) (Lab)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERKS

Anne Peat

Terry Shevlin

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 4 September 2007

[THE CONVENER *opened the meeting at 10:31*]

Subordinate Legislation

Discontinuance of Low Moss Prison (Scotland) Order 2007 (SSI 2007/322)

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I trust that everybody had an enjoyable summer.

I remind members to switch off their mobile phones, please. There is a full turnout of members; thus, no apologies have been received.

I welcome the Cabinet Secretary for Justice, Kenny MacAskill, who is appearing before the committee for the second time; Tom Fox, who is head of communications at the Scottish Prison Service; and Ruth Sutherland, who is in charge of legal policy for the Scottish Prison Service.

I invite the cabinet secretary to make a short introductory statement on SSI 2007/322, which is a negative instrument.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener. I thank the committee for the opportunity to explain the background to the order. I will put the issue in its historical context.

The decision to close HMP Low Moss was taken about five years ago as part of the SPS estates review. It had been recognised for some time that the accommodation for prisoners and the working conditions for staff at the prison were not fit or appropriate for the 21st century. Members who have passed Low Moss will know that the accommodation consisted of wooden huts that dated from world war two. That accommodation was a fire risk, and the physical security of the prison was poor and inappropriate.

On 20 February, the Scottish Prison Service announced that Low Moss would close on 28 May 2007. A closure plan was put in place, which meant a gradual reduction in the number of prisoners at the prison and the transfer of staff to their preferred sites, where possible.

Having explained when and why the decision to close Low Moss was made, I should explain why a discontinuance order is required. The reason is straightforward. The Prisons (Scotland) Act 1989 made provision for Scottish ministers to discontinue any prison by way of an order. The

order in question takes the form of a Scottish statutory instrument that is subject to negative resolution. That is the parliamentary procedure that the 1989 act provides for and which is described in the Executive background note that accompanies the SSI, which is doubtless before members.

Committee members will be aware that, on 24 August, I announced further plans for prisons in Scotland, which included the suspension of the current procurement process for the replacement prison at Low Moss. The private sector will be invited to bid for the design and construction of a new publicly operated prison on the existing site. I am keen to ensure that the retendering of the contract for a prison at Low Moss will not result in any unnecessary delay. I also announced that a new prison will be built in the Peterhead area to replace HMP Peterhead and HMP Aberdeen. That announcement fulfilled a previous commitment to a publicly owned and operated prison service and acknowledged our need for a modern, fit-for-purpose prison estate that plays its role in contributing to public safety and reducing the problem of reoffending.

Capital funding of £120 million a year for the provision of a new, fit-for-purpose prison estate has been provided, which will allow not only the construction of a new prison but significant investment in the current estate to replace our ageing prisons.

Our commitment is to a publicly owned and run prison service, to more investment in replacement prisons that are fit for purpose and to a fundamental review of the role of prison in modern Scotland. We are committing not to building additional prisons but to replacing capacity that is no longer fit for purpose.

The contracts for the operation of HMP Addiewell and HMP Kilmarnock will remain in place due to the complexity and prohibitive costs involved in cancelling them. However, the contracts will be rigorously monitored to ensure that they provide the taxpayer with best value for money.

Modernising the prison estate will make a vital contribution to delivering our commitment to a coherent penal policy. I have already announced a review of community sentences to produce credible and tough substitutes for prison. Work on that part of our strategy is already well under way. Alongside those developments is the overarching need to take a serious and holistic look at why Scotland imprisons so many people, often for very short periods. The commission that we are setting up will be asked to challenge existing assumptions and preconceptions about the use of prison. I will announce more details about the commission shortly.

I am happy to take any questions that members may have.

The Convener: Thank you.

Few would state other than that Low Moss was an inadequate facility. We are dealing with a historical situation with regard to that institution, which has been closed for some time. However, you have raised issues with regard to the funding of future prison projects that might be a little bit more controversial. Do you feel that the existing private prisons have provided value for money and have been effective in doing what they are there to do?

Kenny MacAskill: We accept that they exist and that we have contractual obligations with regard to them. Do I believe the best way to operate the prison estate is through the private sector? The short answer is no. There is good reason to believe that the Scottish Prison Service, which takes a holistic view, represents the best way to provide a prison service as opposed to simply acting as a management agency for the prison estate.

We accept the requirements that have been put on us, but it would be disingenuous of me not to say that, across the world, private prisons are being rolled back. Even in the land of the free and the home of the free market—the United States—there is a rolling back of private prisons.

We believe that our position best provides for a holistic prison service in which what fundamentally matters is the protection of our communities and the rehabilitation of our offenders, taking into account the requirement to look after the interests of the public purse.

The Convener: What comparable costings have been made by the Scottish Government, as I must now call it, in respect of the private and public sectors?

Kenny MacAskill: We cannot compare like with like in the prison estate, which is why, correctly, that is not done. The cost of an open prison is different from the cost of other prisons in a modern prison estate, and the cost per prisoner in a modern prison is different from the cost per prisoner in an old, Victorian institution that is difficult to secure and operate, of which we have many.

An analysis that tried to compare one with another would simply not compare like with like—we are talking about the proverbial apples and pears.

Paul Martin (Glasgow Springburn) (Lab): What process did the previous Executive follow in interrogating the various available procurement methods? For example, I understand that the previous Executive interrogated the possibility of a

privately built, publicly operated process, but decided that that would not represent best value. If my speculation is wrong, please correct me.

Kenny MacAskill: The previous Executive put in place what seemed to be a head-to-head tender process involving private versus public. As far as I can see, that delayed matters for several years. It cost several million pounds for the previous Executive to conclude that it would be better to proceed down the private route.

Our view is that prisons exist not for private profit but for the protection of the public. We believe that the best way to protect the public is through having a prison service and not a management agency. I am grateful that the incoming Labour leader accepted that—we are glad that she agrees with us. It is a tragedy, and a matter of regret, that several years have passed—and several million pounds have been spent—when building could have started. We might not have got a wall up, but we would have made considerable progress.

We have reached agreement with the SPS, the Prison Officers Association and the leader of the Opposition in the Parliament that the way forward is to have a prison service whose ethos is about protecting our communities and rehabilitating offenders, and which is not driven by the pursuit of profit.

Paul Martin: Do you acknowledge that the current Government's ethical opposition to privately run prisons will incur significant expense to the public purse? It is important to clarify that in the public's perception. We could have a privately run prison that would cost less than a publicly run prison.

Kenny MacAskill: I do not think that there is any evidence that private prisons operate more cheaply. A few years ago, the New Zealand Government wanted to clarify the issue that you raised. It built two prisons in Auckland, one of which was privately run and the other publicly run. The prisons operated for five years and at the end of the experiment it turned out that the public service was as cheap as, if not cheaper than, the service provided by the private sector.

First and foremost, we believe in having a prison service whose ethos is about more than just private profit. We must protect communities as well as the people who work in prisons and seek to rehabilitate offenders. We can get good value from the SPS and we should not simply pursue the chase to the bottom—

Paul Martin: Are you saying that expenditure will be the same—

Kenny MacAskill: We can be sceptical about many matters when we talk about a 25-year lease.

How can we know what the position will be in 15 years' time?

Let us be clear about why people operate private prisons and where the profit margin lies. Private prisons make their profits by employing custody officers instead of prison officers and undermining public sector wages—everything else must be operated according to the ground rules that apply to publicly run prisons. If you want a reduction in public sector wages and a change in the nature of the people who are contracted to work in prisons, you pursue the private route. Such an approach has problems—as you know well from the experience of your colleagues south of the border—and does not well serve our communities.

A prison's paramount role is the protection of our communities. Community safety is best safeguarded by having a well-funded and well-resourced prison estate, staffed by people whose morale is high and who believe in what they do.

Paul Martin: Will any element of the private sector be involved in the maintenance of the prison?

Kenny MacAskill: We expect so. We live in a complicated world and the days are gone when the SPS estate employed a maintenance fitter who would deal with broken windows and replace doors. We have sophisticated electronic technology that is not held by the SPS—and probably not by the Scottish Government. We are considering not just the building of the prison, which will quite rightly be done by private operators, but the design and maintenance of sophisticated equipment. Such matters can quite correctly be dealt with by the private sector, but the operation and management of the prison will remain in the public sector.

Complicated security and information technology systems probably cannot be dealt with by the SPS without incurring huge costs and are best left to private operators. Many such aspects will probably be dealt with in the tendering process for the prison's construction. When we procure a complicated building we must ensure that appropriate safeguards are in place so that technical issues can be dealt with. Given that this meeting is taking place in the Holyrood building, I can say that the SPS will learn lessons from a variety of past experiences, to ensure that appropriate maintenance can be carried out at reasonable cost.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Who will own the building?

Kenny MacAskill: We will. The prison will be built by the private sector and aspects of it will probably be maintained by the people who were awarded the contracts to provide them. That is

appropriate, given that those people have the technology to supply the sophisticated software, sliding doors or whatever—in this building the issue seems to be creaking, rather than sliding, doors. Anyway, the Scottish Prison Service will own the building on behalf of the people of Scotland.

10:45

Cathie Craigie: I realise that it is early days, but do you imagine that the contract to be signed at the beginning will include a maintenance period of five or 10 years?

Kenny MacAskill: That is best decided by the experts on contracts and tendering in the SPS and the Government. Whether the maintenance period is set at five years, 10 years or the lifetime of the facility is determined, to an extent, by the balance of market forces, taking into account the nature and complexity of the sector. Lifespans are limited. It would be correct for me to leave that matter to those who are best suited to advise on it.

We are anxious for prisons to be run by people who are committed to them, rather than by people who view them as an adjunct to the operation of a catering business, as is the case elsewhere.

Cathie Craigie: What timescale have you set for the return of bids for the design and construction of the new prison at Low Moss?

Kenny MacAskill: We must follow the appropriate procurement rules—we have to start again. It is likely that many firms that have been operating and designing on a design, build, operate and maintain basis will be interested, and they will have the opportunity simply to shift over. There will be a short delay because we had to go back to the start, regrettably. There have been several years of planning delay and footering around the question whether the new prison should be an SPS prison or a private prison. We believe that there should be a new Bishopbriggs prison where Low Moss currently stands. It will be built as speedily and expeditiously as possible by the private sector and it will be operated and owned by the public sector.

Cathie Craigie: You have widened the discussion to the Scottish Prison Service as a whole. You have mentioned a fundamental review of the system—and that is the right way to go. What is the current ratio of prisoners to prison officers, both in the SPS and in the privately run service?

Kenny MacAskill: Many of the rules on security apply to both the public and private sectors. The ratios vary depending on the category of prisoner and the nature of the estate. There are approximately 4,500 staff in the SPS. The average

prison population is approximately 7,500. HMP Kilmarnock has approximately 550 inmates and around 200 staff.

The difficulty is that security requirements vary among prisons. In some Victorian prisons, the sightlines do not allow as many staff to be released as modern prisons do. Some low-category prisons, including those in the open estate, understandably have a different ratio compared with the ratio that applies at maximum-security institutions such as Shotts, where there are people who can be extremely dangerous and where we must be vigilant for the sake of our communities.

Margaret Smith (Edinburgh West) (LD): I am not entirely reassured by your comparisons between the private and public sectors. My recollection is sketchy, but I remember discussions at the justice committees many years ago, when the previous Administration wrestled with issues around prisons. There was a general thought in that Administration that if the public sector could do the job as well and as cheaply as the private sector, people would feel more comfortable with that. However, it then became clear that proceeding with the private sector was likely to offer better value for money for the public purse.

You have told us that we should not compare apples with pears and that it is difficult to pin things down. I would like a straight answer to this question. Putting the ethics to one side, do you believe that going down the public sector route represents better value for money than going down the private sector route?

Kenny MacAskill: That takes us back to the old adage about the price of everything and the value of nothing. I believe that our approach is the best one. You talked about the agonies that the previous Executive's Cabinet went through on the issue. Although I do not think that Wendy Alexander was a member of the Cabinet at that time, she clearly accepts that we have made the right decision. The issue depends on how we look at things. Some matters are constrained by Treasury rules. On the actual cost of the proposals, we should be clear that private prisons are not cheap. The prison at Addiewell will cost approximately £25 million per year for 25 years, which to me is not a significant saving.

Presumptions can be made on the basis of how matters are written down under Treasury rules and how Governments may be constrained by the availability of funding—I am thinking of procurement, for example. I am fortunate that the Cabinet Secretary for Finance and Sustainable Growth has made money available to build not only a prison in Bishopbriggs—in the normal way in which such matters are dealt with in most of

western Europe—but a further prison in the north-east. If you wish to follow Treasury rules, you might argue that matters are better dealt with in the private sector. However, we do not accept that. If one works on the basis that wages are the major cost impediment in running a prison, one will pursue the private route and prison officers will then become custody officers, to give a cost saving. That is the only real saving that can be made in the prison estate. In the private and public sectors, prisoners must be fed and kept secure in the same way. Therefore, the savings are made in the wage bill.

Prison officers in Scotland do an excellent job in difficult circumstances. We must reward them and treat them fairly. A 25-year strategy that is predicated on seeking to reduce officers' pay would damage not only the officers but security in our prisons. If we have a race to the bottom, problems will follow as a result of staff losing the holistic view and ethos of the SPS and the commitment to the job that they do. That would result in the dangers of corruption and so on. We believe that the best approach is to pursue a public service. If others wish to privatise, so be it, but the Government and I believe that having a public service is the best way forward. We are grateful that Wendy Alexander has confirmed that she agrees with us on that.

Margaret Smith: I will come back on that issue and then move my question slightly sideways. I asked a perfectly neutral question about value for money, but I did not get an answer. I did not ask whether, in the holistic view, it was best to go public or private, although I have my view on that, which is probably not dissimilar to the cabinet secretary's view. My question was about value for money.

I accept the cabinet secretary's argument that value for money is about not only pounds, shillings and pence, but wider quality issues. He will not be surprised to know that I support the review of community sentences that he is undertaking. The Howard League for Penal Reform has suggested that if we do not reduce the number of people whom we put into prison, we will need to build another seven prisons, whether in the private or public sector. What targets do you have on the number of prisons that you might be able to save for the public purse? How will the review be followed up to ensure that the people who are in prison are those who should be there and that we make better use of community sentences? What work are you undertaking to ensure that that is a value-for-money operation as well as a policy measure, given that if the value-for-money aspect is not met, that will have ramifications for the rest of the service?

Kenny MacAskill: I absolutely assure you that the Scottish Government will always seek to pursue value for money, not only in the prison service, but across the board. In that respect, we believe that we must have a well-resourced and well-funded service whose ethos is centred on protecting our communities and on rehabilitation.

As for your question, it is very difficult to estimate prison numbers. It all depends on the organisation that you speak to. However, it is clear that the prison population in Scotland is increasing at the same time that the level of offending is decreasing. Of course, we could extrapolate from that that more people are committing serious offences or that we have been able to capture a number of people who committed offences years ago, but surely such a situation is fundamentally wrong and perverse.

We also incarcerate far more people than most other countries. I hope that everyone will accept that we in Scotland are no more genetically programmed to commit offences than anyone else, so why are more people in prison here than elsewhere? We must try to address that problem without attempting to apportion any blame.

Of course, if prisons need to be built, then built they will be—after all, we have committed to renewing the estate—but we should try to work out who should be in prison. People feel that there are some who should be in prison but are not, and accept that others who are in prison should perhaps be dealt with in the community.

We need a coherent penal policy that gives us protection from serious and dangerous offenders while allowing those who are troubled—in many cases deeply troubled—to be treated in our communities. Our society did not decide to close down mental health institutions and liberate the patients who had been rotting there only to lock them up in prison. However, anyone who has visited a prison will know that a substantial number of people in the system suffer from mental health problems. Some of those people must be incarcerated because they have committed serious or violent offences—of course, that trumps all other considerations—but others have deep problems that cannot be addressed in prison because of the pressures on the estate. We must find a way of treating those people while allowing the SPS to concentrate on the core issue of detaining and dealing with people who are a danger to the public. That is why we need a coherent penal policy.

Nigel Don (North East Scotland) (SNP): I want to go back to the basic numbers. Could you confirm that the replacement for Low Moss prison—when we do it publicly rather than privately—will be the same size and will, in effect, be the same prison?

Kenny MacAskill: Absolutely. Our understanding is that many of those who have tendered on a design, build, operate and maintain basis will probably seek to tender on a design, build and maintain basis, leaving the operation and management to the SPS. We are perfectly relaxed about that; we simply want a prison that is adequate. It is irrelevant who builds it, as long as the prison provides the best value that Ms Smith correctly highlighted and we are sure of its operation and management. Our understanding is that it will be exactly the same size as the current facility.

Nigel Don: In that light, will you break down the numbers with regard to the proposal for the prisons at Peterhead and Aberdeen? Will the capacity of the replacement prison match the capacity of the two existing prisons?

Kenny MacAskill: We are looking to provide a replacement in the Peterhead area that will meet the north-east's needs. It will not necessarily be on the site of the current prison—that matter has still to be decided. The point is that we need to work out how to deal with people in the north-east who are remanded in custody, particularly young men who have to be transported to Polmont and women who have to be taken to Cornton Vale. As a result, we want a prison that meets the requirements of the north-east of Scotland, with not only a separate secure facility for sex offenders, but the facilities that are currently available at Craiginches prison for dealing with those who have been convicted and are serving sentences.

We must also deal with the problems and attendant difficulties faced by Reliance and highlighted by HM prisons inspectorate of moving women and young men from the north-east of Scotland to Cornton Vale and Polmont respectively. For example, the families of those people can find it difficult to stay with them. Instead of dealing with matters in such a disparate way throughout the country, we want a prison that appropriately meets the north-east's requirements.

Nigel Don: That suggests that the total number of cells will increase.

11:00

Kenny MacAskill: We are currently operating 500 cells in the Peterhead area. The number of cells needed depends upon where people are remanded, but that number will provide what is necessary for the north-east. At the moment, we shuffle people around prisons in the country because of the problems faced by the prison estate. We believe that a capacity of 500 cells will allow us to deal appropriately with the existing requirements.

Stuart McMillan (West of Scotland) (SNP): Cabinet secretary, you will be aware of Bishopbriggs community council's submission on the planning application for the prison previously planned for Bishopbriggs. The community council had various concerns such as the inadequacy of the existing road system, traffic congestion, road safety, and a lack of community involvement. Will you guarantee that those issues will be looked at and addressed with the building of the new prison?

Kenny MacAskill: We understand that the plans have been signed off and we are now seeking to build the prison in the way in which it would have been built earlier, with the single change that it will be managed by the SPS, not by a private company. We can therefore assure the local authority that there will be no change to what has been signed off and agreed, albeit after some delay. I do not know what problems exist beyond that but we certainly accept the planning constraints and the agreed position and we will abide by them.

Stuart McMillan: There appears to have been some controversy over community involvement. The people of Bishopbriggs seem to feel that they were not fully consulted and that their concerns were not taken into consideration. I would particularly like to see their concerns addressed so that the prison can be seen as a local facility rather than something that has just been put there.

Kenny MacAskill: The planning position has been ratified. Consultation took place. I will be happy to listen to any representations that people might care to make, but we need that prison to be built as expeditiously as possible. Delays have been caused by planning issues and what I believe is a flawed tendering process for the SPS and the private sector, but we expect the prison to be built as speedily as possible to relieve pressure upon the prison estate elsewhere, not just for those who are incarcerated but for those who are required to work in it. Speed is of the essence, but I will be happy to listen to any concerns from representatives or constituents.

The Convener: It goes without saying that not every member of the committee has been entirely persuaded by the extraneous matter that you quite properly introduced and to which the committee quite properly responded.

However, the SSI is on the table today and, as no member has any problems with it, we will move on to agenda item 2, after a short suspension so that the minister's team can change.

11:03

Meeting suspended.

11:04

On resuming—

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2007 (SSI 2007/324)

The Convener: The cabinet secretary has been joined by Tony Rednall of the Scottish Executive criminal justice directorate, and Steve Paulding from the directorate of public health and well-being of, as I should say, the Scottish Government. I welcome those two gentlemen and invite the cabinet secretary to make a short introductory statement about the order.

Kenny MacAskill: I welcome the opportunity to discuss this order, which de-designates Murrayfield and Hampden—removing the ban on the serving of alcohol at each of the stadia for senior men's international rugby matches. Hampden is mentioned because senior men's rugby matches are occasionally played there, but the order will have no effect on football matches—including the one that I am going to on Saturday. The SSI affects only senior men's rugby internationals.

I stress at the outset that we would never have considered any relaxation of the ban if the police were not comfortable with it. That was a prerequisite for us. Rugby has not shared football's history of trouble. With a number of world cup matches taking place at Murrayfield in the coming month, there is an opportunity to present Scotland and its capital city in a positive light to visitors. As part of that, we want to enable our visitors to enjoy a civilised drink during the match—as they would at any other world cup match at any other venue.

Murrayfield is not a novice at serving alcohol at events. For example, the rugby league challenge cup finals did not fall within the designated list. As a resident of the city of Edinburgh, I remember significant crowds who came up from Yorkshire and elsewhere and had a fine day out at the stadium. They contributed a great deal to the city's economy and added a great deal of colour. All went smoothly.

Alcohol has been sold at major events at Murrayfield stadium; the designation related simply to senior men's Scotland games. However, we are making it clear that the de-designation is not a licence to binge drink or to go to rugby to get drunk. The Government has been emphasising that the issue is not the drink, but how we are drinking. Our message continues to be about sensible and responsible drinking. We have sought and received assurances from the Scottish Rugby Union that it will retail alcohol only when people are drinking in that manner. I am pleased

that the SRU has been working closely with health officials, and I am pleased that the SRU will commit the extra revenues that alcohol sales will generate to grass-roots rugby activities. More activities will be provided for young people, who often rightly complain that there is not enough for them to do.

At present, supporters will drink in local bars and then arrive late and en masse for a match. That can cause problems for public safety. For example, at the sell-out Scotland v Ireland six nations match on 10 March 2007—which I attended—12,000 supporters arrived at the ground in the five minutes before kick-off. Entry could be phased and could be much more orderly, as would happen if the approach taken at Twickenham were mirrored. From the perspective of the crowd, that would be highly desirable. Given the crowd expected for the forthcoming New Zealand game, I hope that safety can be assured.

The de-designation in the order does not guarantee that Murrayfield will be able to serve alcohol; that decision rightly lies with the City of Edinburgh Council's licensing board, which will take its decision on advice from the police. I assure committee members that I will keep a close eye on how the de-designation works in practice. If there is any misbehaviour or cause for concern, we will not hesitate to reintroduce the ban if necessary.

I expect that members will be interested to know whether there will be any de-designation for football. The position that I have stated before remains the same: there will be no immediate de-designation for football. That does not mean that de-designation is ruled out entirely for the future. However, before I would consider any relaxation, it would need the backing of the police. I do not have that at present, and accordingly I am not prepared to consider any relaxation at present.

The Convener: We will not inquire, cabinet secretary, what time you arrived at Murrayfield on the occasion you mentioned.

Members may have a few questions, but I will put the first one. In general terms, the proscription of drink at football grounds was a result of the appalling events at the 1980 cup final, at which there was a riot at Hampden and mounted police had to come on to the pitch. Understandably, the Government of the day responded by bringing in the legislation in the Criminal Justice (Scotland) Act 1980. Would you not accept that Scottish society has moved on a bit since then?

Kenny MacAskill: I think that Scottish society has moved on. We still have a significant problem with alcohol, which is why we are seeking to promote the idea that it is not the drink but how it is being drunk. To some extent, Murrayfield is an

historical anachronism. It volunteered to be prescribed in the Criminal Justice (Scotland) Act 1980. The then Conservative Government had not intended to prescribe it, but it volunteered, and paid the price. Had it not volunteered, it would probably not have been prescribed. However, that was then and this is now, and we are satisfied that de-designation can proceed safely.

The police have indicated no cause for concern with regard to rugby internationals. However, although there has been a change in Scottish attitudes towards drink, there is still a problem with and the police remain concerned about football. So, while we are prepared to relax the situation with regard to rugby and to see how matters proceed, we are not yet persuaded with regard to football. The most important players here are the police, who are not persuaded.

The Convener: Do you not think that unless you are careful, you could be accused of elitism, in that you may be applying different standards to rugby than to football?

Kenny MacAskill: We do that anyway. I am not aware of any banning order—sought or existing—for rugby, but we do have banning orders for football, which were introduced by the previous Administration. We fully support the rolling out of such orders. There is a problem with a minority of supporters at football matches that does not apply in rugby or other sports. We need to be meticulous in maintaining pressure on that. As somebody who goes to football regularly and who is going to a game on Saturday, I accept that the vast majority of football supporters do not offend. However, the clear advice from the police is that they would have significant cause for concern if we were to de-designate football stadia; accordingly, that is the advice that I have to accept.

Bill Butler (Glasgow Anniesland) (Lab): De-designation seems sensible, given the background that has been explained by the cabinet secretary and outlined in the paper. I have two questions. The SRU says that it will establish a local residents group. Does the Scottish Government have any information about how local residents view de-designation?

Kenny MacAskill: My understanding is that there was consultation by Sheriff Nicholson for the Nicholson report. The residents group is a matter for the licensing board, which will take representations from local members. Your colleague Ms Boyack has made comments, and there have been comments from local councillors. The appropriate division here is that we are simply de-designating. If the council is persuaded by residents groups that that is not appropriate for a particular game, that would be a matter for the licensing board. I will shortly be meeting licensing board conveners to discuss areas in which we

have a problem. We have perhaps regressed in the area of alcohol, whereas there are areas in which we have progressed. However, local residents' issues are appropriate for the licensing boards, which are in tune at a local level in the way in which we are at national level.

Bill Butler: You say that ministers will keep the position under review—that is absolutely sensible. Will you explain in more detail how ministers will monitor the success or otherwise of the de-designation? If it were to prove successful, would that have any bearing on whether you roll it out—or at least begin to talk to the police about rolling it out—to football for example?

Kenny MacAskill: We will monitor the situation by keeping in touch through official channels. As a resident of and a constituency representative for the city of Edinburgh, I am in regular touch with the chief constable and will be advised of the concerns of police officers at all levels. Fundamentally, whether a game should be de-designated is a matter for the chief constables, depending on whether they have significant reason to believe that it should happen. If there are problems that are more minor—clearly, we live and learn from game to game—those would be a matter for the licensing board. There is a difference between de-designation, and changing how we operate the matter—that is best dealt with by the council.

On the broader matter of whether we roll out de-designation beyond rugby to football, the football clubs have to persuade the police that there is no problem and that de-designation can proceed safely. Sheriff Nicholson suggested a trial period. At present, however, the police believe that de-designating football is not appropriate, even on a trial basis. If the police are minded to support a trial period we will be open to allowing one to proceed—we have no ideological opposition to such a trial. However, I reiterate that at all levels—the Association of Chief Police Officers in Scotland, the Association of Scottish Police Superintendents and the Scottish Police Federation—the police have significant concerns. I cannot ignore that.

11:15

Paul Martin: Do you agree that there should be a wide-ranging review of all issues relating to the sale of alcohol at sports grounds, taking into consideration the experience of other countries?

Kenny MacAskill: We did that in the Nicholson report. Sometimes in Scotland we consult ourselves to death. Sheriff Principal Nicholson carried out a full review of matters relating to alcohol licensing, which was rolled out in the Licensing (Scotland) Act 2005. There are issues

that we are considering and on which we will comment in due course. The 2005 act may need to be tweaked and refined, but we think that it is a step forward for Scotland and that we can iron out whatever problems exist. Sheriff Principal Nicholson conducted his inquiry at great length and expressed the view that at some stage the sale of alcohol at sports grounds could be permitted for a trial period. We know what the situation is. Until the police are convinced that a change of policy would not create disorder or threaten crowd safety, I will not be persuaded of the need for change.

Like many members of the committee, I am aware of what happens elsewhere, as I have attended games and events in other countries. The position in Scotland remains that the police have clear concerns about the impact of any change on crowd safety. We do not need a further investigation, but we need to ensure that football continues to improve and that the banning orders that are to be introduced make grounds safer and better. We do not rule anything out, but this is a matter for the police to review. Sheriff Principal Nicholson did a fair amount of work and I see no need for the Government to pursue the issue further.

Paul Martin: It is important to recognise that Sheriff Principal Nicholson produced his report before the 2005 act was passed. I am glad that you welcome the 2005 act, because the Local Government and Transport Committee, of which I was a member, rejected a proposal by David Davidson, a former MSP, to introduce the sale of alcohol at sports grounds. Bruce Crawford, who is now your Cabinet colleague, said at the time that the Executive should

“carry out a proper review to examine the matter as a whole, to consider experience from other countries”.—*[Official Report, Local Government and Transport Committee, 3 October 2005; c 2938.]*

In 2005, your Cabinet colleague advised that we did not have enough evidence on the matter and that we should look at sports grounds as a whole, rather than in isolation. Why is the situation now different, given that the Parliament and the Local Government and Transport Committee rejected David Davidson's proposal?

Kenny MacAskill: I do not see what a review would provide. The obstacle to allowing the sale of alcohol to be trialled at football matches remains the view of the police. If that were removed, I can envisage circumstances in which we would allow alcohol to be sold for a trial period. We all know that representations have been made now and in the past by various football clubs that have shown how well run they are, what they would do, how they could do it and where money would be spent. However, there is no point in our carrying out a

review until we are satisfied that the police have been assured that public safety is not threatened. It might be enjoyable for me to visit the Nou Camp and Bernabéu stadiums and to travel down under to Sydney, but that would not advance matters. I would be correctly criticised for going on a junket.

We need to solve the problem that exists in football. Football clubs must work on that problem in conjunction with the police and must use the legislation that is in place. The overwhelming majority of supporters who enjoy a game and have no intention of causing trouble must continue doing what they are doing. If and when the police are satisfied that matters can proceed, they will be pushing at an open door. I do not need to be persuaded of what life could be like in Scotland if there were no problem; I need to be persuaded that there is no problem.

Paul Martin: Are you happy to dismiss the view of the previous Parliament, which opposed the principle of introducing the sale of alcohol at sports grounds? Your colleagues Fergus Ewing and Bruce Crawford agreed with that view and opposed David Davidson's proposal.

Kenny MacAskill: I am agnostic. If the police said that they had no problem with the sale of alcohol at sports grounds, if clubs made representations to that effect and if it was clear that the licensing boards agreed—various parties would be involved—I would have no objection to it. However, the police at all levels have made it clear that they object to the licensing of football grounds to sell alcohol during matches, so I am not prepared to do it.

Paul Martin: So it is the police, not the Parliament, who decide the policy. It is clear that the Parliament rejected the proposal to introduce alcohol sales at sports grounds. However, if alcohol sales are to be allowed just because Lothian and Borders Police says that that is a good idea, then policy is being dictated to the Parliament by the police and not by the Local Government and Transport Committee or other members who contributed to the debate.

Kenny MacAskill: No. As Cabinet Secretary for Justice, I would be being negligent and would be rightly pilloried if I ignored the advice of chief constables, the Association of Scottish Police Superintendents, the Scottish Police Federation and just about every police officer whom I bump into who believes that it would be wrong to de-designate football stadiums at present. However, if and when circumstances change and the police no longer object to that, the appropriate people to make the decision will be members of the Scottish Parliament. In that event, I will doubtless be back before the Justice Committee. It is not true that the chief constable of Lothian and Borders Police dictates policy. Ultimately, if and when

circumstances change, the people who make the decision will be those who are sitting where you are sitting today. It would be fundamentally wrong for me to ignore the clear advice of police officers.

Margaret Smith: I want to pick up on the points that my colleagues have made. I refer in particular to the issue of residents' involvement. You are quite right to say that many of the issues involved are for the licensing board to consider. Many years ago, I, for my sins, sat on the Edinburgh licensing board, so I know the kind of things that boards will take into account. You said that there will be a review. What assurances can you give local residents that their views will be taken into account in such a review, if and when the de-designation goes ahead and is sanctioned by the licensing board?

Kenny MacAskill: I will be more than happy to take such views on board, both as Cabinet Secretary for Justice and a resident of Edinburgh. If there are problems, we will seek to review the decision. Residents' views should be filtered through the licensing board. I will monitor what happens, given the impact on public safety.

Margaret Smith: Like Paul Martin, I was a member of the Local Government and Transport Committee. I was on the committee only briefly but, in that time, I was involved in considering the Licensing (Scotland) Bill. I recall that when David Davidson's amendment was defeated, no staunch argument was made that the police were content for de-designation to take place. If that had been the case, we would probably have given the amendment the general support that you will get from this committee today. Why has the police's view changed in the past two to three years?

Kenny MacAskill: I do not think that I can be asked to speculate on the position of chief constables. However, I assure you that I have not railroaded chief constables and they have indicated that they are perfectly relaxed about the de-designation of Murrayfield stadium. It is inappropriate for me to speculate on why that is, but I can confirm that there is no opposition from the police to the proposal, which is why I am willing to proceed.

Cathie Craigie: I am concerned that football is not being treated in the same way as rugby. It is estimated that the de-designation of Murrayfield for the purposes of the laws governing the sale of alcohol will bring about £1 million into the game of rugby union in Scotland. It is understandable that people who are involved in football would like that kind of income to be brought into the game of football in Scotland. I am sure that you, as a Scotland fan, would like to see that sort of investment. You rightly placed the views and advice that you were given by the police high on the agenda when you made your decision. Can

you advise the committee how you consulted the police? Is there paperwork? Is there a paper flow that we can see in order to become more informed about the reasons why the police are not backing any pilot scheme within football?

Kenny MacAskill: Our officials would have spoken to the appropriate ACPOS officer when the matter was dealt with. I also met the chief constable of Lothian and Borders Police—indeed, I have met every chief constable. Discussions took place between our officials and ACPOS regarding the matter, and it was clear that ACPOS was relaxed about it.

Cathie Craigie: Is there a written record of the responses that the police have given?

Kenny MacAskill: There are e-mail exchanges.

Cathie Craigie: The convener reminded us why the ban was introduced. Has there been any recent history of violence that could be related to drink at football matches—particularly at international matches—that persuades you that the ban must remain?

Kenny MacAskill: There is clear evidence of a resurgence in what is described as casual disorder and violence not just among youths but among middle-aged men. Banning orders are, correctly, being introduced. Not just as Cabinet Secretary for Justice, but as a resident of Edinburgh, I remember detentions in recent months relating to crowd disturbances in Lothian Road following Hibs-Hearts games. There is clear evidence of a resurgence of a hard core of violent hooligans who, sadly, use the sport to perpetrate violence for fun. They besmirch the name of the good supporters and undermine the ethos of the game of football.

There is still a significant problem that we must address. It is a matter of regret, but that problem exists and it is why the ban is still in place. I cannot recall what reviews have taken place, but the police have information—it is also a matter of public knowledge—that organised crowd violence is being carried out by those who describe themselves as casuals.

Cathie Craigie: If the law were relaxed at men's international football matches, would that not provide an opportunity for the police, you and others who are involved to monitor the situation and inform any future decision that you might have to make?

Kenny MacAskill: That may be, but the position of the Union of European Football Associations is also a factor. UEFA has imposed a ban at men's international fixtures, including the match that I am going to watch on Saturday between Scotland and Lithuania. It is not simply about laws that are made

in Scotland; it is about the laws that are imposed by the football authorities.

There are still matters that we must address, and the concerns of the police remain. It would be unfair of me not to say that there is a difference between the situation at international games and the situation at club games. However, there remains a problem at international games, as has been seen throughout Europe, and there is a UEFA proscription.

The Convener: I want to follow up a point that Cathie Craigie made. I accept that there has probably been an increase in the involvement of so-called casuals in football hooliganism. Nevertheless, my experience in such matters indicates that that type of offender is seldom inebriated and acting under the influence of drink—a fact that makes their behaviour even more chilling and reprehensible. I therefore question whether such behaviour is an argument against extending to football grounds the facility to sell alcohol.

11:30

Kenny MacAskill: You are correct that such people tend to act soberly, cold-bloodedly and out of malice and malevolence. However, the police would argue that their actions can affect others, who may be encouraged to participate in matters that they might not participate in if they were not under the influence of alcohol.

We must also consider safety. There is clear factual evidence that those who are under the influence of alcohol are more likely not only to perpetrate offences but to be the victims of offences. In dealing with a significant crowd—whether or not disturbances are generated by a small, sober crew intent on violence—the difficulties for those who are seeking not simply to police but to ensure safety are made much greater when alcohol is a factor.

The logic of what you say is correct but, from a policing perspective, the problem is not simply the alcohol that is consumed by those who seek to perpetrate violence but the alcohol that is consumed by others who may be caught up in the mêlée as they seek either to join in or to get out. That is where the police see the problem.

Stuart McMillan: As someone who has managed to travel through Europe and enjoy a low-alcohol beer at football matches, I look forward to the order being a success at Murrayfield and to football stadia in Scotland being included at some point in the future.

Kenny MacAskill: We have made it clear that we rule nothing in or out. What matters is the position and advice of the police, and their current

advice is that they do not want football stadia to be de-designated. That is how it stands.

The Convener: Once again, we have possibly strayed from the agenda item, which is the specific SSI. If no one has any further points to make on it exclusively, I thank the cabinet secretary and his official for attending and suspend the meeting briefly while they leave.

11:32

Meeting suspended.

11:33

On resuming—

The Convener: There are 10 negative instruments before us this morning. When the committee papers were issued, each was accompanied by a report from the clerks.

Gambling Act 2005 (Fees) (Scotland) Regulations 2007 (SSI 2007/309)

The Convener: Are members content with the regulations?

Nigel Don: I have one question—I am sure that someone can tell me the answer. Are we talking about people needing a licence for each machine or for each premises?

The Convener: In the days when I dealt with such matters, licences referred to each individual machine.

Nigel Don: That is what I expected, but it was not obvious to me when I read about the regulations. Forgive me—that was a few weeks ago.

The Convener: The clerks will check with the Executive, but that is my recollection—I had to serve a penance on a licensing board.

Nigel Don: It does not alter the result; I just wanted to know what we were passing.

The Convener: Are members content to note the regulations?

Members: Yes.

Gambling Act 2005 (Fees No 2) (Scotland) Regulations 2007 (SSI 2007/311)

Licensing (Miscellaneous Amendments) (Scotland) Regulations 2007 (SSI 2007/313)

Sheriff Court Fees Amendment Order 2007 (SSI 2007/318)

Court of Session etc. Fees Amendment Order 2007 (SSI 2007/319)

Adults with Incapacity (Public Guardian's Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/320)

High Court of Justiciary Fees Amendment Order 2007 (SSI 2007/321)

Discontinuance of Low Moss Prison (Scotland) Order 2007 (SSI 2007/322)

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2007 (SSI 2007/324)

Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Amendment Regulations 2007 (SSI 2007/332)

The Convener: Are members content to note the statutory instruments?

Members: Yes.

The Convener: I remind members that the next meeting of the Justice Committee will be on Tuesday 11 September, when the committee will consider its future work programme. Thank you for your attendance.

Meeting closed at 11:36.

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