



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 12 January 2022

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 12 January 2022

CONTENTS

SUBORDINATE LEGISLATION	Col. 1
Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021 (SSI 2021/446)	1

CRIMINAL JUSTICE COMMITTEE

1st Meeting 2022, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Cabinet Secretary for Justice and Veterans)

Fiona Cruickshanks (Scottish Prison Service)

Teresa Medhurst (Scottish Prison Service)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Criminal Justice Committee

Wednesday 12 January 2022

[The Convener opened the meeting at 11:00]

Subordinate Legislation

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021 (SSI 2021/446)

The Convener (Audrey Nicoll): Good morning. Welcome to the first meeting in 2022 of the Criminal Justice Committee. I hope that you all had a pleasant break.

I ask everyone to ensure that their mobile phones are switched to silent, and to wait for the sound engineer to switch their microphone on before speaking.

Our first item of business is consideration of the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021. I welcome Keith Brown, Cabinet Secretary for Justice and Veterans, and, from the Scottish Prison Service, Teresa Medhurst, interim chief executive, and Fiona Cruickshanks, head of operations and public protection.

I intend to allow up to one hour for this evidence session. I refer members to papers 1 to 3. I invite the cabinet secretary to make some brief opening remarks.

The Cabinet Secretary for Justice and Veterans (Keith Brown): Thank you, convener. I wish the committee a happy new year.

The purpose of the Scottish statutory instrument is to add psychoactive substances, as defined in section 2 of the Psychoactive Substances Act 2016, to the list of prohibited articles in the Prisons and Young Offenders Institutions (Scotland) Rules 2011, and to provide prison governors with powers that will enable them to mitigate the risk of illicit substances that are being introduced through general correspondence that is sent to prisoners via the mail system across the prison estate.

Prohibited articles are items that prisoners are not allowed to possess in prison, and currently include controlled drugs, alcohol, offensive weapons and other items. The amendments also provide prison officers and employees with powers that will allow them to photocopy a prisoner's general correspondence, provide the prisoner with a photocopy of that correspondence and retain the original correspondence for return to the prisoner

on their release. Prison staff will also be provided with the power to test general correspondence for the purposes of investigating whether it contains a prohibited article.

The use of psychoactive substances in prisons across the United Kingdom is escalating. The Scottish Prison Service has been working tirelessly to adapt security measures to prevent, detect and deter the introduction of contraband to the estate. However, the use of such substances is a complex and multifaceted problem in our society, and there is no simple answer to the issue of its impact in the criminal justice system.

During 2021, five confirmed deaths in SPS custody have been linked to suspected drug overdose involving the psychoactive substance etizolam, an illicit class C drug that can be infused into paper, card and clothing. Intelligence from the SPS also indicated that there has been an escalation in the number of emergency drug-related escorts to hospital and incidents of prisoners being suspected to be under the influence of drugs. Members will be aware of the emerging debates on the issue, and that Her Majesty's chief inspector of prisons has been calling for the introduction of the measure that we are discussing today.

I am also aware that Families Outside, which works with children and families who are affected by imprisonment in Scotland, has written to the committee to note its support for the proposals. On the other hand, I know that concerns have been raised by stakeholders regarding prisoners' human rights.

Many operational decisions in our prisons require a rather delicate balance to be struck to address a range of competing rights but, ultimately, the SPS must do all that it can to protect and ensure the health and safety of its staff and people in its care.

The instrument that is before you today is considered essential to mitigate the threat of significant harm to prisoners and staff that might be caused by further increases in the volumes of psychoactive substances entering the prison estate. The power that is set out in the instrument will help prison officers to prevent the entry of illicit substances into prisons and reduce the availability of those substances to prisoners. That can only help to reduce the risk that those substances present to prisons, prisoners and prison staff.

We considered options that would make the measure less intrusive, such as handing mail that had not tested positive for illicit substances to prisoners while they are in custody, but we are responding to an ever-developing threat, with new substances created that we cannot detect. Other options would not have been as effective in

stopping that route into prisons for those substances. We acknowledge that there might be an impact on prisoners as a result of the instrument and its implementation, but they will continue to receive the substance of their correspondence, and they will be offered the choice of having the photocopied correspondence destroyed or retained, so that they can receive clean originals on release.

The amendments will also affect only general correspondence sent to prisoners, not confidential correspondence, such as privileged correspondence, court correspondence and medical correspondence, all of which are already protected under rule 56 of the prison rules.

The impact of not doing anything would be further disorder, illness and potential risk to life in prisons. I think that the measure strikes a fair balance between prisoners' rights and the security and good order of prisons, which is also an essential factor in upholding prisoners' rights in general.

The instrument has been in force since 13 December 2021, and I acknowledge the concerns that have been expressed by members of the Delegated Powers and Law Reform Committee regarding the breach of the 28-day laying period.

In normal circumstances, negative SSIs require to be laid before the Parliament for at least 28 days before they come into force. However, as outlined to the Presiding Officer by the head of the SPS, there was a concern that, in the run-up to the festive period, when the volume of mail increases, the SPS would in all probability have experienced a great escalation in the volume of psychoactive substances being sent into prisons via general correspondence with prisoners. The instrument was laid in November after careful consideration by the SPS and escalating concerns following the incidents at HMP Shotts and HMP Addiewell involving illicit substances. It was considered critical that the process be put in place quickly, and before mid-January 2022, which is when the SSI would have come into force if laid before Parliament in accordance with the 28-day rule.

The SPS will also commit to doing everything possible to mitigate any detrimental consequences that impact on the receipt of special mail such as photographs and occasion cards. Where possible, governors have been asked to give consideration in the first instance to testing all cards and photographs using the Rapiscan Itemiser drug-detection machine to allow the issuing of the original copies.

It is recognised that the maintenance of personal connections and family contact are essential to the lives of people in SPS care and, of course, their families. The SPS has implemented a

number of measures to support that, including access to physical and virtual visits, access to communal and in-cell telephones and access to the Email a Prisoner and Prison Voicemail schemes.

The SSI has been in force for about four weeks, and there has been support for the change from the prison population to date. Early indications are that there has been a significant decrease in recorded drug-taking incidents and drug-related emergency escorts in the month of December 2021, compared with the previous two months. There were 248 drug-taking incidents in October, 305 in November and 131 in December; and there were 39 drug-related emergency escorts for the month of October, 37 in November and 15 in December. The SPS will continue to closely monitor the implementation of the policy across the estate.

The SPS and Police Scotland are reviewing the current memorandum of understanding concerning the management of illicit substances found in prisons, including the investigation, collection and destruction of such substances. A further meeting to discuss the MOU is planned for mid-January. In the meantime, Police Scotland has agreed to uplift all items suspected to be contaminated with illicit substances. I know that that was a concern that was raised by prison officers.

The instrument is, of course, only one of a range of measures and support that is required. There was a co-ordinated effort by the SPS, the national health service, Police Scotland and other criminal justice partners to limit the supply of drugs, including psychoactive substances inside and outside prisons, and the provision of support and treatment will be required. It is, therefore, crucial that our approach to tackling the problem concerns a balance between security and deterrence on the one hand, and also recovery and support on the other.

I am aware that there is a range of views among members on the issue, and I welcome this opportunity to answer members' questions.

The Convener: Thank you, cabinet secretary. Ms Medhurst, would you like to add any additional comments?

Teresa Medhurst (Scottish Prison Service): Good morning. No, I do not have anything to add to what the cabinet secretary set out, other than to say that I am pleased to have been given the opportunity to attend the meeting and to answer any questions that members may have.

The Convener: We move to questions. I will kick things off with a general question, after which I will hand over to Russell Findlay.

Cabinet secretary, it is interesting to note the early feedback since the introduction of the changes. You mentioned that concerns had been expressed about a lack of wider consultation before the regulations were made, although we appreciate that the Prison Service was keen to make progress on the matter before the festive season. Are there any plans to carry out a review of the new powers, in which input could be sought from those who work in the field and a wider range of experts as part of that?

Keith Brown: You will be aware, not least from some of the points that I made in my opening statement, that there is an on-going review on the impact of the new measure, which is looking at, for example, how the attitude of prisoners has developed. Although, initially, prisoners' attitude was in some respects hostile, it is now much more supportive. That is explained by the fact that the bullying and the medical fallout from the prevalence of such psychoactive substances in prisons affects prisoners directly. In many cases, they are pleased that the measure in question has been taken, not least because it leaves them less vulnerable to being bullied to provide drugs for others.

We are also talking to prison officers and the trade unions; I am sure that the Prison Service will be able to say more about that. I am not aware of there being a long-stop deadline for a review to take place, but I am more than happy to continue to have a dialogue with other interested parties, including some of those that have raised objections, as the process moves on.

I would be keen to hear from Teresa Medhurst on that question.

The Convener: I invite Ms Medhurst to respond.

Teresa Medhurst: You are absolutely right, convener—we need to review on an on-going basis any measures that restrict or impact on people's human rights. We have procedures in place in the organisation to review the impact of the measures in every establishment and at national level. We will continue to have robust monitoring procedures for as long as those measures are applied.

We must also look at whether we have the right information and evidence to support the application of the measures. As those bed in, we can vary them according to the intelligence profile and any changes in that intelligence profile.

As the cabinet secretary pointed out, we will continue to work closely with partners and others, internally and externally, to better understand concerns. I am sure that we are taking on board the views and perspectives that have been highlighted to the committee.

The Convener: Thank you—that is helpful.

There is a lot of interest in the issue, and we have a lot of questions on it. I hand over to Russell Findlay.

Russell Findlay (West Scotland) (Con): Hello, Ms Medhurst and Mr Brown. Happy new year to you both.

Etizolam has been rife in prisons for quite some time. Prison officers tell us that a lot of etizolam has been smuggled in through items of mail, which is why the decision has been taken to stop the use of that route.

I was fascinated to hear of the dramatic drop-off in the number of ambulances that have been called to prisons since 13 December 2021, which is consistent with the feedback that I have received. I have also been told that the number of mail items coming into prison has dropped off dramatically. Is that, indeed, the case? If so, is that the case in individual prisons or across the estate? If that is correct, does that tell us anything about the prevalence of etizolam in the mail? That is perhaps a question for Teresa Medhurst.

11:15

Teresa Medhurst: I will bring in my colleague Fiona Cruickshanks to give more of the detail once I have given you an overview.

There are early signs of changes that are affecting the operation of prisons in relation to illicit substances. We consider that that is likely to be the result of the measures that we have taken on mail. However, I give the caveat that it is still early days and we need a longer timeframe to assess the impact before we more closely link the actions that we have taken with the subsequent impact.

Substances are changing all the time. We are still working with the University of Dundee to better understand how compounds are changing and what the impact is likely to be on the introduction of illicit substances into prisons. We became aware of etizolam in 2020 and have been monitoring its prevalence since autumn 2020. That is why, from early summer 2021, we started to look in greater detail at the measures that we were taking to prevent the introduction of illicit substances through the mail.

That provides a degree of context. I do not know whether Fiona Cruickshanks has statistics on mail.

Fiona Cruickshanks (Scottish Prison Service): We have some statistics. Most establishments reported an increase in the number of mail items through December. However, that is in the run-up to Christmas, so it is to be expected and is in line with trends in previous years. Over the past couple of weeks, as

we have moved into early January, the number of mail items has reduced in some establishments. We will continue to monitor that to find out what impact the photocopying of mail has had on the number of items that are coming into establishments.

Russell Findlay: As the cabinet secretary pointed out, the measure has already benefited vulnerable prisoners who do not want to be in an environment where drugs are taken and they have to face the violence and disruption that goes along with that. I have read the submission that a group of academics made to the committee. Does Mr Brown know whether they consulted staff about their concerns?

Keith Brown: I do not. Teresa Medhurst might know the answer.

I come back to Mr Findlay's previous point. He asked whether there had been a reduction in mail as a consequence of the measure. There is another consequence in which he might be interested. As I have mentioned before to the Parliament, sometimes, when we try to deal with drugs in prison, if we deal with one aspect, it causes an increase elsewhere. That is what has happened in this case: there has been an increase in the number of perimeter fence attempts to provide drugs in prison.

It is clear that there is a tidal wave—*[Inaudible.]*—and we do what we can, not least given what Teresa Medhurst said about the changing nature of drugs. Mr Findlay is right to say that there is a consequence to what we do.

I do not know who the academics consulted. They have a legitimate point and we are happy to take into account their concerns for the rights of prisoners and others. I point out that one of the initiatives came from Her Majesty's chief inspector of prisons, who is very concerned, and obliged to be concerned, about prisoners' rights. We believe that the measure is a proportionate response to safeguard those rights.

Perhaps Teresa Medhurst could answer the question about who the academics consulted before they made their submission.

Teresa Medhurst: I am not aware of who the academics consulted, Mr Findlay, or of whether they made any informal contacts in prisons but, certainly, nothing came into us formally.

Russell Findlay: Finally, I just want to respond to something that Mr Brown said. It is inevitable that, as soon as you close down one route, another one opens—that is the nature of the beast. However, that does not mean that it was wrong to take the action that has been taken. Is the perimeter fence issue now the subject of greater attention from the Prison Service?

Keith Brown: Again, Teresa Medhurst is best placed to answer that. There has been increased detection in that respect, so the system seems to be working well. Perhaps Teresa can give more information.

Teresa Medhurst: Obviously, we have a range of security measures in place, and perimeter security is always high on our priority list. The reason why we have detected more instances of perimeter fence breaches is that we are deploying our tactical options in the way that we should be.

Russell Findlay: Thank you. I will hand back to the convener.

The Convener: I will bring in Fulton MacGregor to ask questions on photocopying and testing.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. From listening to what has been said and what the cabinet secretary outlined, on balance, I am minded to support the measure. However, I have concerns, some of which have already been explored. My question is about the type of correspondence that is included. We have heard that it is "general correspondence". Cabinet secretary, you said a bit about that in your opening statement, but will you clarify what is included? Does it include personal mail from, for example, prisoners' children or family members? I assume that it does, but I would like that to be clarified. Has all general correspondence been opened since the regulations came into force on 13 December?

Keith Brown: I will try to respond, but Teresa Medhurst will have more of the detail.

The measure applies to general correspondence, but not all correspondence is opened, and there are different practices in different prisons. The approach might be targeted or it might be random, but not all correspondence is opened. I mentioned the exemptions, such as legally privileged information. I am aware that legally or medically privileged information can present a route to people trying to circumvent the system, so measures are taken to try to avoid that. Interestingly, we are aware of correspondence that purports to relate to the child abuse inquiry going to prisoners but which is nothing of the kind—it is a means to try to get drugs into the prison estate.

It is a difficult issue to deal with. I am sure that Teresa will not want to be too explicit about the ways in which we try to ensure that drugs do not get into the estate. However, not all correspondence is opened. We will look at personal correspondence, including correspondence from children, which is perhaps one of the most sensitive areas in relation to the issue. We have taken measures that are proportionate. We will ensure that prisoners get the original correspondence, where that is

possible. Not all correspondence is opened. The approach is targeted or random, and I believe that it is proportionate.

Teresa might want to come in on that.

Teresa Medhurst: General correspondence includes correspondence from families and children as well as cards and photographs. Through the work that we engaged in with Families Outside, we have provided a strong steer to governors to ensure that, when they apply the photocopying to cards and photographs, that is considered to be proportionate.

I remind the committee that we are still in the early weeks. The measure has been in place for only four weeks and clearly, over that period, as Fiona Cruickshanks said, the levels of correspondence have been very high, so it has probably been difficult to be more discerning.

However, the approach is not being applied in a blanket way across all sites. For example, the intelligence assessments at Cornton Vale and Castle Huntly suggested that it would not be proportionate to apply the measures in those establishments.

There are nuances between the other establishments, with regards to photographs, cards and so on. As the levels of mail drop, which is what we are anticipating, the intelligence profile and the quantity and scope of work that has to be done in establishments will enable us to be much more nuanced in individual circumstances in establishments and take into consideration the impact on families and, in particular, children. We are acutely aware of the need to protect the contact between children and a parent who is in prison.

Fulton MacGregor: I understand how difficult a balancing act it must be to decide whether to implement the measures. Clearly, if some people are using personal mail to get drugs into prison, that must be dealt with, but I assume that that is not the case for the majority of prisoners, whose personal mail would also be subject to the measures.

Obviously, prisoners are living in prison—that is their home for a period of time. They develop relationships with prison officers, and prisoners might have feelings about what sort of information about their family life they want to share with them. Are any rules in place about whether personal mail is read by officers when it is opened? Once it is screened and it has been confirmed that it is not contaminated with any drugs, is it then put down? You know the question that I am asking. Once mail has been read, can that have a wider impact of changing the dynamics in the relationships in the prison?

Teresa Medhurst: I completely understand what you are getting at. Obviously, the relationships between staff and those in our care are critical and they have to be based on trust and proportionate behaviour and responses. That has been a critical part of the development of the work that we have undertaken. Prison rules are very clear that prison officers cannot read prisoners' mail without direct authority from the governor. Where mail is photocopied, they are not allowed to read it; they can only photocopy it, deal with the original in whichever way the individual chooses and return the photocopy to the prisoner.

We undertook some internal consultation with those in our care, as the cabinet secretary outlined earlier. Although it was limited, in the main, prisoners understood why the measures were happening. We are absolutely committed to ensuring the protection of prisoners' families as well as of prisoners themselves, with regard to the bullying and intimidation that goes on.

You are right that, in the procedures that we have adopted and applied, we have ensured that we protect that critical relationship between prisoners and our staff.

Fulton MacGregor: My next question might seem to run counter to my previous one. I asked for reassurances that prisoners' personal mail is not being read. On the other side of that, if you like, what measures are in place for officers who perhaps inadvertently see something in mail—perhaps they read part of it—that they have concerns about, such as something of a child protection nature? Are they allowed to go to their line manager without any fear of being told, "Well, you must have read that mail to know that"?

I know that that kind of runs counter to my previous question, but a picture could come in that raises a child protection concern. Something like that could catch the eye, so are processes in place to allow officers to report that without any fear of reprimand for reading mail?

Teresa Medhurst: With regards to mail, the regulations are quite specific. I would be very concerned if, when photocopying someone's letter, an officer read any part of it. There is nothing in the rules that allows officers to raise such issues, because they should not be reading mail in the first place.

That said, if there were suspicions because of inappropriate pictures, for example, that would need to be checked. If a member of staff becomes aware of such things, they can raise concerns with the governor, and the governor can then approve the opening and reading of mail, but that has to be documented to ensure that, when it has happened, the individual concerned is told about it.

11:30

Fulton MacGregor: I have one final question for you, Teresa. What proportion of opened mail has been tested for drugs? You have said a few times that the scheme is in its early days. Is there a proportion that goes on to be tested?

Teresa Medhurst: I do not have figures. We do random testing at each site, and we also do suspicion testing. The amount of testing therefore depends on the suspicion tests across each individual establishment.

For our purposes, we will continue to undertake random testing of mail as well as suspicion testing. When staff picking up mail are suspicious that it might be contaminated, it will be sent for testing.

Fulton MacGregor: This might sound a naive question, but is it often quite obvious that a letter is not contaminated, or is there a grey area that means that it needs to go for an official test?

Teresa Medhurst: The picture is evolving. Methods are becoming far more sophisticated. Some of the ways in which we could previously identify contaminated mail are now starting to be ironed out by those who send it in. We therefore have to be alert and alive to changes in the methods and means by which drugs are being introduced. However, sophisticated methods are being developed as we speak.

The Convener: I will hand over to Rona Mackay, and then to Jamie Greene.

Rona Mackay (Strathkelvin and Bearsden) (SNP): My question is for Ms Medhurst and is about the resource implications of the initiative. How much additional time have prison staff spent on dealing with the initiative since it started? What impact has it had on their other work?

Teresa Medhurst: It is still too early to identify whether the initiative has had a detrimental impact on other work for two reasons. First, we are in the initial stages of implementation, although I understand that, so far, governors on all sites are fairly content with the arrangements and have not had to put additional resource in place. Secondly, you will also be aware that we are undergoing another wave of the pandemic, and omicron is impacting not just in communities but in prisons. It is an unusual time to assess the quantity of time taken and its impact on the delivery of other services.

I am sorry that I cannot answer that in any greater detail.

Rona Mackay: I completely understand what you are saying, but, when the pandemic has settled down, will some kind of assessment be done of how much time staff are spending on the initiative?

Teresa Medhurst: We will continually monitor and assess the impact of the initiative on establishments. If there is a detrimental impact, we will have to consider how best to resource and support each establishment, depending on its circumstances.

Rona Mackay: Thank you. That is fine, thank you convener.

Jamie Greene (West Scotland) (Con): In the interests of time, my questions will probably be quite rapid-fire ones. My first question is to Ms Medhurst. Can you give us an indication of what percentage or proportion of original mail has been photocopied and passed to prisoners as photocopied versus the percentage or proportion of mail that has been given to prisoners directly in its original form? As you have said, it is quite difficult to spot original mail that has been soaked in drugs.

Teresa Medhurst: I am sorry, Mr Greene, but will you clarify that? Do you mean the proportion of mail that we considered would have been contaminated versus not contaminated prior to the implementation?

Jamie Greene: That might also be helpful, but I am looking for the figures since the implementation of the new policy. What percentage of all the mail that comes in is currently being photocopied?

Teresa Medhurst: I am afraid that I do not have those figures. I would need to go back and check what I can provide to you. I am certainly happy to write to you separately on quantities and the information that we have on that.

Jamie Greene: Okay. Thank you.

I come to my second rapid-fire question. It is not just mail that contains drugs; I am aware from speaking to prison officers that clothes are often soaked in drugs. Obviously, that is very difficult to deal with. How on earth are you going to manage the incidence of that?

Teresa Medhurst: We have methods that we can deploy to identify items that come in through clothing and to try to reduce and minimise the number of articles coming into the establishment. As I have said, each establishment conducts its own assessment of the threat and impact, and then deploys appropriate measures to try to manage and mitigate the risk. Earlier, Mr Findlay raised the issue of other means and perimeter security. Obviously, we are very well aware that clothing, for example, may be another route in. We will continue to monitor and evolve our response, depending on the intelligence threat and profile.

Jamie Greene: My next question is for the cabinet secretary. It is clear that serious organised criminal gangs are the primary drivers of drugs

getting into prisons to feed addiction and to feed their lucrative market. You said that confiscated mail would be passed to the police if there was a suspicion of drugs. Are the police following that up? Are you aware of any criminality taking place? Has anyone been prosecuted for posting mail that is soaked in drugs? Is there any recourse when it comes to prisoners who receive the mail? Does it affect parole conditions or their behaviour card, for example?

Keith Brown: I will come to both of those points. It is important that the other questions that you asked are answered, but it may be not a good idea to—[Inaudible.]—publicly. Perhaps I could pass information about some of the issues that have been raised—for example, the number of items of mail that have been intercepted—on to the committee outwith the public sphere. As Teresa Medhurst rightly pointed out, there is a battle of wits between the Prison Service and those who are trying to safeguard prisoners and stop drugs getting into prisons, and those who are trying to find new ways of doing that.

You asked about police follow-up. I mentioned that an MOU between the Prison Service and the police is being discussed to ensure that all those items are uplifted. It is my understanding that there is no recourse in relation to prisoners who, at that point, would not have received any infused materials. That is my understanding, but Teresa Medhurst will know about that better than I do. The MOU will result in all those items being uplifted by the police. How the police will prosecute that is a matter for them. Again, Teresa Medhurst may have more information, because she will be involved in the drawing up of that MOU.

Jamie Greene: What I am getting at is that, if so much mail has been posted, that is clearly a misuse of drugs. Those are classified drugs. Someone is posting them, so criminal behaviour is taking place somewhere in society but there does not seem to be a huge amount of follow-up or any prosecution. If people were being prosecuted for sending drugs, it might act as a disincentive for others in the future.

Teresa Medhurst: Fiona Cruickshanks would be best placed to answer that question, because she works closely with our colleagues in Police Scotland.

Fiona Cruickshanks: Work has been on-going between the SPS and Police Scotland at national and local levels, particularly on reviewing the drugs that are currently received in prisons and the methods via which they are received. That will help to inform changes to the current MOU. Unfortunately, when we receive letters in the prison, it is not always possible to identify where they originated from, but Police Scotland review any contaminated mail that we have and, if there

is a possibility of following up with criminal investigations, they do so.

Jamie Greene: Thank you for that. However, I presume that, if something is clearly identifiable as being from a family member, because it includes a message such as “Dear son”, “Dear brother” or “Dear Dad”, it is obvious where the mail originates from and, if it contains drugs, there is clearly an issue there. Perhaps, with some input from the police, the cabinet secretary could write to us on that.

My last question is in response to the cabinet secretary’s opening statement, in which I believe that he said that original items will be returned to prisoners on their release. This might be an obvious question, but could mail that is still soaked in drugs be returned to prisoners on their release? Clearly, we want those prisoners to go back into society drug-free and to mitigate any potential for them to return to misuse or addiction. Handing them back drugs seems a sure-fire way to send them down the spiral of ending up back in prison.

Keith Brown: That issue has been raised before; it is valid and is the subject of the discussion on an MOU between the Prison Service and the police. You will know that the Prison Service has no right or powers to confiscate those materials; it has to come down to the police. That is why the MOU, which will result in the uplifting of materials that have been infused with drugs, is being put in place.

On the previous point, which was really important, Mr Greene mentioned that family members might be sending materials. However, serious organised crime might still be behind that, and the family member could be under duress. It is a bit like human trafficking, where we do not want to punish the victims. It is a complicated matter. Mr Greene raised an interesting point about getting a better handle on what the police are able to do once they discern criminal behaviour, and we will follow that up. I am happy to write to the committee on both the matters that he raised.

Jamie Greene: I appreciate that. If etizolam can be sent in the post, the big issues are about what else can be sent and how else it can be sent. People clearly still want to get drugs into prisons, and some prisoners will still want drugs to get in as well, so the really big question is, “What next?”

The Convener: I will bring in Pauline McNeill. I ask for succinct questions and answers.

Pauline McNeill (Glasgow) (Lab): Good morning. I totally accept the necessity for the Government to move ahead. I want to probe as much as I can into the detail of how the instrument will operate. Under article 8 of the European convention on human rights, there is a right to privacy and family life, especially for prisoners who

are not involved in drugs. That is where I am going with this. Although Families Outside supports the statutory instrument, it has expressed a number of concerns and says that there is a concern that families might opt not to send correspondence, which could interfere with family relationships.

Teresa Medhurst has said that staff are not allowed to read letters. How do you propose to prevent that and ensure that families who are just keeping in touch with their loved ones in prison and are not involved in drugs have confidence in the system?

11:45

Teresa Medhurst: You are absolutely right. That relates to the question that was asked earlier about trust.

The operating procedures that we have in place have been tested for compliance with the regulations and the prison rules by our legal branch. In addition, we have had contact with Families Outside and have undertaken consultation with prisoners in our care to help them to understand what happens.

We will keep the current operating procedures under review but, so far, no difficulties have been raised by individuals who are concerned about their correspondence being read or about the manner in which staff have handled that correspondence. We will continue to monitor that.

We have internal complaints procedures, and prisoners are entitled to write to MSPs and to raise concerns with the Scottish Public Services Ombudsman. There are a number of ways in which people can raise issues and concerns if they consider that what we are applying in prison is in any way disproportionate or has breached their human rights.

Pauline McNeill: Thank you for that, but I do not want it to get to the stage where people have to complain. Is there a safeguard within the operating process that you can tell the committee about? The measures have been in place for only four weeks. What does the Prison Service have in place by way of a safeguard so that Families Outside and anyone else can be reassured? You said that you will “monitor” the situation, but what does that mean? Are you just going to wait until a complaint is made?

Today’s meeting is the first opportunity that the committee has had to drill down on the matter. I do not think that any of us is opposed to the instrument that we are considering, but we have a responsibility to raise such questions to make sure that, as the cabinet secretary said, the balance is right. I would like to know specifically what safeguard there is in the process.

Teresa Medhurst: You are absolutely right. Today’s meeting offers an opportunity for the committee to scrutinise the instrument and for me to provide the necessary detail.

At the moment, the process that is applied across prisons is that when mail comes in, as it does on a daily basis, it goes to the residential areas and those individuals who have received mail are told that they have mail. They will then be able to witness the process as it is applied.

Pauline McNeill: Does that mean that the prisoner is present when a test is carried out?

Teresa Medhurst: I am not sure about that. I will need to bring in Fiona Cruickshanks to answer that part of your question.

Fiona Cruickshanks: Yes, prisoners are present when mail is opened and checked. In most establishments, prisoners are also present while the mail is photocopied, but in some establishments, because of the volume of mail that comes in, it is necessary to photocopy the mail slightly later in the day. However, the mail is still opened in front of the prisoner. It is then placed in a secure container and locked away, before being photocopied and handed out later on.

It is hoped that, once the volume of mail starts to reduce, that process will become slicker and we will be able to open the mail, photocopy it and issue it to the individual there and then, with them being present throughout.

Pauline McNeill: It is really helpful to know that. Families Outside had asked about that issue, because the rules currently say that the prisoner “may” be asked to be present.

That being the case, if a complaint was made that correspondence had been read, it is not likely to have happened at that point, because the prisoner would have been present. That would have happened afterwards. Are you saying that, if a prisoner found out that their mail had been read or confidentiality had been breached, that would be dealt with by them making a formal complaint about it?

Teresa Medhurst: Yes, we have a formal complaints process. I am not sure how that would happen, given the robustness of the systems that we have in place.

Pauline McNeill: I put the question to you in order to understand the process. From what you are saying, it is quite robust, which has given me some satisfaction.

I have no further questions, convener.

Russell Findlay: I have a question in relation to the memorandum of understanding with Police Scotland. In the cabinet secretary’s opening remarks, I think that he said that the MOU was

now in place and that suspected drug-soaked items were being taken away by the police as a matter of routine. However, under questioning from Jamie Greene, the situation became less clear—forgive me if I have misheard. I seek clarification on that point.

Teresa Medhurst: I think that Fiona Cruickshanks would be the best person to come in at this point.

Fiona Cruickshanks: There is currently a memorandum of understanding with Police Scotland, which has been in place for a number of years. The problem is that, due to the introduction of the Psychoactive Substances Act 2016 and the issues that we are facing in prisons, the MOU requires to be updated. We are currently going through that process. There have been improvements in local practices and police divisions over recent months, which have been as a result of discussions both between local divisions and prison establishments and at national level. We are continually looking to improve the situation, and we are in the process of updating the MOU so that it reflects the current challenges and the types of substances that now come into prisons.

The Convener: I see that Katy Clark wants to come in. Is your question on this topic?

Katy Clark (West Scotland) (Lab): It is a follow-up on the points that Pauline McNeill raised about mail being opened in front of prisoners.

I would like to get a bit more detail on the extent to which prisoners can see what the mail is. For example, if it was a birthday card, a photograph or a number of photographs, would the prisoner get to see the mail, even if they did not handle it? Obviously, some items of mail have far greater sentimental value than others. What thought has been given to how mail items of more sentimental value might be provided to prisoners? I appreciate that it is relatively early days, so I suspect that how that is being handled might not be consistent at the moment.

I do not know what percentage of items are checked for drugs, but if it is clear that a mail item is not contaminated with drugs and it has sentimental value, there are times when it would be very helpful for the prisoner to be provided with it, whereas with a lot of correspondence, it probably does not really matter whether they get the original. Will you provide a bit more detail on that?

Teresa Medhurst: The steer that has been provided to governors with the introduction of the new procedure has been to protect, as far as they can, the correspondence, cards and photographs that would be of particular sentimental value and, in particular, items that come from children. As I

said in my response to Ms Mackay, we have faced a period in which the number of mail items has increased, on top of which we have been dealing with the omicron variant in prisons, so it has been much more difficult to apply that more nuanced approach. However, I anticipate that that will happen.

We will continue to work closely with Families Outside to understand any concerns that are being raised by families locally and through visitor centres, as well as through the charity itself, and we will continue to take soundings from those who are in our care to understand the impact on them, so that we can nuance and change our approach and practice to better reflect their concerns, as well as protect them from the harms of psychoactive substances that come in through the mail.

Katy Clark: On the point about the prisoner seeing the item, will the prisoner know what the item is and therefore have some opportunity to make representations if it was a particularly important piece of correspondence for them?

Teresa Medhurst: Absolutely. The prisoner is present, so they see exactly what is in the item of mail. They see every item that is in the envelope, such as photographs or cards.

The Convener: We have about five minutes left. I will bring in Rona Mackay and then finish by bringing in Collette Stevenson.

Rona Mackay: I want to ask a bit more about the response of prisoners to the initiative. The cabinet secretary said in his opening statement that prisoners had initially been hostile but that things have sort of calmed down. I ask Ms Medhurst for her view on why things have calmed down. Is that because the process is running smoothly?

Are there plans to carry out a mental health assessment of the impact on prisoners and their families? If so, can you give us an approximate timescale for that?

Teresa Medhurst: The hostility came through the focus groups that were held. Initially, it was verbal. When anybody's circumstances change and their contact with family and friends is impacted, we would expect there to be a bit of pushback. Therefore, that was not unreasonable under the circumstances. Given the nature of the change and the time that it happened, I am pleased that, because of the amount of work that was done in establishments to ensure that there was positive engagement and constructive communication, there has been little or no reaction in any establishment since the measure has been implemented. I think that that belies the concerns that prisoners have about how open they and their families are to manipulation and intimidation.

On the question about the mental health impact, it would be difficult to separate the impact of the change from the impact and effect of the pandemic. However, I am keen to understand how the pandemic has impacted. That includes the impact of the restrictions as well as of the additional measures that we have put in place to support greater family contact, such as virtual visits and mobile phones, as well as some of the other measures that have been mentioned. I want to better understand how the greater restrictions and the improved access to family contact during the pandemic have balanced out. I cannot give any details yet, but we have started early discussions on how we might do that in prisons. I am happy to give an update to Ms Mackay on that in future.

Rona Mackay: That is fine—thank you.

Collette Stevenson (East Kilbride) (SNP): Good morning. I was going to touch on retention and the destruction of opened mail, but I am conscious that that has been covered quite well.

When mail is tested and is found not to contain any drugs, is it handed over to the prisoner while they are still in custody or at the end of their sentence? Excuse my ignorance, but what tests are carried out, given the volume of mail that comes in? Are a lot of tests carried out, or are just one or two particular items tested? What are your findings in that regard?

Teresa Medhurst: I will hand over to my colleague Fiona Cruickshanks, as she has more of the detail on that.

12:00

Fiona Cruickshanks: In relation to the testing of mail, as Teresa Medhurst said, we do random and targeted testing. I can give some statistics. From August 2020 to July 2021, 8,869 mail items that were received in prisons tested positive for an illicit substance. The nature of the drugs that come into custody changes frequently, and we are not always able to detect substances that come in. Therefore, even though a mail item might not give a positive indication through our tests, that does not mean that it has not been impregnated with a substance that we cannot yet identify. There is still a risk that mail items are coming in, testing negative in our drug detection systems and going into circulation.

Collette Stevenson: I want to ask about another issue relating to mitigation of the amount of mail that comes in. HM Inspectorate of Prisons for Scotland has recommended the provision of in-cell telephony. Cabinet secretary, what progress, if any, has been made on installing telephony in each of the prisons?

Keith Brown: It would be better if Teresa Medhurst answered that, as she has a much better grasp of exactly where we are on that. The member raises an interesting point and she knows the challenges that we have had on the issue. Teresa will have the up-to-date position.

Teresa Medhurst: We are looking at the options for in-cell telephony. We have not yet concluded our consideration but, once we have done so, I would be content to come back to the committee to provide you with an update.

Collette Stevenson: Okay—thank you.

The Convener: Before I bring this part of our meeting to a close, I ask the cabinet secretary for any information that he can provide on the timetable for the review that has been mentioned. Will details of the findings of the review or any adjustments that are proposed be shared with the committee?

Keith Brown: My response to the question about a review was that we have not planned that, but there is a kind of on-going review. Perhaps the best thing to do would be to commit to providing an update to the committee in whatever timescale you think would be appropriate. As has been said, we are only four weeks into the system. After a three-month period, we will have a better idea of how things are panning out, so that might be a good point at which to provide an update to the committee. That might include elements of a review but, in any event, it would be good to update the committee on progress.

The Convener: I know from looking at the online chat that there are a couple of additional issues that we would be keen to follow up with you, so that would be very much appreciated.

I thank the cabinet secretary and Ms Medhurst for attending. It has been a very useful session.

That concludes the public part of the meeting. Our next meeting will be on Wednesday 19 January. We now move into private.

12:03

Meeting continued in private until 12:51.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba