



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 23 February 2022**

**Session 6**



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**Wednesday 23 February 2022**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) BILL: STAGE 1 .....</b>	<b>2</b>
<b>PHOTOCOPYING OF PRISONERS' MAIL .....</b>	<b>42</b>

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**CRIMINAL JUSTICE COMMITTEE**

**7<sup>th</sup> 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:**

Emma Jardine (Howard League Scotland)

Teresa Medhurst (Scottish Prison Service)

Allister Purdie (Scottish Prison Service)

Dr Marsha Scott (Scottish Women's Aid)

Kate Wallace (Victim Support Scotland)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament Criminal Justice Committee

Wednesday 23 February 2022

*[The Convener opened the meeting at 10:02]*

### Decision on Taking Business in Private

**The Convener (Audrey Nicoll):** Good morning, and welcome to the seventh meeting in 2022 of the Criminal Justice Committee. No apologies have been received.

The first agenda item is a decision on whether to take in private item 4, which is discussion of the evidence that we are about to hear on the Coronavirus (Recovery and Reform) (Scotland) Bill. I also seek agreement that consideration of the evidence that is heard and of draft reports on the bill should be taken in private at future meetings. Do we agree to take those items of business in private?

**Members indicated agreement.**

## Coronavirus (Recovery and Reform) (Scotland) Bill: Stage 1

10:02

**The Convener:** I refer members to papers 1 to 3. Today, the committee begins its scrutiny of the justice provisions in the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 1 of the Parliament's legislative process.

We will hear from two panels of witnesses. In the later part of the meeting, we will be joined by representatives of the Howard League and the Scottish Prison Service.

However, first, I am pleased to welcome Dr Marsha Scott, chief executive officer of Scottish Women's Aid, and Kate Wallace, chief executive officer of Victim Support Scotland. We very much appreciate the time that you have taken to join us.

I intend to allow an hour for questions and answers. As usual, I ask members and witnesses to keep questions and answers as succinct as possible. I also ask that, when members ask questions, they indicate which witness they are directing their remarks to. Both witnesses are familiar with how our online meetings work. If they would like to speak, they can let us know by typing R in the chat function.

We now move directly to questions. I will open with a general question for both witnesses.

I note that both Victim Support Scotland and Scottish Women's Aid support a permanent change that will expand the use of virtual court proceedings. Do you have any concerns about the use of virtual attendance? For example, issues have been raised in relation to digital access for vulnerable groups and for people who are living with disability. I ask you first, Kate, for your comments and thoughts on that general provision.

**Kate Wallace (Victim Support Scotland):** The feedback that we have had is that vulnerable witnesses, in particular, really value being able to give their evidence away from the courtroom. There are a lot of concerns about potentially seeing the accused or the family of the accused. We know, from many decades of research, that attending court is often traumatising for victims and witnesses. Being allowed to provide evidence outwith the traumatising environment of a court setting and, therefore, able to give their best evidence is an overarching theme.

Of course there are issues around assessing whether it is appropriate for people who might have issues and challenges with accessing the technology to give evidence remotely. It is important to note, however, that such provisions

are already in the vulnerable witness legislation that we have had in Scotland since 2004. There is already an ability to give evidence via a live videolink from outwith a court building, if appropriate. We would certainly like to see wider use of that, with assessment of the support that somebody might need.

Another thing to note is that the technology that is used for the virtual trials has moved on so much. There are sometimes concerns about people being able to use the technology. However, for most of the time that we have been supporting the Scottish Courts and Tribunals Service and others with the virtual trials, there has been somebody there with the vulnerable witnesses—they would normally have a supporter there anyway through the special measures, as you know—and that has helped to overcome those issues.

From our perspective, we want to see a trauma-informed justice system that gives people choice and control, so that they can decide for themselves whether they want to give evidence remotely. Not everybody wants to give evidence in that way, but the overwhelming feedback that we have had is that doing so has lessened people's trauma and completely removed their concern about bumping into the accused or their family, and that is helpful.

**The Convener:** Thanks very much, Kate. Would you like to pick up on that question, Dr Scott?

**Dr Marsha Scott (Scottish Women's Aid):** I would. There is an echo on my line; it is quite distressing. Perhaps there is a way to turn off somebody's microphone.

First, I will say that the legislation is deeply disappointing for us, because a huge amount of work has gone into this area. The virtual summary trials pilot in Grampian gave us a very robust report and evaluation, which indicated lots of positives including all the things that Kate Wallace said. Victim Support Scotland was very much involved in that project, and we sat on the project board. When we heard from victims and survivors in our network, they were overwhelmingly positive about feeling safer, giving better evidence and not having to trail their children all over Scotland to go to a court where their trial or hearing is then postponed yet again.

That change of climate has had benefits, so that the one barrier left in the system, which was mentioned by the board and the Lord President, is that legislation is needed

"to create in effect a presumption in favour of domestic abuse trials by electronic means".

I speculate that the reason why that is not in the bill is that there were concerns about cross-party

consensus not being present. I urge the committee to weigh in constructively on that really important issue.

The problem in the system at the moment is that defence agents tend to object to virtual trials. Despite the possibility of thousands of virtual trials going forward during the previous two years, eight—count them—went ahead. Therefore, we really need that in the legislation.

**The Convener:** Thank you very much. That is helpful, and it is certainly food for thought for members.

I will ask Kate Wallace and Marsha Scott a quick follow-up question before I bring in Katy Clark to ask questions about time limits in criminal cases. On going forward from the perspective of victims, Marsha Scott touched on how well virtual arrangements are working already. It is clear that they have some challenges. What needs to change in early course?

**Kate Wallace:** If I may, I would like to go back to the point about assessing the suitability of virtual methods of giving evidence. The same applies to assessing the suitability of a court environment. I remind members that our courts are often not the most accessible of physical buildings and that we often get complaints from victims and witnesses about the acoustics in courtrooms and their physical accessibility. The ability to give evidence virtually may well provide a much more inclusive approach at times than a building-based environment does.

On the question about what needs to change, we would like the expansion of what we would describe as a hybrid model and—I refer to what Marsha Scott said—a presumption that vulnerable witnesses can give their evidence virtually outwith a court building altogether, if that is what they would prefer, to happen quite quickly across the board. We believe that there would then be more attendance by witnesses, less attrition and better evidence from those people. That would all help with the backlog.

We also need to put in place a much better system for managing the business of the courts. I know that moves are being made on that. All members of the committee will be aware of the massive backlog. I have spoken to the committee before about the impact that that has on the mental health of victims and witnesses.

The number of adjournments is also creeping up massively now. Witnesses are asked to go to court to give evidence and then, at the last minute, it does not happen and they are asked to go away and come back another day. Marsha Scott will talk about that in more detail. I know that she has, as I do, examples of people who have been asked to go to court several times. From a witness point of

view, there is the feeling that they have put their life on hold, and they have to remember absolutely everything to try to give their best evidence. The rug is then pulled from under them at the last minute, and they are asked to come back at an undisclosed time. There are many cases now in which people are asked to come back four, five, six, seven or eight times. That whole process needs to be managed.

One of my big concerns about coming out of this phase of the pandemic is that there are a large number of trials for each court per day when it is possible for only one trial to go ahead, and all the witnesses are cited to come to the court and there are massive numbers of adjournments. It is becoming more and more intolerable for witnesses. Something must be done quickly to get us out of that situation as we move out of this phase of the pandemic.

10:15

**Dr Scott:** There needs to be a robust planning and implementation process that does a needs assessment for anyone who is participating remotely. I think that Kate Wallace would agree with me that we have a huge opportunity to create a user-friendly, victim-friendly court system by setting up Victim Support offices, Citizens Advice Scotland offices or Women's Aid offices that are not more than an hour or two from where women live as places to give evidence from. Support can be made available there, with technology that can be vetted by the Scottish Courts and Tribunals Service.

There are many advantages to creating such safe spaces for women and children, and, as the pilots have shown, it would not be difficult. Work should be done on that. It is not rocket science. It should happen immediately, along with the setting up of the virtual domestic abuse specialist courts in each sheriffdom.

Covid has shoved Scotland—and other places—into the 21st century in terms of technology use. There is no going back. Let us use that technology and invest in it in the interests of people who have less access. It is not impossible; it just requires political will and a bit of investment.

I echo Kate Wallace's—

**The Convener:** You do not have to stop; we can still hear you.

**Dr Scott:** I just got a message telling me that you could not, but I see now what happened: I was probably on two links. Forgive me. I do this all the time; you would think that I would be better at it. I can see you now, finally, and there is no echo.

I will mention a couple of cases. I want to thank Mhairi McGowan for representing SWA on the virtual trials board and for sourcing these case studies from the ASSIST—advocacy, support, safety, information, services together—project.

The first case study involves an incident that was reported in May 2020. The first trial date was August 2020, but the trial was adjourned to January 2021 and adjourned again to November 2021. At the intermediate diet, the trial was adjourned again, as the scheduled date fell during the 26th United Nations climate change conference of the parties—COP26—and a new trial date was scheduled for April 2022. The child witness was seven years old at the time of the incident, and he will be nearly 10 by the next trial diet, which we hope goes ahead.

The second case study involves a trial that has been adjourned three times. On the fourth occasion, there was time to take only the mother's evidence. The child is required to come back to give her evidence in a few months' time. The mother broke down crying at that news. If the process goes ahead, it will be nearly two and a half years since the incident.

I am pleading with the committee to understand the impact on victims and survivors—children and adults—of delay. I think that it is one of the elements of our system that existed before Covid but, as you know, it has been greatly exacerbated by Covid. We have something like 40,000 cases in the backlog, and 25 per cent of those will be domestic abuse cases. Some bold action is required.

The path has been laid out for us, and we must not balk at the last hurdle—I hate to use those clichés, but I seem to be dropping into them.

**The Convener:** On the issue of time limits and delays that you have highlighted, I am watching the time myself, but I know that some members would like to ask some questions about that. I call Katy Clark, to be followed by Jamie Greene. I just want to keep our discussion moving.

**Dr Scott:** No problem.

**Katy Clark (West Scotland) (Lab):** On statutory time limits, do you still support the longer criminal procedure time limits that were put in place in response to the pandemic? Do you have any concerns in that respect?

**Dr Scott:** We still support them but, obviously, we have mixed feelings that are in line with what I have just been saying about the impact of delays on victims and survivors. The problem is that the system is pretty broken at the moment, and those limits are one of the safeguards that we need to put in to ensure that cases do not get dropped.

**Katy Clark:** Do you have any concerns about them? As you know, the bill proposes to extend them—not permanently but presumably for a considerable period of time. Do you have concerns about, for example, the length of time that an accused can be remanded in custody?

**Dr Scott:** As I have said, we always have concerns. One of our biggest concerns about the remand problem—and I am very mindful of the numbers that are coming out for those on remand in prison—is that decisions on remand and bail seem, in part because of pressure on the system, to be driven more about concerns about prison population, which I share, and a variety of court problems rather than victim safety. We have always had such concerns, but they have been heightened by the situation during Covid. I think that Kate Wallace would support that.

The question, for us, is: what can get the system working again? Clearly scheduling eight trials a day and feeling lucky if two go ahead would not be good actions, so what we would say is that we would support the limits until the system readjusted and then we would like them to be reconsidered as soon as possible.

**Katy Clark:** Similarly, Kate, do you still support the longer criminal procedure time limits that were put in place in response to the pandemic and the continuation of those measures? Do you have any concerns from a victim's perspective?

**Kate Wallace:** Like Marsha Scott, I support them with a heavy heart. Because of the delays in the system at the moment, our biggest concern is that cases get timed out and victims do not see justice done. Given that they have waited such a significant length of time—and given the big impact on their mental health, as I have said—we really think that that cannot be tolerated. We therefore see the limits as an unfortunate necessity, certainly until, as Marsha has said, the system is back under control and the delays are not what they are at the moment. That is what lay behind some of our responses to the earlier consultation.

**The Convener:** I call Jamie Greene, to be followed by Rona Mackay, who will ask about the early release of prisoners.

**Jamie Greene (West Scotland) (Con):** Good morning, everyone. My colleague Katy Clark has already covered this area quite well, and I get the impression that this is a necessary evil, given the two options in front of us. No one wants cases to be timed out, so there must be a mechanism for extending them. Historically, as you will know, people had to apply for an extension, whereas under the emergency procedure, the extension was automatic.

The bill makes permanent some of the temporary features that were brought in during Covid. Do you have any concerns about the extension of the limits to 17 or 18 months for solemn cases and the other extension for summary cases? Would you rather that they were time-limited automatic extensions and that the limits would revert back to their original 11 or 12 months? If so, at what point in the future would you like that to happen?

**Kate Wallace:** We did not support increasing the time limits permanently, but we support the extensions on a longer temporary basis. When they should revert back to pre-pandemic timescales would be based on an assessment of how the system is coping and working. That is our view. We would not want there to be such extended time limits on a permanent basis, simply because of the impact that the delay has on victims.

Committee members will be aware that delay was already a problem in the justice system, prior to the pandemic. A large number of victims and witnesses were already badly affected by the length of time that it took for their case to come to court and the delay, from their perspective, in giving evidence and the impact that it had on them. For those reasons, therefore, we would not be supportive of extending the timescales permanently—simply because of the detrimental impact on victims and witnesses.

**Dr Scott:** I agree with Kate Wallace, in essence.

**Jamie Greene:** That is great.

My second question on that concerns the fact that some people think that, for some trials, even 18 months is ambitious, albeit that that is an extended time limit. We have just heard examples of some trials that are already taking way beyond 18 months. If we assume that that is what is happening, the backlog is going to take four or five years—perhaps longer—to clear, given the volume of cases.

What are the main causes of the delays to trials? Do they involve the capacity in the system? On numerous occasions, the committee has asked the SCTS and the Crown Office whether they think that there is capacity in the system to deal with the backlog, or what more they might need to get through it more quickly.

Alternatively, do the delays simply involve the nature of the processes that we work with? Is it that, even with all the will in the world—if we doubled court capacity and the number of defence solicitors and Crown agents—we would still not get through it at the same rate as we would wish because of the inherent nature by which trials take place?



What are the main barriers to reducing the length of time that people are waiting? In other words, how do we clear that backlog quickly but also fairly, so that each party is given the absolute right to fairness throughout the process?

**Kate Wallace:** Do you want me to answer?

**Jamie Greene:** I do not mind. It was a tough question.

**Kate Wallace:** I will go first. You have heard evidence from some earlier round-table sessions, if you remember—from, for example, the Faculty of Advocates. The committee spoke about some of that there.

A clear message is needed that a robust approach will be taken in Scotland, to make sure that cases are dealt with and that prosecutions are pursued. A number of things that relate to the pandemic are impacting on the backlog and, as I said at the beginning of the meeting, on the rate of adjournments. That means that cases are not getting cleared in the way that we would like. It is about a robust case management system and a very strong message that, in Scotland, cases will be carried through to their conclusion and their outcome, and that that is the process.

Yes, some people are unable to attend court on the day of the trial, because of Covid symptoms and so on, but the overriding message that is going through is that, if someone keeps on delaying, perhaps their case will eventually be dropped. That is what victims really worry about. That is what they feel has really been going on in the system over the past two years. Coupled with that, I have spoken about some case management issues that make it difficult for witnesses and victims to give their best evidence.

The best communication and support have not been put in place for people and, at the moment, the approach is, "Let's list a load of trials and then wait to see who turns up at court in the morning, to see which ones will run." That is not an effective way to carry on, particularly given that, as Covid restrictions start to be removed in court buildings, people's anxiety levels will start to increase.

10:30

Marsha Scott and I have spoken before about our concern that the process becomes so prolonged and traumatising for witnesses that they start to drop out of the system. We have big concerns about that, as does Sandy Brindley at Rape Crisis Scotland. That also creates the problem of people being less likely to report in future, which is something that we all want to avoid.

It would really help if there were a co-ordinated message across Scotland that the justice system

is robust and will continue, and that prosecutions and cases will not be dropped to try to manage business, as is happening in other parts of the world.

**Jamie Greene:** Thank you.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning, Kate and Marsha. You have both expressed opposition to the provision in the bill on early release of prisoners, and you have highlighted issues to do with the safety of victims. Can you give examples of the impact on victims and your concerns in that regard? Can any steps be taken to allay those concerns? That question is for Marsha, first.

**Dr Scott:** We were pleased that the first actions on early release identified domestic abuse cases as an exception. We are highly sceptical about how well early release has worked so far; it will be interesting to see an evaluation of whether and how often people who are released early end up back in prison, because it is a terrible waste of the system's resources if that is happening—not to mention the effect on victims' safety.

The pressures on the system are pushing sheriffs and the court service to think about how to reduce pressure on the service rather than about how to protect victims. I echo what Kate Wallace said: we have to take action across the system, because unless we relieve the pressures on the courts and sheriffs, the system will default to delay, regardless of how well intentioned the Government and Parliament's actions are. That will happen in order to protect people. The service would prefer delays—because there are no real consequences from or accountability for delays—to winding up in an appeals court being embarrassed by having a decision overturned. That is very much a lay person's assessment of how the system works. The reality is that unless we make the system work for multiple players, the delays will continue.

The other thing that I need to point out in terms of early release—domestic abuse cases aside—is that the system needs to take a close look at why we remand. Remand should only be about public safety and the safety of victims—although I suppose that that is not a domestic abuse specialist-informed opinion.

**Rona Mackay:** Thank you. Kate, would you like to comment?

**Kate Wallace:** When there was emergency early release during the early stages of the pandemic, all the victim support organisations—including Scottish Women's Aid, ASSIST and Rape Crisis Scotland—saw a massive upsurge in the number of victims who contacted us, petrified that the perpetrator in their case was going to be released early. We all struggled to find the

capacity to manage people's anxiety and to support them through that time.

We have heard anecdotal reports of what happened to the 348 people who were released early during that wave. Like Marsha Scott, I am interested to know what happened afterwards. If we are going to go there again, I would really like to see a far more co-ordinated approach being taken. Information sharing agreements were put in place very quickly between the Scottish Prison Service and every local authority in Scotland. It can be done—as, I am sure, you will hear later from Teresa Medhurst.

That was done really quickly to ensure that support could be put in place for prisoners on emergency early release, but there was no equivalent action for victims in those situations. There was no information sharing to ensure wraparound support for victims who were traumatised by the thought of the perpetrators in their cases being released from prison early. No regard whatsoever was paid to that.

Victim Support Scotland and other organisations would be happy to work with anyone to ensure that adequate support is put in place. I do not want to see the return of the real anxiety that was felt at that time. We know that 348 people were released, but there was an impact on a far greater number of victims because they did not know who was going to be released. We were all inundated with requests for support, as we reported at the time.

My plea is that we put in place measures to ensure that information is shared with victims, and that safety planning and support planning are put in place so that victims get the help that they need when the perpetrator in their case is released from prison.

**Rona Mackay:** Thank you—you have raised an important point.

**The Convener:** Marsha Scott wants to come back in, before I hand over to Jamie Greene.

**Dr Scott:** You will be glad to know that I will be brief; Kate Wallace can give chapter and verse.

I will pick up on how the system responds. There have been huge difficulties with victim notification schemes. Victims are not the clients of our courts system—the accused are. We know what the deficits are; Kate has already referred to them. For any releases, early or not, we know, because it has been done for local authorities, that the system is capable of notifying victims in a timely manner. The question is how we set up the system so that a perpetrator is not released unless the victim has been given a certain amount of notice.

**Jamie Greene:** I have a two-part question about early release.

As you know, short-term prisoners in Scotland must be released after serving half their sentence. Long-term prisoners may be released after serving half their sentence, subject to decisions by the Parole Board for Scotland. First, what do you think about that concept?

Secondly, the emergency provisions in the coronavirus legislation gave the Scottish Government the ability to release prisoners earlier than the mandatory time limits. The bill, as I said in my previous question, seeks to make those temporary provisions more permanent features of the justice system. Is that appropriate? Would you prefer the provisions not to be permanent in legislation? I think that we all agree that some good justice system reforms have come from the Covid pandemic; we have already talked about those. However, we might not want that provision to become a permanent feature of the system.

Perhaps Kate Wallace can start.

**Kate Wallace:** I will try to remember the questions.

Victims really already struggle with the idea that people can be released after serving only half their sentence, and we do not agree with decreasing the length of time. Instead, we ask for clear communication with victims on exactly how long a person will serve in prison and what that will mean in terms of support being put in place for people who are released, as well as for victims.

Marsha Scott has referred to my deep concern about the victim notification scheme; indeed, I have previously mentioned that concern to the committee. Until we solve the issues and problems, and have in place a proper trauma-informed approach, we will face a challenge. We can put as rigid a timeline on the matter as we want, but the fact is that victims must be given really good information, and must be given it in a supportive way, and in a way that supports their personal safety.

A point that I will bring up now that I have mentioned before is that we extended our victims fund at the beginning of the pandemic. We are now providing roughly £300,000 a year in direct support to victims of crime who are in immediate financial need. At the beginning of the pandemic, the requests were more for essential household items, but more recently—certainly in the past year—we have been inundated with requests for money for security and safety equipment. In fact, they dominate requests for support from the victims fund. That tells me that victims are really concerned about their safety and security in a way that they might not have been concerned—or they might not have been so concerned—at the start of

the pandemic. We need to bear that in mind with regard to the questions that Jamie Greene has asked.

I am sorry—I have forgotten your second question.

**Jamie Greene:** The question was about the ability to release people even earlier than halfway through their sentence. That was a temporary measure to deal with the public health emergency of the pandemic, but the bill will make the measure permanent. What is your view on that?

**Kate Wallace:** As Marsha Scott and I have said, it would be interesting to dig out figures on what happened to people who were given emergency early release and to make an assessment on that basis. Our understanding is that the move did not work as was intended. From victims' point of view, we do not advocate a further reduction in the timescale, because people would find that really challenging and difficult. We have commented that we need a robust justice system that keeps people safe, so it would be really difficult to argue for such a proposal.

**Jamie Greene:** I will bring in Marsha Scott in a minute. The bad news, unfortunately, is that the numbers speak for themselves. Of the 348 people who were released early under the emergency power, 142 reoffended within six months. I do not know the specifics of the cases—I am sure that we can find that information—but I suspect that a chunk of them will involve domestic abuse or gender-based violence. That is a worry. There was a public health emergency, and we had to release people from prison, but they went on to reoffend when, in normal circumstances, they would still have been serving their sentences. In this instance, the proof of the pudding is in the eating, unfortunately. That said, I would be grateful if you could share with the committee any anecdotal evidence of such cases that you might come across.

Dr Scott, can you give us your views on the general concept of early release and use of the emergency power?

**Dr Scott:** The picture that is painted of Scottish Women's Aid's feelings about the prison population is often unfortunate, so I underscore that we are not in favour of just banging people up, and we do not think that it is the only solution in domestic abuse cases. We think that it is the safest solution at the moment, because the other solutions for creating victim safety have not been implemented or invested in. I am talking in particular about robust electronic monitoring and use of global positioning systems, intensive bail supervision and other things that are not on today's agenda.

However, in a desperate attempt to deliver a good thing—to reduce Scotland's prison population—the system is taking a hammer to a situation that requires a screwdriver. The reality is that a broad early release scheme is needed only because we put too many people in jail.

10:45

Domestic abuse cases were not, on paper, included in the previous early release scheme, but we all know that domestic abuse is far more prevalent than is visible from the system. Women and children are very unlikely to disclose domestic abuse, to call the police or to get the system involved in other ways. That is, in part, because of how they are treated when they wind up in court, but it is also because of delays. There are a couple of points to remember.

I would be interested to find out about the extent to which domestic abuse offences were part of the reoffending in the 140-plus cases that Jamie Greene mentioned. Women are still told every day in civil cases not to mention domestic abuse because they will be considered to be non-compliant or unco-operative witnesses if they do, so a closer look at what happened in those cases would help us to fine tune the interactions.

The real problem that we need to fix is the other delays in the system. That relates to how we feel about early release. We feel fine about it for the people who should not have been put in prison in the first place—domestic abusers are not those people. It comes down to considering whether the victim's safety is at risk. My suspicion is that, if we started to look at the prison population through that lens, our decisions would be a lot easier and we would have much more effective interventions.

From discussions that we have had about the problems with delays, I know that the Crown Office and Procurator Fiscal Service was already observing witness attrition. As Kate Wallace said, we do not want to reduce the prison population by making the judicial process so difficult that people never engage with it. The system did some really good work at reducing time to court for domestic abuse trials prior to the pandemic. We have research that says that if we get a case to court within eight to 10 weeks, we have worse attrition on the defence side than on the complainer's side and better outcomes for everybody involved. The time to court prior to the pandemic was around 12 weeks, but now it is years. Those are things on which we need quick action.

**Russell Findlay (West Scotland) (Con):** We have heard that victims were not told about the emergency legislation on early release and you were inundated by requests for information. From what my colleague Jamie Greene said, we also

know that 40 per cent of the people who were released went on to reoffend quite quickly. We do not know the details of that reoffending. It looks like there is a complete imbalance in the system, which has little regard for victims. However, I will get off my soapbox and ask a question.

The early release scheme should not apply to prisoners who are subject to sex offender notification requirements. However, I wonder whether the definition of people who have been convicted of sexual crimes is narrow and specific and whether the exemption could have been, and may yet be, used for prisoners who have been convicted of other crimes of a sexual nature in which the victims are primarily women and girls.

That question is open to either or both of the witnesses.

**The Convener:** I will bring Kate Wallace in first.

**Kate Wallace:** I will hand over to Marsha Scott. She might want to respond to that.

**Dr Scott:** I would defer to Sandy Brindley of Rape Crisis Scotland to address the sexual assault figures. However, it is worth pointing out that the vast majority of victims of domestic abuse are also victims of sexual assault; there just may not be a prosecution focused on that element of their experience. That is really important.

I have forgotten my other point. Will Russell Findlay remind me what the beginning of the question was?

**Russell Findlay:** Sure. It is quite a specific thing. The exemption is for people who are subject to sex offender notification requirements. Does that mean that prisoners who have committed other sexual offences might not be exempt and could be released early? Do we know that?

**Dr Scott:** I was going to point out that, at least in the context of the larger world of victims, who do not fall neatly into categories of sexual assault victim, domestic abuse victim or forced marriage victim, our system is very much a blunt tool. The early release of people who are perhaps not on the sexual offender list does not mean that they are not a risk to other people's safety, which comes back to your original point.

There is another issue, from our perspective. The last time that I looked at the data—which was prior to the implementation of the new domestic abuse law—fewer than 1 per cent of convicted offenders of domestic abuse wound up with a sentence of more than a year. That means that, in the vast majority of domestic abuse cases, there will not be a problem with regard to early release because the convicted offenders never wind up in prison. They wind up on community payback orders, and we think that there are significant problems with those.

**The Convener:** Shall we go to Kate Wallace?

**Russell Findlay:** Yes, if she would like to add something, but I have another quick question that is perhaps more directed at her.

**The Convener:** I will butt in quickly to say that I am watching the time. We have just under 10 minutes left, so I would appreciate succinct questions and answers, as usual.

**Russell Findlay:** This question is for Kate Wallace. It touches on the evidence mentioned earlier in respect of applications from victims for security assistance. Will you expand a bit on that? That is not why the fund was created; it was created to compensate people for what they had been through.

**Kate Wallace:** The victims fund was not created as a compensation fund. There has been a victims fund for more than a decade. It was supposed to be about making sure that people who had no other financial means were not plunged into financial hardship as a result of being a victim of crime and, therefore, through no fault of their own. The fund was always there, but we recognised that the pandemic would have an exacerbating impact. That is why we increased it dramatically at the beginning of the pandemic in April 2020.

At the beginning, we were seeing requests for things such as food vouchers and clothing. People who had to flee their home because of domestic abuse had only the clothes on their back and their kids' clothes, and nothing else. Such requests made up by far the majority of the applications that we saw at that time. However, the picture has changed over time. Now, the majority of applications are for security and safety equipment, such as closed-circuit television cameras. Requests for such equipment dominate applications to the victims fund at the moment and have done so for the past year. You are right that the picture is quite different from what we have seen before.

**Russell Findlay:** Why is that happening? Is there suddenly a sense that victims are not protected and need that additional help?

**Kate Wallace:** That is what it would indicate. We have more work to do to get feedback from people around exactly that point. There certainly seem to be a lot more people who are concerned about their safety in a number of areas.

We reported a rise in the number of calls that we were getting from people who had experienced antisocial behaviour or hate crime. We know that the level of domestic abuse increased during the pandemic, in particular during lockdown periods. We are, unfortunately, seeing all that coming out in the applications that are being made.

**The Convener:** A couple of members want to come in on this subject. I will bring in Fulton MacGregor, followed by Pauline McNeill, and then we will—I hope, if we have time—move on to our next and final area of questioning.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** My question, which picks up on Jamie Greene's point, is probably for Dr Scott.

Early release for people convicted of domestic abuse offences will be really worrying for victims; I hear what is being said in that regard. However, I am sure that Dr Scott would agree that domestic abuse sentences are not usually very long in any case. In my view, the issue is the rehabilitation of those people. I worked in the field previously. If we are talking about early release for specific groups of offenders such as those involved in domestic abuse, would it be helpful if their early release was not only highlighted, so that victims could be prepared—Kate Wallace made that point well—but attached to some sort of work programme that is effective and actually works?

The Scottish Government recently invested further in criminal justice social work services, which was a welcome move given the pandemic situation. What does Dr Scott think about my suggestion in respect of early release for such prisoners?

**Dr Scott:** I have to say that I have very little confidence in the ability of a work programme to change the behaviour of a domestic abuse offender. There is no evidence in the literature that such an intervention would be effective. We have the Caledonian system, which—as I think you referred to—has been expanded to around two thirds of local authorities in Scotland. However, even if every local authority in Scotland had a well-financed, well-functioning Caledonian programme, it would still take only a certain percentage of the convicted offenders who were referred to it, given the difficulty of delivering good outcomes in a programme with a large number of offenders.

I also note that such an approach is not the only way to fix the problem. For example, we need legislation that allows for longer sentences in summary cases. One indicator that the system would like that is that, when we look at convictions under section 1 of the Domestic Abuse (Scotland) Act 2018, which refers to a course of controlling behaviour, we see that the average sentence in summary court cases is 364 days. We know, therefore, that sheriffs and courts are essentially using the maximum sentence that is allowed in such cases. We need better information about what the appropriate limit would be in that regard.

I give a nod to the Parliament for passing the 2018 act, because prosecutions that are based on the element of a course of controlling behaviour

are allowing the courts to see much better the harm and trauma caused by domestic abuse and to respond as best they can in that situation.

I also point out that the equality impact assessment and the Scottish Parliament information centre briefing for the Coronavirus (Recovery and Reform) (Scotland) Bill fail to identify a number of critical gender-related issues, in particular the poor operation of the system. We have copious amounts of evidence that Covid has had a disproportionately negative impact on women, and yet we see nothing in the bill that tries to address the disproportionate harm that women are experiencing.

11:00

I am thinking of the resilience of women whose employment has been made more precarious than that of men because of Covid. Economic abuse has always been the single biggest concern in respect of whether women will be forced back into abusive relationships. The bill needs to reflect what we know and deliver on obligations under international agreements to provide progressive realisation of rights, or even just protect the existing system where it is working well.

**The Convener:** Finally, I hand over to Pauline McNeill. I am afraid that we will then have to bring the session to a close.

**Pauline McNeill (Glasgow) (Lab):** Good morning. I have just one question. The committee has been asked to comment on the extension of court time limits. You both expressed concerns about the previous level of adjournments. Are you not more concerned that if the Parliament gave its authority to an extension, we could end up in the same place again, being asked to extend the limits by another six months?

Perhaps it is time that we put some pressure on to fix the system. I am deeply concerned about the extension of court time limits, given the evidence from you both. I am concerned that we may be back here again if we extend the limits for six months. Do you share my concern?

**Kate Wallace:** I totally understand your concern in that regard. However, the reality is that there are now so many cases in the system that, if the time limits were not extended until the system had recovered and we got things back under control, I would be concerned that cases would end up timing out. That is the very opposite of what we want. Victims are very concerned that they will not see justice done. I completely understand your concern, but I am not sure that trying to force the system to respond will produce the effect that we would want.

**Pauline McNeill:** What if we are in the same situation in six months? Will you be saying the same thing? Will we be saying that the system is so broken that we have to extend the limits further?

**Kate Wallace:** I would say the same. The backlog figures speak for themselves in terms of the timescales. There are no quick, easy solutions to the current situation. We have submitted some possible solutions—as the committee will know, Victim Support Scotland, Rape Crisis Scotland, Scottish Women's Aid and ASSIST wrote an open letter at the beginning of the pandemic to outline some of the ways in which we thought the backlog could be reduced more quickly. However, those suggestions have not been taken forward, so unfortunately we will be in the current situation for a few years. As things stand, there is no quick way out of it, so I think that, unfortunately, a temporary continuation of the extension of timescales is required.

**The Convener:** We have overrun a little. There are a couple of areas of questioning that we would like to have covered, but time has been against us, so we will follow up with you both in correspondence to ask some more questions. Likewise, if you feel that there are any outstanding matters on which you would like to share your views with the committee, please feel free to do so in writing, and we will take that evidence into account. I thank you both for your attendance today.

I suspend the meeting briefly to allow our next panel of witnesses to come in.

11:04

*Meeting suspended.*

11:08

*On resuming—*

**The Convener:** Welcome back, everybody. I welcome to the meeting Ms Emma Jardine, policy and public affairs adviser at the Howard League Scotland; and Teresa Medhurst, interim chief executive of the Scottish Prison Service, and Allister Purdie, interim director of operations.

I intend to allow around an hour and 20 minutes for questions and answers. We will move directly to questions, and I will ask the opening question, which is for Teresa and Emma. It relates to developments around court business being undertaken by electronic means. I am interested to know your views on the specific provisions in the Coronavirus (Recovery and Reform) (Scotland) Bill to allow flexibility for people to attend court proceedings remotely.

**Emma Jardine (Howard League Scotland):** Good morning. We have no objections. It is not our area of expertise—we expect that you will take evidence from the Scottish Courts and Tribunals Service—but there is no reason why, in the future, we should not use some of the technological advances that have been imposed as a result of the pandemic. As others have said, we need to be careful to ensure that the use of technology does not jeopardise or discriminate against those who find it more difficult to engage with the process by virtual means, so it should remain under constant monitoring, but we have no objections.

**Teresa Medhurst (Scottish Prison Service):** Good morning. There are two areas where there are implications for the Scottish Prison Service. First, the virtual police custody service that is now in place has implications for us in two ways. We operate the escort contract, so the staffing provision for custody and virtual custody falls within the management of the SPS and is therefore our responsibility. We have been able to manage the levels so far during the pandemic, but were there to be any increase in those, we would need to consider the resource implications.

Secondly, because cases in the custody courts are the last ones to be heard, we sometimes receive people later in the evening than we would normally expect. That has implications for our staff and for national health service staff, given that we must ensure that we admit people into our care safely during the evening.

The other implication arises because other procedural court hearings have been taking place and appeals are regularly heard using virtual courts. That has had a positive impact in that the number of people who leave prison to go to court has reduced, so the impact on individuals has been minimised. However, where it is anticipated that virtual courts will be used much more readily and frequently, there will again be potential resource implications in relation to not just our staffing and NHS staffing, but buildings and the virtual capacity in prisons.

**The Convener:** Thank you for that interesting update. Mr Purdie, do you want to comment?

**Allister Purdie (Scottish Prison Service):** I will add one point, convener. The workload means that the scheduling is sometimes quite difficult, which leads to difficulties for individuals in getting legal support before and after hearings.

**The Convener:** I will ask a follow-up question before I bring in other members. Teresa Medhurst mentioned the positive impact of there being less movement of prisoners in and out, and the resource implications of that, which have clearly proven to be beneficial. Has that been seen broadly across the prison estate? What more

needs to be done to benefit from the opportunity and to make things work as effectively as they can?

**Teresa Medhurst:** We are still feeling our way in relation to the pandemic and virtual court business, so there will be some bumps and glitches along the way. However, we have excellent working relationships with other parts of the criminal justice sector and we work collaboratively to iron out any issues or difficulties.

The benefits for the wellbeing of individuals in our care who are not required to attend court for short hearings have been palpable, as such requirements have been minimised. That has been really positive.

I am sorry—what was the second part of your question about?

11:15

**The Convener:** It was about what more needs to be done, if anything. You spoke about things being at an early point and about there being bumps along the road, which is understandable. What, in your view, are the priorities for developing the opportunity that exists on a more permanent basis?

**Teresa Medhurst:** I will outline what would be helpful from a Prison Service perspective. The Scottish Courts and Tribunals Service is working hard to understand better where the development of virtual court business is likely to land. That would assist us in planning and preparing, particularly in relation to the resource implications. It is not yet clear what the impact is likely to be in terms of size and scale, nor is it clear what capacity we would have to support virtual courts. Prisons have not been built with virtual courts in mind. You may think that less room would be required, but there are strict protocols around how courts need to operate in prisons, which we need to adhere to.

The step into the world of virtual courts is a welcome one, however, and I can see many benefits, both in minimising disruption to staffing levels and in ensuring that people who do not require to leave prison do not do so. I am thinking, in particular, about minimising the exposure of distressed women or young people to the court experience.

**The Convener:** Do you wish to come in on that, Mr Purdie?

**Allister Purdie:** I have just one point to make. Collaborative work is proceeding with a sheriff principal so that we can try to marry the two services together, understand the planning that is required and maximise the opportunity for virtual courts to happen, minimising the impact on the

individual and helping to support the criminal justice system in the recovery.

**The Convener:** Thank you—that is helpful.

I hand over to Katy Clark, after which I will bring in Jamie Greene to ask about statutory time limits.

**Katy Clark:** Good morning. I would like to start with Emma Jardine. It would be useful if you could outline your views on the provisions of the bill that would continue the temporary extension of the various time limits in criminal cases. Could you outline your organisation's response to that?

**Emma Jardine:** Howard League Scotland would probably describe those measures as “a necessary evil”, as it was put during the discussion with Kate Wallace and Marsha Scott. As you know, the number of people on remand has increased from 16 per cent of the prison population to 27 per cent, according to the most recent figures that we have. As you know, those are people who have not been convicted of any crime. That is an important part of what we need to do.

The measures are a necessary evil, in that the backlog is not likely to be cleared until 2023 or 2024. We agree with colleagues in the Law Society of Scotland, for example, who have highlighted some safeguarding concerns. Under article 6 of the European convention on human rights,

“everyone is entitled to a fair and public hearing within a reasonable time”.

We need to be mindful of that.

**Katy Clark:** The levels of remand in Scotland are very high—they are higher than in the rest of the UK and higher than in other comparable countries around Europe and elsewhere. Can you suggest any alternative ways of dealing with such cases? What alternatives are there to remand?

**Emma Jardine:** Obviously, there is an overlap with the bail and release from custody consultation. It has already been acknowledged that we need to do something significant about the situation quickly. It is unfathomable that the remand rates are so high compared with those in England and Wales, as you point out. We need to mark cases more quickly. We should not remand anyone who is unlikely to receive a custodial sentence. We need to make better use of non-custodial bail options, and those need to be adequately funded. We know the answers to these issues, and I think that the committee knows them, too. It is case of bold actions rather than bold visions.

**Katy Clark:** Do you think that the alternatives are adequately resourced at the moment?

**Emma Jardine:** Evidence suggests that they are not. We are also aware of the fact that criminal justice social work is under huge pressure here.

**Katy Clark:** If you were able to provide the committee with further evidence in relation to that in writing, that would be useful.

I will put similar questions to the Scottish Prison Service. What are your views on the provisions in the bill that would allow for the continuation of the extension of the various time limits in criminal cases? How would that impact on your organisation?

**Teresa Medhurst:** As Emma Jardine outlined, just over 30 per cent of our population are on remand. That includes those who have been convicted and are awaiting sentence. That is a significant shift from 2020; when the pandemic first hit, the remand population was between 15 and 17 per cent.

Obviously, that impacts on how prisons operate. We have experienced a reduction in the population of prisoners on short-term sentences, but at the same time the remand population has risen. That means that in responding to the needs of the different elements of our population, whether they are on long-term or short-term sentences, we need to pivot to provide services to a remand cohort that is bigger than it would previously have been.

Because people are spending longer periods of time on remand, I had anticipated that we might experience disruption or unrest as a consequence, but that has not proven to be the case. To be honest, I am not sure why, but there has not been any kind of pushback from those who are affected that has created concerns about operational stability.

However, when people are on remand and the timescales within which they are likely to attend court are uncertain, that has an impact on their mental wellbeing and their health, and we are very mindful of that. We have tried to put in place additional supportive measures to ensure that they are able to access self-help or specialist support, such as that which is provided by our NHS colleagues.

**Katy Clark:** Are you saying that the issues are more to do with the numbers in prison, rather than the time limits, although the extension of the time limits might be having an impact on numbers?

**Teresa Medhurst:** The time limits situation is definitely having an impact on numbers.

**Katy Clark:** I understand. Allister, are there further points that you want to make?

**Allister Purdie:** The extension of the time limits leads to uncertainty in an individual's mind about

how long the remand period will be, which requires more support to be put in place at times, so that they can work through that anxiety.

**Katy Clark:** I understand. I will pass on to a colleague.

**The Convener:** I will bring in Jamie Greene, after which we will move on to questions about early release of prisoners.

**Jamie Greene:** Good morning. My first question is for Emma Jardine from the Howard League. Do you feel that your organisation and the people whom your organisation assists or represents have been adequately consulted as part of the bill process?

**Emma Jardine:** As far as consultation is concerned, we have had adequate time to respond. However, until very recently, victim support organisations have often been at the table in the formulation of legislation. That opportunity has not been afforded to organisations such as ours. I have written to the committee on a number of occasions to highlight issues that might not otherwise have been brought to its attention. Although we are always careful to ensure that we are not talking about victims versus perpetrators, we all know that there is a huge degree of overlap between the two. However, I would suggest that, until recently, we have not had as loud a voice as we could have had in such discussions and in the formulation of legislation.

**Jamie Greene:** What are your main concerns about the bill, if any?

**Emma Jardine:** I am probably jumping ahead a bit, but with regard to emergency release, the original legislation was drafted in a very short period, and we are now in a position where we are being asked to extend that legislation without going back through it to correct some of the things that we believe are of concern.

In the earlier evidence session, there were questions about exemptions and so on. Nobody has raised the issue of why the legislation was not drafted using a vulnerability-based model. We forget that the 348 prisoners who were released early were people who were nearing the end of their sentences. There were prisoners on short-term sentences who were within three months of their release date and there were the exemptions that we know of. Therefore, in reality, all that happened was that people who were already going to be released were released a little earlier—some by only a day or two—in the three tranches of release.

We question why the legislation does not include children, the most vulnerable, the disabled or pregnant women. The scrutiny is not necessarily appropriate. We are talking about



using coronavirus as a reason for extending the time limits under the existing legislation; instead, we could be giving ourselves the breadth of time to re-examine some of that legislation, if it was not drafted in a way that suits today's environment.

**Jamie Greene:** We will come back to the issue of prisoner release.

I come back to time limits, because that is a technical matter and the bill deals with it on a technical level. I think that there is a general understanding of why there has been an extension of statutory time limits, both for trials and, in the more direct case, remand, which has a direct effect on the prison estate. However, the extensions of the time limits for remand are quite stark: a jump from 80 days to 260, from 110 days to 290, and from 140 to 320, which is nearly a year. Those are marked differences. The original extensions were emergency measures and they were temporary. The bill seeks to retain them and make them on-going features of the justice system. Do you have a view on that? Is it right that those extensions are in the bill? Do we still need them, given that the First Minister announced yesterday that the majority of Covid restrictions would be dropped next month? Why should the extensions become permanent features of our justice system?

11:30

**Emma Jardine:** Howard League Scotland does not think that the extensions should be made permanent. It is worth pointing out that there was already a backlog; it is not just a result of coronavirus.

This is probably an opportune moment to remind ourselves of what the conditions are for people who are held on remand, despite the best intentions of the Scottish Prison Service, which is in an incredibly difficult position. Jamie Greene correctly pointed out that there has been a big jump in the number of days spent on remand. The prison population is at 94 per cent of pre-pandemic levels and, as we know, there is no requirement for prisoners on remand to attend work parties, for example. The uncertainty that has already been pointed out means that we are at a point that could concern the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. We are at the stage of legal solitary confinement for some remand prisoners, who may be kept in their cells for 22-plus hours a day. We must be very mindful of that.

**Jamie Greene:** What effect has the rather elongated extension to remand time had on the Scottish Prison Service? Do you have a view as to whether the measures seem necessary and

proportionate enough to make them permanent features?

**Teresa Medhurst:** As I mentioned earlier, as part of the justice sector response to the pandemic, we have been working closely with colleagues across the justice system to better understand the pressures and the impact of the restrictions as we have worked through the different phases of the pandemic. Although I understand why Emma Jardine is saying that the extensions should not be made permanent, we are in unprecedented circumstances. I can understand that the pressures on the system were such that the measures had to be implemented initially and why there are now moves to make those arrangements more permanent.

The impact and implications for us in the Scottish Prison Service relate to the population profile and how we manage that. Remand prisoners have to be kept separate from other cohorts of prisoners. Our buildings are quite fixed assets, as I am sure the committee will understand, and trying to adhere to the legal requirement for that separation while supporting increasing numbers of remand prisoners presents challenges in terms of access to services and support and ensuring that people are given the right support at the right time.

**Jamie Greene:** They are not just challenges. It sounds as though they are almost breaching international law. I refer to the paper from HMCIPS, which stated:

"Staff prisoner relations and the tolerance of prisoners to the very restricted regime has been ... positive to date"—

perhaps not in every case, but that is the overarching situation—

"but the continuation of heavy restrictions risks an adverse reaction."

That is a very real reaction, and we have already seen the consequence of that. We already know of attacks on prison officers, for example, and there is a distinct possibility that the levels of tension could rise. Is there any sense of the prison population questioning why the wider population of the world is moving forward while they are still under the restrictive measures that were imposed under the emergency?

**Teresa Medhurst:** Mr Greene, can I just ask what you are referring to in relation to the attacks on prison officers?

**Jamie Greene:** Have there been any?

**Teresa Medhurst:** So you are asking me the question.

**Jamie Greene:** Sorry, yes—I should have made that clear.

**Teresa Medhurst:** We have assaults on staff, but the reasons for that are complex. I do not have that information to hand but I can certainly provide it to the committee if you so wish.

The response from our population has been absolutely incredible. The co-operation and collaboration in moving through the different phases of the pandemic have been outstanding from both our staff and those in our care. They have welcomed and commented positively on the fact that we have made every effort to try to keep them safe.

Would we want to operate such restrictive conditions on an on-going basis? Absolutely not, and as we have moved through the different phases of the pandemic, we have been able to reinstate and realise more access to purposeful activity. This year, things look—I hope—more positive, and we should be able to restore even more things and have something akin to a normal regime.

**The Convener:** I call Rona Mackay, to be followed by Russell Findlay. I should also say that, although everything that we are discussing is important and relevant, I would appreciate it if we kept our questions to the provisions in the bill.

**Rona Mackay:** Good morning. My first question is for Emma Jardine. Are you in favour of continuing on a temporary basis the additional powers to release prisoners early? If so, why?

**Emma Jardine:** Yes, we are in favour of extending them, but not permanently. As I have said, I do not think that they are broad enough, and they also require further scrutiny. We should be using a vulnerability and human rights-based model for this, and we would not want the powers to be made permanent until the legislation in question had been looked at again.

That said, it is important to point out that the early release of prisoners occurs in other legislation; indeed, the bail and early release consultation contains a proposal to release prisoners early because of flooding or infrastructure problems in a prison. It is also probably worth saying that we are potentially at the point of using legislation in a way that was perhaps not expected and which is incorrect. By that, I am referring to the lack of capital expenditure for the prison estate. If we were to use legislation to release people if, say, HMP Barlinnie or parts of it were ruled to be uninhabitable, that would be a very slippery slope.

**Rona Mackay:** I was really interested in your point about using a vulnerability and human rights-based model. In your letter, you raise concerns about the conflict with the United Nations Convention on the Rights of the Child and articles 2 and 8 of the European convention on human

rights, and I would highlight that Her Majesty's Inspectorate of Prison for Scotland has raised concerns about children and young people, too. You say that you are not in favour of making the powers permanent, but would you be in favour if there were enough scrutiny of the matter?

**Emma Jardine:** In all honesty, I think that it is too early to know. After all, we do not know what legislation we are expecting to be made permanent. At the moment, though, there are significant flaws to address. For example, no children's rights and wellbeing impact assessment has been carried out. Oddly, the reason that has been given for this issue not being covered in the Coronavirus (Recovery and Reform) (Scotland) Bill is that it should be covered by the emergency release legislation, but because children are not included in that legislation, no impact assessment has been done. I expect that you will already know this, but I will just remind the committee that 14 16 and 17-year-olds are currently being held in prison, 11 of whom are on remand. In other words, 79 per cent of the children being held in young offenders institutions are on remand.

**Rona Mackay:** That is a really important point. Perhaps I can ask Teresa Medhurst for her thoughts on vulnerability and human rights-based modelling. How do you respond to general concerns that the use of early release can threaten the safety of the public, and that there is general unease among the public at the thought that it will become permanent?

**Teresa Medhurst:** The regulations around early release were developed by the Scottish Government in response to the effect of the pandemic and the challenges that we were facing. Our single-cell occupancy rate was as low as just over 60 per cent, because of prison population pressures. When enforcing restrictions with regard to outbreaks and self-isolation, which we were doing at that time, the smaller the number of people who are affected, the better. We had moved to what we called household bubbles, trying to cohort individuals in smaller groups to keep them safer and minimise the likely impact of the spread of the virus in prisons. In order to do that more effectively, single-cell occupancy was at a premium. For those reasons, it was decided that the emergency early release arrangements would be invoked, and a number of people were released back into the community. That resulted in our single-cell occupancy rate moving up to around 84 per cent, so it was much easier for us to manage the risk of infection and the spread of infection in prisons at that time.

I understand the concerns of the public about people being released, but, as I recall, the concerns about emergency early release arrangements that we heard from the public at that

time were mainly about people moving from prisons into the community and taking the virus with them. The concerns were not about offending that might occur. Although there were outbreaks, all our processes and protocols managed and mitigated the risk of anyone who was infectious at the time of their release.

**Rona Mackay:** Will you address the point that the Howard League made about the vulnerability of children and young people, and whether there should be scrutiny of that? That has not been done. What are your thoughts on that?

**Teresa Medhurst:** I suppose that it is really a matter for Government to respond to, because it is Government legislation. The SPS applies the legislation as it is designed and indicated.

In response to our having children and young people in custody, and there being vulnerabilities in other prisoner groups, we prioritised virtual visits and mobile phones for the establishments with such individuals in custody in order to better support them, because we recognised the vulnerabilities in those populations.

**The Convener:** Before I bring in Russell Findlay, Pauline McNeill has a follow-up question.

**Pauline McNeill:** My question is on remand accommodation and is for Teresa Medhurst. Did you say that the remand population is now at 30 per cent, whereas the previous figure was 27 per cent? I appreciate that you have to manage the prison environment according to the situation and the legislation that you are given. If 30 per cent is the figure now, and if we extend the provisions of the legislation, is it inevitable that remand prisoners will be held in more difficult conditions?

**Teresa Medhurst:** As I said, there has been a reduction in the population on short-term sentences. It is at 7,550, which is still above our designed capacity. However, the reduction in the short-term prisoner population means that, as we reinstate services and support, we will be able to pivot more to the remand population and look at appropriate facilities and support arrangements.

Some establishments already offer work placements to those on remand. That is not consistent across the board, but some do. Some, including Barlinnie, also offer education to those on remand. We need to consider a consistent offer to those on remand, particularly if they are to be a larger feature of our population.

11:45

**Pauline McNeill:** I would appreciate it if the committee could be kept up to date on that if the Parliament extends the legislation.

My question is for Emma Jardine. You will be aware of this, but I want to put it on the record that the time limit on remand before indictment, if we extend it, will go from 80 to 260 days. Time on remand before pre-trial hearings will be extended from 110 to 290 days, and time on remand until trial will be extended from 140 to 320 days. Do you agree that those are pretty stark figures for any Parliament to be asked to approve, given that those will be the minimum times?

The rationale for the changes relates to the need to conduct

“large numbers of individual hearings on applications to extend time limits or renew adjournments on a case-by-case basis.”

The reason why we are being asked to consider the measure is to prevent the Crown, and perhaps also the defence, from asking for an extension on time limits on a case-by-case basis. Instead, it will be automatic. How concerned are you about what the Parliament is being asked to do, given the impact that it will have? Would it not be better to extend the time limits on a case-by-case basis, because fewer people would be impacted?

**Emma Jardine:** I am not sure that that is my area of expertise. With respect, it is probably a question that would be better posed to the Scottish Courts and Tribunals Service.

**Pauline McNeill:** Are there not human rights implications? You have told the committee that we are in danger of not complying with the requirements of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

**Emma Jardine:** I am sorry. You are right. We are in danger of breaching article 6 of the ECHR, which states:

“everyone is entitled to a fair and public hearing within a reasonable time”.

What those time limits are is probably a bit outwith my area of expertise, but you are absolutely right to point out that serious human rights safeguards are being called into question. I do not envy your position in being asked to pass the measures.

**Russell Findlay:** I have a question for Teresa Medhurst on an issue that she touched on earlier. Many people would be concerned about a Government’s ability to release people early from prison. We have heard all sorts of evidence about what happened. You talked about mitigation in relation to prisoners who have been released. Given that it was a coronavirus public health requirement, were they all tested for Covid prior to their release?

**Teresa Medhurst:** The testing regime was not in place at the time, so testing was not available. I look to Allister Purdie on that, but testing was not

available. People were asked questions about their health prior to release. That happens regardless of whether they are out for early release or not. If there was an indication that somebody might have had Covid, we would have tested that individual and put in place mitigations to ensure safe movement outwith custody.

**Russell Findlay:** At the height of the pandemic, you were asked by the Government to release prisoners, but it did not give you the means with which to test them for Covid. We know that 40 per cent of those released went on to commit further crime, and it is probably a safe assumption that some of them went on to infect people with Covid, but we just do not know. Is that true?

**Teresa Medhurst:** I am not a public health professional. We could only manage the conditions that we faced at the time. We worked closely with public health consultants and experts to put in place protocols that would offer protection, as far as that was possible. However, at that time, the number of cases among people in custody was still fairly low.

**Allister Purdie:** The testing regimes and pathways were not in place across the country at that time but, by way of mitigation, we made sure that the 348 people in question had information about the pandemic and knew where to go if they had symptoms and how to approach that. We made sure that the public health message was carried with those 348 people into the community, that the links were there and that they knew where to go in their local authority area in the event that they had any health concerns.

The extent of infection in the establishments at that time was not known.

**Russell Findlay:** Have you had discussions with the Government about ensuring that testing would take place if early release was enacted again?

**Teresa Medhurst:** I do not think that we have.

**Allister Purdie:** We have not. However, for the committee's information, we have several testing pathways within establishments at the moment, which involve testing on day 1, on admission, and days 7 and 8. Lateral flow testing is universally available to our population. We have polymerase chain reaction testing for our staff, and we have lateral flow testing for our contractor, GEOAmev, and our private prisons. In addition, we have a pathway for testing for visitors who come into establishments from our visitor centres and reception areas.

Anyone who is symptomatic will automatically undergo a PCR testing regime and isolation. We now have several pathways across and outwith

prisons that we would utilise, should early release be enacted again.

**The Convener:** If we have got through all the questions that members would like to ask on the bill, I would like to thank—

**Jamie Greene:** I apologise, convener. I have been looking at our schedule of questions, and I have another question about prisoner release.

What Mr Purdie has said is very welcome, but can I double check that all prisoners are tested before they are released from prison, irrespective of whether their release is early, planned or due? Does that happen as a matter of course, or are they tested when they go into the community, as a general public health measure?

**Allister Purdie:** The situation is similar to the situation in the community. Testing is voluntary, so we cannot make testing on release compulsory. However, testing is offered. Lateral flow testing is universally available seven days a week, and we encourage those who are on transfer or on release to participate in the lateral flow testing programme. Because testing is not mandatory, we cannot compel people to be tested when they go back into the community.

**Jamie Greene:** Of course. I understand the implications of that.

Ms Medhurst, what were the criteria for coming to a decision about early release? I ask that not to look backwards, but because the bill that is before us means that the same situation could arise again. From what you said earlier, the criteria seemed to be largely to do with your ability to confine people in single-occupancy spaces, given the issue of population versus capacity. What criteria did you use for the early release of prisoners? Would you use the same criteria again? If not, what would be different?

**Teresa Medhurst:** The criteria that were used for early release were set by the Scottish Government, because it was the Government's policy. As I said earlier, the focus was on reducing the prison population at a time when people had no access to physical visits and we had reduced the size of the cohorts in which prisoners could associate to between 12 and 30. People in custody had limited access to services and support, because we had responded to the pandemic in prisons in the same way as was expected in communities. Most services were down or were being delivered in alternative ways.

It was a matter of knowing and understanding the pressures on individuals, with a requirement for us to respond in a measured way to the mitigations that were required in order to stop the spread of infection in prisons. The predictions had been that people would die from Covid in prisons

not in tens but in hundreds. That has not happened.

The purpose was to alleviate the pressures on the system and to ensure that we could apply the measures and mitigations that public health colleagues were putting in place, along with governors, to manage the pandemic in a proportionate and justifiable way and to maintain the legitimacy of what we were doing with our population.

**Jamie Greene:** That was a reactive measure in response to an emergency. There was not even a testing regime in place, so you were dealing with what you had within months of the pandemic starting. We are two years on from that now, of course, in a very different world, and the measures before us are being proposed for the future, not for today.

Referring to my original question, what criteria should be used in that respect? We have to go back to the Government and say what we think is right or wrong about the bill. If the measures are only about the pandemic, the health situation in the prison, the prison population or how many people are in a cell, and less about the type of prisoner or how long is left on their sentence, what sort of people were being released, from your point of view, and was it entirely appropriate that they were released early? Would we do something differently next time? Ultimately, the Government will have to rewrite the rules for future pandemics or for variations of this one.

**Teresa Medhurst:** The release mechanism that was applied in 2020 alleviated the pressure on the Prison Service. We had not experienced similar population levels since 2006. That allowed us the space and time to develop our response and make it more sophisticated, and to put in place mitigations that supported people in a measured and proportionate way.

It would be for the Scottish Government to determine whether emergency release should be applied again, depending on what circumstances arose at the time.

**The Convener:** For the final part of this evidence session, we will move on to the Scottish statutory instrument that will come forward this Friday. We understand that the Scottish Prison Service intends to seek a further six-month extension to powers for governors to respond to the coronavirus pandemic in prisons and young offenders institutions. We have not been covering that in our consideration of the Coronavirus (Recovery and Reform) (Scotland) Bill, which has been the main subject of today's evidence session. However, the committee would like to take the opportunity to ask about the proposed extension of the powers.

It is helpful that we have had sight of copies of correspondence from HM Inspectorate of Prisons, the Howard League and the Scottish Prison Service in relation to the forthcoming SSI. Let us spend 20 minutes or so asking questions about the SSI.

I will start with a general question for you, Ms Medhurst. I invite you to outline why you feel the extension of the powers is necessary. Does the extension reflect the latest public health advice that we are being given? I will initially direct that to you, Ms Medhurst.

12:00

**Teresa Medhurst:** In relation to the public health advice, we follow the set of bespoke guidance for prisons, in addition to the changes that are confirmed in Scottish Government announcements. Prisons have been designated as complex residential settings. They are not the same as hospitals or care homes, obviously, but they are not the same as other types of setting, either. They are closed institutions. In 2020 in particular, when we were moving through the initial stages of the pandemic, it became clear that bespoke advice and guidance was required for prisons. We have followed that guidance and we continue to do so today.

We consider that, given the need to manage the risks and ensure the wellbeing, safety and health of those in our care and our staff, the measures that we wish to continue are proportionate. I hope that, as we move through the year, the requirement to impose any of the restrictions will be minimal at most. However, we are still experiencing outbreaks in prisons and impacts on our staffing levels. We therefore consider it proportionate to retain the ability to impose the restrictions that we have had as we have moved through the pandemic, subject to both the public health advice and the guidance, so that we can operate as effectively as we can.

**Allister Purdie:** We have used the measures sparingly, but we have found that at times during the periods of the three variants—from the Kent variant to omicron—the measures have allowed us to keep the prison population and visitors safe, and to get the right balance between public health, human rights and the ability to move our prisoners. The measures have been really useful and our governors and teams have been able to use them only sparingly since the SSI was extended previously.

**The Convener:** Collette Stevenson has been waiting patiently online. I will hand over to her, then I will go round the table and ask members whether they have questions.

**Collette Stevenson (East Kilbride) (SNP):** I want to ask about the SSI, given Wendy Sinclair-Gieben's comments and HM Inspectorate of Prisons for Scotland's concerns. One of the points that she raised in her letter to the SPS is that

"the amendments do not provide clarity on where decisions are taken"

in terms of the

"impact on prisoners accessing visits, purposeful activity and recreation",

which could have a huge impact.

Concerns are also expressed about communication and how such changes are implemented. It is suggested that, rather than there being central oversight, individual governors should be in charge, with an increased ability for them to plan and make decisions. Have you considered that aspect? If so, should that be included in the SSI?

My concern, which I have raised before when the subject has come up, is that human rights under the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—OPCAT—apply to people in prison as well.

**The Convener:** Who would you like to address that question to, Collette?

**Collette Stevenson:** Sorry. I put it to the Howard League, and also to Teresa Medhurst.

**Emma Jardine:** The Howard League Scotland certainly has concerns in relation to human rights legislation, and we concur with Wendy Sinclair-Gieben, Her Majesty's chief inspector of prisons, in that regard. It has been said, euphemistically, that there are tensions with articles 2, 3 and 8 of the European convention on human rights. We support that view, although we would perhaps put it less euphemistically.

As you point out, we do not have transparent, clear reporting. There are other jurisdictions where time out of cell is measured and reported on. On the prison rules, the process itself has not allowed for much scrutiny. In the latest consultation, we were asked not to reiterate issues that we had raised in the previous consultation response. The previous consultation had asked about gaps in provision, which we identified but are now unable to question.

We are not necessarily adhering to Council of Europe principles. We are asking that anything that a governor in charge does should be reported on by some independent means, so that we know that, when proportionate measures are introduced, why they are being introduced, how long are they being introduced for and who has central oversight

of that. We very much agree with Wendy Sinclair-Gieben on that matter.

**Teresa Medhurst:** On the question about independence, HM Inspectorate of Prisons for Scotland is an independent body, which provides scrutiny and oversight across all prisons. Her Majesty's chief inspector of prisons can appear at the door of a prison at any time and ask for access to anywhere in that prison—that is within her role and remit.

There are also independent prison monitors, who are allocated to different prisons. They work under the banner of the chief inspector and provide on-site scrutiny of the conditions that are being applied at any given time.

On the reporting arrangements for governors, under the prison rules, only a governor can apply those restrictions, but there is oversight from headquarters, with reports going directly to Allister Purdie. Do you want to say a bit more about that, Allister?

**Allister Purdie:** If a restriction were to impact on a large part of the prison, individual applications would be made, including the justification for the restriction, seeking permission from me for its introduction. That is usually backed up by incident management team case conferences, which would make a public health recommendation for the restriction to be implemented. The application also states the length of time for which the restriction is proposed.

We must review any restriction daily. That has happened on every occasion since October 2021, when the SSI was last renewed. On every occasion, restrictions have been set aside more quickly than we had expected them to be.

We also have the national coronavirus response group, which governors are linked into. That multidisciplinary team, which takes public health advice, including from NHS colleagues, is linked into local coronavirus response groups in establishments. They have information on infection rates for example. They provide the key picture, which allows the governor to take decisions. In effect, that allows the governor to make a recommendation, through me, to authorise a restriction under the SSI.

**The Convener:** Thank you very much—that is helpful. Do you want to come back in, Collette?

**Collette Stevenson:** Yes, I have a quick follow-up question for Allister Purdie. You are saying that there is a good flow of communication when a governor chooses to implement a restriction. Have you looked at the impact of restrictions that have been implemented in the past, particularly on young people and remand prisoners? What is the longest time that a restriction has been in place?

Is there any part of the prison estate where such restrictions have been particularly prevalent?

**Allister Purdie:** Restrictions have been spread across the estate; there have not been specific pockets. I will highlight some recent examples. In one of our establishments, there was a three-day restriction on visits and recreation, because our public health colleagues deemed mass testing to be necessary in four wings. In other areas, there was a two-week restriction on visits during the last omicron outbreak, because of a significant reduction in staffing. The time that those measures have stayed in place has varied from two or three days to a month.

**The Convener:** Are you happy with that, Collette? Do you have any final follow-up questions?

**Collette Stevenson:** I know that there have been challenges with staff absences in the prison estate. Can either Allister Purdie or Teresa Medhurst tell us what the current level of staff absences is? Are you doing anything about recruitment? Are you looking into what other action that you can take to rectify that situation?

**Teresa Medhurst:** We monitor absences daily and disaggregate them into Covid and non-Covid absences. As of yesterday, there has been a slight increase, with the figure standing at just over 12 per cent.

Outbreaks can have a disproportionate impact on different prisons, with the level of Covid-related absence lower in a few prisons and much higher in others. It just depends on what is happening in those localities and/or establishments.

As for staffing levels, by moving recruitment online, we have been able to maintain quite a positive staffing position. According to the most recent figures, we are slightly above our normal staffing level, certainly on the operational side of things.

**The Convener:** I call Rona Mackay.

**Rona Mackay:** I have a supplementary to the earlier part of my colleague's question to Allister Purdie. You get a request from governors to implement measures, which you subsequently give permission to. Is all that information made public?

**Allister Purdie:** No, not at this point. It is held within the Scottish Prison Service.

**Rona Mackay:** So the committee would not be able to find out what measures were being implemented in any particular prison.

**Allister Purdie:** No, but the independent prison monitors, as well as Wendy Sinclair-Gieben's team, would have access at any time to that information on the number of people in isolation

and on the restrictions applied by specific governors or establishments.

**Rona Mackay:** Could the committee find out that information by, say, writing to prisons and asking them for it?

**Allister Purdie:** Yes.

**Rona Mackay:** But you do not automatically put it in the public realm.

**Allister Purdie:** Not at this point, no.

**Jamie Greene:** I have a follow-up to Rona Mackay's question. In its response to the consultation, HMIPS has said:

"this has been a long-term pandemic and HMIPS would like to see those powers where used reported on transparently and regularly with clear and sufficient justification."

The inspectorate is asking for more transparency in reporting, as are we, but I get the impression that your response to that is that all the information is there if somebody wants it. The approach does not seem to be joined up. How do we make things much more proactive in that regard so that everyone's needs might be addressed?

**Teresa Medhurst:** We have been publishing information on our website on a weekly basis. As with everything, though, you start to refine and hone what you are able to provide as you move through different circumstances and arrangements.

Our prisoner record systems do not necessarily allow us to look back at cases historically, so the information that we would be able to provide is quite high level. If the committee wants us to write and provide you with information, we can do that, but—referring to Emma Jardine's earlier point about transparency—we are considering our management information and how much information we provide on our website. We know that we need to improve that and to become much more transparent when it comes to the types of information that people frequently request and that are of interest. That is work in progress.

12:15

**Jamie Greene:** I guess that, from a practical point of view, the families of those in prisons will most likely want to know what the current status is of that prison, which would be helpful for them.

I turn to my other question. From the responses that we have had, there seems to be support for extending the instrument by six months. Why six months? Is that in keeping with what the Parliament is doing with coronavirus measures? If the Parliament is legislating to end coronavirus measures for the wider public, why is there still a need for them to be extended in this case? What

is so different about the prison environment that you need to keep extending the powers by six months, while we are ending them or do not really see the need to extend them for that long? Do you think that you will be coming back in another six months, asking for the powers again? I know that we do not know what will happen with the virus, but the measures seem like an endless iteration of what were only just temporary powers two years ago.

**Teresa Medhurst:** I understand the concerns that you have raised. Going back to March 2020, when we first went into lockdown, most of us probably hoped that it would be for just a few weeks. Almost two years later, we are still experiencing the effects of the pandemic.

The main crux of the response to your question must be around the uniqueness of our environments and the potential for infection spread. Another factor is the health vulnerabilities of those in our care, who come from some of the most deprived areas in Scotland. We are acutely aware of the vulnerabilities in our population.

The population is transient, and we do not have information on their vaccination status and so on. It would be really difficult to collate any data that would be helpful in determining how and when we would completely lift restrictions in prisons. However, I reassure the committee that we have applied learning from each phase of the pandemic to make improvements as we have moved along. The intention, yet again, is to see what learning we can take from the recent outbreaks in the context of what is likely to be a steady state for prisons—which is where I would like things to be.

**The Convener:** I will now bring in Russell Findlay.

**Russell Findlay:** My question is for Emma Jardine and goes back to what you were talking about earlier. I appreciate your diplomatic language of euphemisms, using words such as “tensions” and so on. In relation to your concerns about the consultation process, in the letter that we have in front of us, you mention your

“concern that this may be more of an administrative, than a truly consultative exercise”.

Is that a one-off frustration, or is there a more general cultural issue with some Government agencies that you encounter?

**Emma Jardine:** In this instance, there has been a worry that the measures relating to the prison rules have been an administrative exercise right from the start of the pandemic. We have written to the committee on three different occasions. We highlighted the point that nobody was consulted on the prison rules. Then there was a limited consultation of nine organisations, of which three,

ourselves included, submitted a response. Due to an administrative oversight, the committee did not see our full consultation response.

We have had a matter of days to respond to the latest consultation, and we now find out that the SSI will be laid on Friday. It feels as though the consultation is not as open as it should be. SPS responded to the previous consultation request, saying that no action would be taken on any of the points made by any of the organisations that had submitted a response. I hesitate to use this phrase, because it sounds a little heavy handed, but there has been criticism that SPS has been allowed to mark its own homework, which concerns us.

**Russell Findlay:** I will add “administrative oversight” to the list of euphemisms. That was very helpful—thank you.

**Katy Clark:** Teresa, you said that you have limited historical records and limited records in relation to individuals. However, the letter from the Howard League says that

“in other prison services (e.g. Ireland) figures are provided for number of hours out of cell each day for example.”

What would you need in order to provide the public and the committee with the kind of data that we would probably find helpful in making informed decisions?

**Teresa Medhurst:** The data that I said is limited is historical data on individual cases, which is hard to aggregate. However, we collate data on purposeful activity hours, which is published as part of our annual report and accounts, because that is something on which the organisation is scrutinised.

We have data and information that we can provide and publish, but there we need to do more to provide assurance about our management information; we need to become more sophisticated. As I said to Mr Greene, the organisation is on a journey. I want it to be seen to be transparent and open to scrutiny, rather than being seen as closed.

**Katy Clark:** What do you need to do to be able to do that? Is the problem that you do not have the resources? Is it that you do not have the systems?

**Teresa Medhurst:** It is partly that we do not have the systems. We are updating our systems as we go through the pandemic. However, part of it is about becoming more sophisticated in terms of data capture—for example, through utilising better platforms to capture data. We need to identify how best to capture management information without doing so being as resource intensive as it is at the moment. However, we still capture a lot of data, and a lot of information is



published—although probably not as much as people want or expect.

**The Convener:** A final question has come to mind. It is probably for Teresa Medhurst and Allister Purdie. Is there scope, within prison settings, for different levels of restriction to be imposed in different parts of the prison? Forgive me if this has already been covered and I missed it. Instead of blanket imposition of restrictions, is there, depending on circumstances at any point in time, scope for different levels to be applied, or would that be overly complicated?

**Teresa Medhurst:** No, it would not. In order to ensure that restrictions are proportionate, they are applied only to the extent that is necessary to limit the spread of infection. Restrictions can be applied to a cohort of individuals; it would be quite unusual for them to be applied across a whole prison. There are flexibilities within that and it would be expected that a governor who would recommend that restrictions be imposed would do so by assessing the impact in conjunction with advice from the incident management team.

**Allister Purdie:** I concur: that is exactly what we do. We control by households and we make sure that when restriction is necessary it is proportionate and there is no other impact on the establishment.

**The Convener:** That concludes the evidence session. I thank witnesses for attending. If you want to share any outstanding points with the committee in writing, please feel free to do so and we will take them into account. We will pause briefly to allow you to leave the committee room.

## Photocopying of Prisoners' Mail

12:26

**The Convener:** Our next item of business is consideration of correspondence on photocopying of prisoners' mail. I refer members to paper 4. Members will recall that in January we considered a statutory instrument to change prison rules to allow for photocopying of prisoners' mail in order to mitigate the risk of illicit substances being introduced via the mail system. We subsequently wrote to Police Scotland, the Scottish Government and the Scottish Prison Service requesting additional information. Responses have been received and have been circulated with this week's committee papers.

The committee is invited to consider what, if any, follow-up action is required. Members will recall that the Cabinet Secretary for Justice and Veterans, Keith Brown, indicated that he would update the committee on on-going review of the regulations after three months.

I am happy to hear members' views on the matter.

**Russell Findlay:** The letter from the police is reassuring, because it answers the unanswered question about stuff that might be contaminated being returned to prisoners. The letter clearly says that that will no longer happen. We cannot measure much until we hear back from the cabinet secretary after three months, but the memorandum of understanding is unclear about when the provision was introduced—there is no date or Crown signatory. It is probably worth asking the Crown whether it ever signed it, and if so, when. I find it slightly odd that even if it did sign the MOU, it is at least nine years old, and in that time we have seen the rise in use of psychoactive substances, we have seen drones come along and we have seen the impregnation of mail with substances. The landscape has changed and the document predates all that stuff. Was the MOU implemented, and if so, why has it not been looked at for the best part of a decade?

**Fulton MacGregor:** I am happy with what has been said. We need to bring in the cabinet secretary for his update after three months of the provision's being in place. I am happy with that timescale.

12:30

**Jamie Greene:** On the correspondence from the SPS in response to our questions, my understanding is that the service gave us figures only for the four weeks following the changes to the rules on 13 December. That is only one month of data, so we should request continued updates.

Also, because that was the Christmas period, there would have been abnormal volumes of mail throughout the month.

It is notable that 48 per cent of correspondence was photocopied and passed on. I do not know whether that is good or bad. I guess that some people understood that all mail would be photocopied and others thought that it would be selected depending on the evaluation of risk. It is hard to gauge whether the figure is good, bad or indifferent, so it would be helpful to have some context.

The more interesting figure is on how many pieces of mail tested positive. Because 12 per cent of mail that went through the Rapiscan machine tested positive, it sounds as though it would be a wise move on our part to push for photocopying. I would be keen, as we move forward, to see what effect that has on the number of items that test positive over the months, and whether the number goes down as people reduce the risk that they take in sending substances through the mail.

Equally, it would be naive to think that a reduction means that drugs are being eliminated from prisons. Will there be a change in the type of drugs that get into prison or the methods of getting them there? It is probably too early to say, and I appreciate that the Government needs more time, but when we hear from the Government—perhaps before the summer recess—it would be interesting to hear whether people in the illicit sector have found new and innovative ways of getting drugs into prisons, and to hear what those drugs are. As we know, methods and products have changed over the years. It is fair to say that that will continue to be the case, so we should keep a watching eye on that.

**Collette Stevenson:** [*Inaudible.*]—with reviewing the rules again after three months to get a full idea of the impact that the change has had. I am not sure whether it has been addressed, but we discussed delivery of personal items, notwithstanding mail being photocopied. I would like to know whether there has been a review of that and whether there is any suggestion that drugs are getting into prisons via footwear, for example. However, I am comfortable with a review after three months.

**Katy Clark:** I am happy with a review in three months.

**Pauline McNeill:** Same here.

**Rona Mackay:** And here.

**The Convener:** We agree that the direction of travel looks broadly positive, but that it is too early to evaluate the success or otherwise of the change to the rules. We can follow up with Police

Scotland, in writing, the issue about the MOU. Fulton MacGregor mentioned bringing the cabinet secretary back, which we will do in three months, as he offered and we agreed. Continued monitoring is needed, as is evaluation of how the process is working. Colette Stevenson raised an interesting point about personal items.

It seems that we agree that the change has been a positive development and a positive piece of work. If members are happy with that, our clerks can pick up the actions.

That concludes the public part of the meeting.

12:34

*Meeting continued in private until 13:08.*

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