



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 1 March 2023**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**7<sup>th</sup> Meeting 2023, 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:**

Professor Colin McKay

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Criminal Justice Committee

Wednesday 1 March 2023

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Audrey Nicoll):** Good morning and welcome to the seventh meeting in 2023 of the Criminal Justice Committee. We have received no apologies, and Katy Clark joins us online.

Our first item of business is to decide whether to take in private agenda item 4, which is consideration of the evidence that we will take under item 2. Do we agree to do that?

**Members** *indicated agreement.*

# Scottish Mental Health Law Review

**The Convener:** Our first and main item of business is to consider the criminal justice issues raised in the Scottish Mental Health Law Review. As members will recall, the Scottish Government established the review to examine existing Scots law, with a view to improving the rights and protections of people who might be subject to mental health, incapacity or adult protection legislation by virtue of having a mental disorder.

We are joined by Professor Colin McKay. Professor McKay, who is based at the centre for mental health and capacity law at Edinburgh Napier University, was a member of the Scottish Mental Health Law Review team. Welcome.

I refer members to papers 1 and 2. I intend to allow around 45 minutes for this session. I invite Professor McKay to make some brief opening remarks.

**Professor Colin McKay:** I thank the committee for the invitation. I am delighted by the committee's interest in the work of the Scottish Mental Health Law Review; I think that the Criminal Justice Committee is the first committee to look at it. It is great that the review is starting to be noticed.

The review was large and complex. As a visual aid, I have with me a double-sided, single-spaced print-out of the report. It is probably the largest review in this field, because it not only covers the Mental Health (Care and Treatment) (Scotland) Act 2003, but covers adults with incapacity and, to some extent, adult support and protection. As the review was wide ranging, I can only scratch the surface of what it is about in my opening remarks.

We made more than 200 recommendations, but there are three broad themes. The first is strengthening the voice of people who use mental health services, whether that is people with a mental illness, a learning disability, dementia or whatever. The second is reducing the need for and the use of coercion in health and care systems, whether civil or criminal. The third and perhaps most important theme is giving effect to the full range of human rights—including economic, social and cultural rights, such as the right to health and the right to independent living—to everybody in the system.

It is not possible to do that using the law alone. As we did our work, it became apparent that the law needs to be changed, but if the law is to secure the full range of human rights, there also need to be changes to the culture and shape of services and to how services are held accountable.

I will say a couple of words about the forensic aspects of the review. In line with our remit, we started by looking at the specific forensic disposals in criminal law, which derive mostly from the 2003 act. We make some significant recommendations about those disposals. One of the starkest things that we noticed was that, although there are fewer than 100 of those mental health disposals a year, there are thousands of people with a mental illness or a learning disability in the criminal justice system, and there is a lot of evidence that the system does not always meet their needs. Therefore, we felt that we had to make some recommendations across the whole system.

Starting with the initial police contact, we followed up on the work that the committee did last year through its round-table session on policing and mental health. We recommend the development of new models of crisis support to fill the gap between prison and psychiatric hospital.

When people with a mental disability are charged, we want there to be more systematic diversion out of the criminal justice system, as well as greater support for accused persons and, indeed, for victims in court processes. We have called for changes to avoid people being remanded in prison for lack of a bed or, if they are sent to hospital, being kept in hospital indefinitely, awaiting a trial, for many months.

We think it important that there is the option of a specialist mental health disposal for offenders who should be supported and treated in hospital. We are concerned by the evidence that some people, particularly those with learning disabilities, who receive such disposals can spend far longer in hospital than they might otherwise have done had they received a prison sentence and gone through the ordinary system.

We propose keeping the special category of restricted patients for the most serious and risky forensic mental health patients, but we make a number of recommendations to give more powers to the Mental Health Tribunal for Scotland to oversee those cases and to reduce the oversight role of ministers for those cases.

We do not say much in the review about prisons, but I urge the committee to consider that. When I worked for the Mental Welfare Commission for Scotland, we saw some very distressing examples of women with serious mental health needs being placed in prison where that was not meeting their needs. That was drawn to our attention by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which tells you something about the seriousness of that.

My final point is that we are not the only review in town. Our work comes on top of the Rome

review of learning disability and autism in the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Barron review of the forensic mental health system. There is also a recently published review of diversion from prosecution. In addition, an assessment of mental health needs in the prison population came out around the same time as our review. There are many reviews and a lot of work is being done to review the system. We might now be at the point when we need to stop reviewing stuff and start a systematic programme of change.

I hope that that is a helpful outline of our work. I am very happy to answer questions.

**The Convener:** Thank you, Professor McKay. That has been a very helpful overview.

We move straight to questions. I will kick things off with a question about section 297 of the Mental Health (Care and Treatment) (Scotland) Act 2003, which deals with an issue that I have been interested in for a number of years. That makes provision for an officer to take a person from a public place to a "place of safety". The review highlights that much police time is spent dealing with such issues. You referred to the fact that, in May last year, the committee took evidence on that issue. You will know that many people who are in distress are in their homes and therefore in a private place.

The review report outlines a range of issues. That includes noting that the police are not best placed to respond to those situations and that the provisions of the 2003 act are being used to respond to people who are in distress, rather than those who are experiencing acute mental illness, as section 297 of the act refers to.

We note that your review makes some recommendations about that. One recommendation in the report is that the Scottish Government should

"work with health and care agencies to develop alternative places of safety for people who are in distress and at risk",

and might not necessarily need psychiatric care.

Another recommendation is that the Government should

"review whether the place of safety powers should extend beyond suspected mental or intellectual disability to other people who may be at serious risk."

That is a rather long-winded introduction to asking you to outline a little more about the review's work on that particular part of the 2003 act.

**Professor McKay:** The work on place of safety links to the broader work on the scope of the act and on issues of coercion and the use of state powers to keep people safe.

A broad theme comes through the work of the review. The system works for the people that it is designed to work for, which is people who have an acute, treatable mental illness, such as an episode of bipolar disorder or schizophrenia, and need to be in hospital so that they can get medication, recover and be re-integrated into the community.

It does not work so well for all the people whom that does not quite fit. That is people with personality issues, comorbidity of substance use disorder and people who absolutely have mental health needs but do not necessarily need to be treated as in-patients in a psychiatric hospital. As psychiatric care has developed, a smaller and smaller number of people fit the bill for acute in-patient treatment in a psychiatric hospital.

We took evidence from a wide range of stakeholders, including from people who use services, people who provide services, third sector organisations and advocacy organisations. A general theme runs through the review not just in relation to policing issues but around child and adolescent mental health services, for example. The whole system is geared towards getting a referral to the CAMHS system, but a lot of people end up being rejected because they do not meet the criteria, so there is a big gap.

In a way, mental illness is perhaps the wrong focus. Dr Heyman, who gave evidence to you, highlighted the idea of what I think she called the medicalisation of distress. We heard the same evidence as the committee around the police's concerns about the amount of time that they spend dealing with people who appear to be in great distress, particularly people who are at risk of suicide. They feel, as the chief constable suggested in his recent statement prior to his resignation, that the police having to fill in for other agencies is not sustainable.

Obviously, it is not our place to allocate budgets between the police and the care agencies, but the gap between in-patient psychiatric care and other services that other people might need was—most of the people who gave evidence to us agreed with this—starkly evident.

Section 297 of the 2003 act was designed to address the situation in which the police find somebody who appears to be unwell and in need of care. In those circumstances, they will take that person to somewhere that they will be looked after. However, the reality is that, for too many of those people, there is nowhere that they will be looked after. Certainly, an acute psychiatric ward or accident and emergency department is not the best place to look after them. The police are left holding the baby as a result. They spend a lot of time getting the person to A and E or psychiatric hospital and hanging around waiting to see what

will happen only to be told that the person will not be admitted and they are left with a problem.

It is not that we think that there are no alternatives. There are other ways of conceiving crisis services. Many of those would be places where people might go into voluntarily or to which they might self-refer. There are one or two examples of crisis services in the country that could be more widely spread.

We talk in the report about coercion, but we also talk a lot about the preventive approach. One thing that we want to do is to reduce the amount of coercion in the system. Often, by the time that we get to the crisis, there is not much else that we can do but use coercion of some kind, whether that is through the police or through mental health detention. However, that crisis often could have been prevented if people had received support earlier or there had been somewhere that they could go to. Therefore, we talk a lot in chapter 9 of our report about the development of alternatives, such as safe spaces where people can go to if they feel increasing distress, peer support and all sorts of other ways of thinking about services.

**The Convener:** Perhaps I will come in at that point.

**Colin McKay:** Yes, you should probably stop me—I am probably going on a bit long.

**The Convener:** We will come back to what those alternative options and places of safety could look like. I am conscious of the time, so I will bring in other members now and hand straight over to Russell Findlay.

09:45

**Russell Findlay (West Scotland) (Con):** Good morning, Professor McKay. Your report is six months old. By my count, it makes 205 recommendations over 115 pages, and many of those recommendations have sub-recommendations—for example, recommendation 8.10 has 11 specific asks. It is a huge piece of work, which I had not appreciated as I had no real involvement with or knowledge of it.

The report makes reference to an implementation gap. There is an understanding that what the Government seeks to do and how that is delivered might be two different things. Six months after delivery of your report, can you give me a sense of the Government's position on those asks? Do you have a general sense that some of that will never see the light of day? Has there been a favourable reaction to the recommendations? Roughly, where do you think that the report has landed?

**Professor McKay:** I cannot speak for the Government, but I think that it is taking the report

seriously, and it has officials working on it. The statement that I heard from the civil servants is that they hope to publish a more detailed response in the summer; whether that is civil service summer, which takes us into October, I do not know.

The report does not come out of the clear blue sky. A lot of what we recommend builds on other things that are already in the system. For example, the recommendations that we make around scrutiny and accountability services link in to other work that the Government was already doing as a consequence of the investigations into mental health services in Tayside. As I said, other work is being done on the forensic mental health system.

It is a big and complicated issue. The recommendations are not totally new, but some of them are quite radical. My sense—we say something about this in the report—is that the Government should do some things quickly. There are one or two areas where there is a risk of European Court of Human Rights challenge—for example, around deprivation of liberties—so there are some areas where the law needs to be fixed quickly. Some things around service provision could be done now, but we acknowledge that other things could take a long time—around five years down the line, I would suggest—and a lot of work to develop.

**Russell Findlay:** Some of the stuff is happening anyway, some of it can be done in organisations through cultural change and some of it might require legislation.

**Professor McKay:** Yes.

**Russell Findlay:** It might be worth asking about the possibility of an online action tracker, so that individuals involved in the report, people in the professions and members of the public could see where we are on each of the 200-plus recommendations. Would you support that, or have you asked for that? Has there been any discussion of that?

**Professor McKay:** We have not asked for that specifically. The review team has done its job and has disappeared, as it were, and the chair of the review is now a judge. Within Edinburgh Napier University, we are helping to support discussions about some of the implementation of the review, and Government officials have been very willing and supportive of that.

I absolutely agree that it would be helpful to have a systematic response to each of the recommendations. I have seen work that the Royal College of Psychiatrists is doing to categorise the recommendations from “That’s obvious; who could disagree with that?” down to “Bloody hell; that’s a really crazy idea.”

**Russell Findlay:** There could be a traffic-light system to show that something has happened, like we in the committee do with reports.

**Professor McKay:** Chunking it up into a programme of change would be very sensible.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Good morning, Professor. I will ask you about chapter 5 of the report, which is on support in the criminal justice system, in relation to communication with people who have learning difficulties or additional support needs.

A constituent of mine has a petition going through Parliament; the Equalities, Human Rights and Civil Justice Committee talked about it yesterday—my colleague can confirm that. It relates to a member of their family who has experienced great distress trying to communicate with the police—and carers, actually—because she uses the Makaton signing system. My constituent is trying to promote that system and says that legal advocates and those who deal with people who have those needs should have that ability—or at least that some of them should. What is your view on that?

**Professor McKay:** In relation to the expectations of the United Nations Convention on the Rights of Persons with Disabilities, which is one of the things that has guided us, it would absolutely be the case that, if people have augmented support needs to communicate, particularly on something as serious as a police case, that need should be met and supported. In fact, even in basic equality legislation, that should be the expectation for people who have particular support needs.

There are perhaps two different issues, one of which is about the ways in which people might be supported to communicate. I would not see a difference between that and translation services, for example. You would expect that a person who could not speak English—

**Rona Mackay:** —would have an interpreter, yes.

**Professor McKay:** —would have an interpreter, so if a person uses Makaton to communicate, that should be facilitated and supported.

The other issue in the criminal justice system is the weight that you attach to the evidence of people with intellectual disabilities and the extent to which we can say whether they really understand what they are telling us. Again, the focus should not be on trying to find a way to exclude some people from the system, as it were, but around how we can support people to give their evidence, just as we now take children’s evidence much more seriously than we used to. Therefore, I personally support the idea that those



kinds of augmented communication aids should be available, and that would reflect our obligations under equality legislation and under the CRPD.

**Rona Mackay:** Would legislation be required to introduce that, or is it more of an operational matter, with, for example, the police training a certain number of officers in Makaton or British Sign Language?

**Professor McKay:** In practical terms, yes, it is perhaps an operational issue, and we already have the Equality Act 2010. To answer the question, legislation might help, but the primary thing—and obviously the quicker thing—would be that it becomes part of an operational expectation.

As you will know, we already have legislation around the appropriate adult system, which ran for about 25 years on a non-statutory basis. It is now statutory. I would see that as part of how the appropriate adult system should be supported.

**Rona Mackay:** That is very helpful, thank you.

**The Convener:** Fulton MacGregor, do you have a follow-up question?

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Thanks, convener. I am a member of the Equalities, Human Rights and Civil Justice Committee that Rona Mackay referred to. Yesterday, the committee again considered the petition that she referred to and has agreed to do some further work around the area. Was the review team aware of that petition and, if so, did it take it into consideration?

**Professor McKay:** I have to confess that I was not aware of it. I do not know whether any other members of the review team or the secretariat were aware of it, but I was not aware of it, I am afraid. When was the petition lodged?

**Fulton MacGregor:** It was a while ago, was it not?

**Rona Mackay:** It was lodged in 2020 and then it was referred to the Equalities and Human Rights Committee.

**Professor McKay:** I apologise that I did not pick up on it.

**Fulton MacGregor:** No, that is fine—I just thought that I would ask.

**Jamie Greene (West Scotland) (Con):** Good morning, Professor. I want to focus on some of your comments in your opening statement around the role of policing and the role of police as first responders. You are certainly right to echo comments by the departing chief constable on his concerns about the increasing use of the police as a first port of call for incidents where there is clearly a mental health element—or where that is the substantive element of the situation—how

police deal with those situations, how they are prepared to deal with those situations and what happens thereafter when someone has to be removed from that location to another place and where they go. There has been a lot of discussion about that over the years but it seems to me, certainly anecdotally if not evidentially, that it is increasing substantially.

Will you talk for a few moments about the work? It is a big report and there is a lot in it—chapter 9, for example, went into some of the issues—but will you sum up what the problem is and what the Government should be thinking about?

**Colin McKay:** Gosh. In relation to the police, it is a complex, multifactorial problem. It is partly to do with the way that services have developed. This came out in evidence to the committee but, as things get tough, people look to their own bases and stop working together so much. They feel that they can hardly help the people who they are supposed to help so they decide that they will not take on other people who might not fit or that they will not do other things with another agency when they are struggling to do their own job.

The scope for multidisciplinary working has diminished, the complexity of needs has increased—that has always been a problem but, for a number of reasons, the complexity of presentations has increased—and local authority services have had huge pressures on them, so the kind of services that might have been available in the past are not there. Part of the issue is just about the level of resourcing in the system and part of it is about the targeting of it towards the people who do not fit well into the boxes that the system provides for them.

There are practical things that can be done to improve the system. The Mental Welfare Commission for Scotland looked at psychiatric emergency plans. Each health board has one. A lot could be done to make those more consistent and cover some of the bases that we are talking about, particularly matters such as what happens if there is a difference of view between the police and the health services about a person's needs or—this is a huge complicating factor—what happens if a person may have a mental disorder but is also intoxicated or has obviously taken something and what you do while you are waiting to assist them.

There are a number of practical steps that could be taken. I guess that that needs co-ordination and central support and encouragement. The law can play a part in it but, to be honest, it is not the biggest thing that needs to be sorted out. It is much more about interagency working and perhaps trying new things. We encouraged examining what people have done in other places and trying things out. The evidence that we had

and that the committee has perhaps had is that there are pilots around the place but they never seem to become mainstreamed. They just bubble up and disappear.

A lot of the solution is about better joint working—all the things that we have been talking about since the Christie commission, I suppose.

**Jamie Greene:** Absolutely. It is evident that many of the social services that local authorities, NHS boards or integration joint boards provide are very 9 to 5, Monday to Friday and, outside of that, there is little scope to support people. That is why other emergency services are sucked into that vacuum and have to respond.

There was some discussion of, and a lot of interest in, some of the pilots in which, when the police attended situations in which there was perhaps no crime being committed but there was a suspicion that someone was vulnerable or a danger to themselves or others for the reasons that you mentioned, they would be supported by other bodies or agencies to provide an on-the-spot triage system that identified the best place to take that person. At the moment, a lot of those people seem to end up in police cells for their own safety as opposed to the safety of the public. That does not sound like an ideal place to be taking people in that situation.

**Colin McKay:** No, it is absolutely not. You are right that there have been some positive developments. I think that Glasgow used mental health nurses working alongside police officers, so that, where there appears to be some kind of mental distress, the nurse can intervene in a way that it would be difficult for the police officer to do.

10:00

I am not an expert on the outcomes, but some of what I have seen suggests that they do not often go on to use the statutory powers to admit or detain people, because they are able to de-escalate the situation or to get other help for that person.

One fundamental thing about section 297 of the act is that the majority of those people do not go on to long-term detention in the mental health system. They are there for some other reason and need to be in some other place. That is the gap that should be looked at.

**Jamie Greene:** I have one more question, which is about prisons. It is evident that there is a worrying trend in the statistics about those in the prison population who have long-term mental health conditions or a history of self-harm, depression, anxiety or the abuse of alcohol and drugs. There are some interesting statistics in your report, which shows rates that are in some cases

almost double those for people who are not in the prison population.

We also know that there is a disparity in the provision of mental health care and mental health nurses across the prison estate. The report includes statistical data showing that the figure varies from one nurse per 53 inmates to one nurse per 177, depending which prison someone is held in, which is a postcode lottery. The sad outcome of that is an unfortunately high rate of prison suicide, often among remand prisoners who have not even been convicted and do not have long-term sentences.

Did anything come out of your investigation that the Scottish Prison Service should take note of or that the Government should address?

**Professor McKay:** There is a lot in that question. We did not look at that issue in as much detail as we might have liked to, but there is other evidence, particularly the assessment in “Understanding the Mental Health Needs of Scotland’s Prison Population”, which was published in September 2022 and hits the nail on the head. That credible report talked about

“inconsistent and somewhat arbitrary service resource allocation”

and about support being directed to the “acutely mentally ill”, leaving large numbers of others without support. It refers to “limited cross-agency partnership working” in the system, which is something that I came across when I worked with the Mental Welfare Commission for Scotland. There was too much emphasis on the need for the person to engage and to say, “I am feeling suicidal,” or, “I am feeling unwell,” when there are all sorts of reasons why a person might not say that, including what might happen to them if they are put on suicide watch. The assessment calls for a “fundamental change” in how prisons approach mental health care.

There is an issue with the small number of acutely unwell people who need to be in hospital, who certainly need to be out of prison, but the wider issue is that people who are in prison are far more likely than not to have a mental health need. We are not talking about a small subset; this is a large proportion of the prison population. There are big gaps in the evidence, particularly regarding neurodevelopmental disorder in young people. There are also areas of particular risk, such as the remand population. That is a big cluster of issues.

That assessment that I mentioned recommends the same things as we do: a focus on the needs of that group, multidisciplinary working; different ways of moving people through the system; better ways of listening to people so that we understand when they are in distress and may need some kind of intervention. That must be a priority. The

Mental Welfare Commission also carried out a review of its visits to prisons, which tells a similar story.

**The Convener:** The next questions will come from Colette Stevenson and Pauline McNeill.

**Collette Stevenson (East Kilbride) (SNP):** Good morning, professor. In addition to prisons, I want to touch on the sentencing aspect. The report stated that there was very little use of community disposals, particularly for people with mental health conditions. Do you think that that is in relation to the forensic mental health system or criminal justice more generally? What do you feel needs to be done about that?

**Professor McKay:** There seem to be some quite complicated systemic issues. In a way, it is not that we do not have the legal options, because a number of different community-based disposals could be put in train for people with mental health needs who offend, which include: community payback orders, with the condition of mental health treatment; compulsion orders, which could be in the community; and guardianship under the Adults with Incapacity (Scotland) Act 2000, which might sometimes be relevant, particularly for offenders with learning disabilities. However, when we count the number of those orders that are actually used, it is often in single figures in a year, so they are not much used, and there are a number of reasons why that might be. Sometimes, there is a view that, because we cannot compel somebody to take mental health treatment, such orders are pointless and toothless sanctions. In the report of the joint review of diversion from prosecution, it was striking that the inspectorates identified that, sometimes, having a mental health need or learning disability was a reason for being excluded from diversion. There is a sense that we do not have the options for those people, so we are not going to use those powers.

Fundamentally, we need a system that provides and develops good options that people could use. One of the reasons for those disposals not being used is that, over the years, criminal justice social work and mental health social work have slightly diverged. They are almost two different professional paths, and maybe we need to think about bringing them a bit closer together.

A sentencer, such as a sheriff or judge, might be happy to consider those disposals, but they need to see a practical option in front of them and for somebody to say, "This is something that we could offer, and we think that it has a reasonable shot at working." It is really around the design and development of bespoke alternatives for people who have those kind of needs.

**Collette Stevenson:** On that subject, I had a conversation with Wendy Sinclair-Gieben, HM

chief inspector of prisons, and one of the things that we were talking about was alternative disposals and electronic monitoring and taking that a step further. I know that, in England and Wales, a sobriety cuff is used, but our conversation was more about tapping into technology, such as a device to monitor a person's sleep or an electronic tag, which would not only make sure that the person was at home for a certain length of time, but alert them about when they should go and speak to their social worker. Have you come across anything like that? Was any work done on that?

**Professor McKay:** I am certainly aware that there are apps that people can use to monitor their mental health, which have triggers that tell them that they are becoming unwell. There is quite a lot of work and research being done on that as a way of helping people to maintain their mental health and to know when to seek help because, obviously, when someone is becoming ill, that might be when they decide not to seek help. I have not heard about that in a criminal justice context, but that is an interesting idea that might be worth following up.

For a lot of those things, we obviously need to get the person to buy into the idea that it is something for them and not just part of a punitive disposal. However, there could be opportunities. Those apps are still in development, and I do not know how many of them are fully evidenced and worked through. There are certainly creative things that could be tried around how we help people to manage their mental health and stop them from getting them into the place that got them into trouble before.

**Pauline McNeill (Glasgow) (Lab):** Good morning, Professor McKay. You have been involved in excellent work, so thank you very much for that. My questions follow on from the questions that the convener and Jamie Greene asked, because I am having difficulty visualising what the system might look like—forgive me for returning to a subject that we have covered.

As Jamie Greene said, we have heard from those in the police service that they work 24/7 and have a responsibility to keep people safe, so they have a duty to come out when they are called. Realistically, how is that going to change? Who would take the place of the police in a different system, and where would people be taken to if they were not taken to A and E?

I have been in forensic units, so I am familiar with those, and I used to represent mental health nurses, so I have a bit of knowledge about that. I am thinking about whether we have the places; we might have shut down too many places when we did the big reforms in the early 1990s. I am trying to visualise what the change will look like.

If mental health nurses took over, would they need to change their working patterns and be given new restraint powers? The circumstances might be difficult, and the police are called because they have those powers. Clearly, we want to avoid taking people to A and E. Anything that you can say to help me to visualise what will happen would be useful.

**Professor McKay:** I suspect that there will always be a role for the police. When we spoke to members of Police Scotland, they accepted that the police, including warrant officers, have important powers to act during an immediate crisis. People know who the police are. In fact, the Mental Welfare Commission received evidence from people who had been in crisis, and some of them spoke more positively about the police than they did about some other services. It is not that the police do not have a role, but their role relates to the immediate response. If necessary, the police could get hold of a general practitioner, a nurse or somebody else who could conduct a medical assessment and help them to work out where a person should go. In some cases, the person might not need to go to some kind of special place; instead, it might just be about working out how to help the person to calm down so that the immediate crisis can be managed and they can be linked to services.

There are different service models. There are already crisis services to which people can self-refer—they can say, “This is all too much, but I really don’t want to go to a psychiatric hospital. I just want to go somewhere where I can be quiet and get my head straight for a while.”

At other times, as Pauline McNeill suggested, some limited powers of detention might be needed—that might look and feel a bit different from an acute mental health ward. I am not sketching this out in a great deal of detail, because I am probably not competent to design the—

**Pauline McNeill:** To be honest, from what you have illustrated, I do not see how things will change. Is there no one else to call when a person is identified as being in acute mental health distress? In circumstances in which the powers under section 297 would be used, who else would be contacted?

**Professor McKay:** It has to be—

**Pauline McNeill:** Surely, the only way that the situation can change is if there is an alternative to calling 101 or 999, so that people can call someone else. Otherwise, it will always fall back on the police. I cannot see how that could possibly change.

**Professor McKay:** Answering the call is not the problem for the police; the problem is that they then have to spend the rest of their shift following

the person around if they cannot get them into somewhere. It is about the police being able to lock into other services—health and social care services, for example—that will pick up the issue and support people. That could be done through the third sector.

An integrated system is needed, rather than the police being the fallback. Evidence shows that the average time that the police spend on such cases is about seven and a half hours, so police officers spend basically a shift dealing with such crises.

**Pauline McNeill:** The only way that that can change is if the police take the initial call and then hand the case over to someone else.

**Professor McKay:** Yes—well, it is not always the police, but the police take the initial call in a lot of cases.

**Pauline McNeill:** What service should people be referred to?

**Professor McKay:** Support could be provided by the health service or social work services, but it could also be provided by the third sector.

**Pauline McNeill:** Would that be quite a radical change to make? I do not know enough to know whether it would be.

**Professor McKay:** Potentially, it would be quite a radical change, but such a thing is not completely unheard of. If we look back through history, we see that there have been examples of more informal crisis services. However, they have tended to disappear as services have had to focus on the more mainstream specialised services.

**Pauline McNeill:** Do you feel optimistic? Given what I have heard, I am not that optimistic that things will change. We have heard evidence that the police are the first responders for everything, including this. For that to change, there has to be a structural change in service. Otherwise, I do not see how things will change.

**Professor McKay:** One of the arguments is that we are spending a lot of money on doing the wrong things. If we could spend some of that money on doing the right things, there might be a change. However, I agree that it would need structural change in the kind of services that are on offer.

**The Convener:** That has brought us nice and neatly to our 45 minutes. Thank you very much indeed, Professor McKay, for attending today’s meeting. Members might have some follow-up questions, and we will write to you with them.

10:16

*Meeting suspended.*

10:17

*On resuming—*

## **Fireworks and Pyrotechnic Articles (Scotland) Act 2022: Implementation Timetable**

**The Convener:** Our next item is consideration of the timetable for the implementation of the various provisions in the Fireworks and Pyrotechnic Articles (Scotland) Act 2022. As members will recall, we were the lead committee for scrutiny of the bill, and the Scottish Government undertook to keep us updated on the implementation of its various provisions.

I refer members to paper 3 and invite their views, questions or comments on the update that has been provided.

**Jamie Greene:** I thank the Minister for Community Safety for the update on Valentine's day—it was a welcome gift.

I did not spot this until the committee papers came out, but I want to comment on the content of the letter and pose a few questions for the minister to address. There is a lot in her letter.

My first point relates to the first main paragraph, on what appears to be the only bit of the act that has come into force: proxy purchase provisions, and the emergency worker aggravation measures, which we proposed—to be fair to the former minister, I am grateful to the Government for including those at our request. It would perhaps have been helpful to have some data on whether that was a worthwhile exercise.

I have chucked a few questions into the system, but perhaps the minister could make it easier for us by enlightening us as to whether there have been any offences relating to proxy purchase or attacks on emergency service workers. At the time of bonfire night—the tail end of last year—there were some high-profile incidents. We know that because we discussed them in the chamber and they were reported widely in the media. I appreciate that that was only a few months ago and that such cases take time to come through the justice system, but what is unclear, and what I am intrigued to know, is whether any of the emergency worker aggravation measures will come into play in any of the cases.

In preparing our report, and during the passage of the bill, we talked a lot about how many incidents were reported, the conversion rate from charges to prosecutions and convictions, and what the sentences looked like. I would be interested in seeing a piece of work on that at some point this year.

My second point relates to the next paragraph of the letter. The minister states:

“The ongoing unprecedented challenging financial context is impacting our ability to implement the remaining measures”

of the bill. I want to dig a little bit further. What is the

“ongoing unprecedented challenging financial context”?

What, specifically, is the minister talking about? If the answer is inflation, I think that that is a bit too generic. If it is a freeze on the directorate's budget or a reduction in the amount of money that is available, that comes back to the financial memorandum.

During the passage of the bill, many of us raised the point that—as always seems to be the case with such things—the financial memorandum seemed to underestimate the overall potential financial ramifications of the bill. It seems that that is perhaps coming to pass. There might be a valid defence, but the letter does not say what it is. I would therefore like some more information from the minister on what, exactly, the challenges are, and on why the original anticipated timescales are being stretched.

My next point relates to what has been delayed. Indeed, it is clear that quite a few things have been delayed now. The firework control zones will apparently commence this year, but we were promised that there would be both guidance and a framework around those. I think that we need those in quite a timely manner in order to interrogate the Government on them and perhaps even speak to stakeholders. Some of us tried to include in the bill a requirement for that to be part of valid scrutiny. I do not want such provisions just to get chucked in as part of Scottish statutory instruments at the last minute when we have not had any time to scrutinise them properly. Firework control zones are quite a big part of the legislation.

I note the delay to the licensing system, which is not a huge surprise to me. Again, the reason for the delay is unclear. Is it related to financial matters or to disagreements with local authorities? Are there technical or information technology issues? Have any concerns been raised by anyone? Are things just taking longer than the Government thought they would? If so, that is a valid reason.

The final issue that I wish to raise concerns the restricted days of supply and use. That was another controversial element of the bill, which we discussed at great length. There were very mixed views on those provisions and on their effect on both online retailers and physical retailers. The letter just says that they have been

“paused to a future financial year.”

That sounds very much to me as though they have been kicked into the long grass. It is a polite way of saying, “We’re not doing it at the moment and I’m not sure when we’re going to do it.” Perhaps the minister could provide a little bit more information about what is meant by

“paused to a future financial year.”

That could be any time this century. Is there a bit of backtracking going on? Are there some issues? Have there been any legal challenges? Some of us warned that there might be. I hope that there is nothing untoward happening that would cause issues for the Government.

The letter is helpful, but it raises more questions than answers.

**Russell Findlay:** I begin by noting the irony that the minister responsible for trying to curtail fireworks is now putting on such an entertaining display as she seeks to become First Minister.

There is a lot in Elena Whitham’s letter, and it is quite concerning. We should remember that the legislation was rushed. Collectively, we felt that there was not the appropriate and necessary time for all the scrutiny that was required. We were told that there was nothing to worry about and that the details would be filled in later. Here we are with a letter that, frankly, fails to do that.

Jamie Greene has touched on some of my points already. In the bullet points at the bottom of page 2, the minister talks about

“A slight delay to implementation of the licensing system”,

which is one of the central planks of the legislation. My understanding is that the system should have come in this year, but it will now not be in place until next year “at the earliest”. That seems a bit open ended.

Even more vague is the final bullet point, which concerns the restriction on days of supply and use. The committee will recall that those provisions related to specific cultural and religious events and so on. The letter says that the provisions have been

“paused to a future financial year”,

but it does not say which year, even as a guess. It would be nice to know whether ministers could give us some indication as to which one they are working towards. Is it—as in the previous point—2024, or will it be even further down the line? Might it even, as Jamie Greene suspects, not happen at all?

With regard to all the implementations, we warned about the confusion around what is being brought forward. I think that the confusion will now be even greater, given that the public will be getting this stuff coming in piecemeal.

The plan was to bring in the proxy purchasing provisions and the aggravation for emergency service workers in year 1, and then to bring in all the other stuff in year 2, which is this year. That is now not happening. The situation was already confusing, and it will now become even more confusing.

Anyone who reads the letter would think that everything was all perfectly fine, but it is far from it. It is clear that there are big problems around delivery, as we warned that there would be. We need to drill down as much as possible into what the timescales are and why the delays are happening.

**Fulton MacGregor:** I thank the minister for the letter. It is a bit of a mixed bag. We have heard a more critical view so far, but what is in the first two bullet points, to which Russell Findlay referred, is good. It is reassuring that some of the provisions will come in before bonfire night, which is obviously the season that is being targeted. The commencement of the pyrotechnic possession offence is also a positive.

With regard to the last two points, however, I find myself agreeing with colleagues who have already spoken. What is set out is a bit watery. On the licensing system, which is a key part of the legislation, the letter says:

“it will commence mid-2024 at the earliest”.

I would rather that we were working towards mid-2024 for definite, albeit that there could be mitigating circumstances.

On the final point, I do not think that it is good enough to say that implementation could be delayed until “a future ... year”. We need something a wee bit more definitive.

The letter is a mixed bag. Given the work that all members of the committee put into the legislation, it is good to see that some of it is coming forward, and we hope that it will make a difference to our constituents. However, there are areas that need to be tightened up, so we will need to write back to the minister on those.

**Pauline McNeill:** I welcome the fact that the letter sets out the situation quite clearly. From my reading of it, the implementation issues seem to be to do with the financial context, but it would be good to get clarification on that.

I welcome the fact that firework control zones “will commence”. For me, the test is whether they, and the offence, will be used by local authorities. That is what I am interested in.

I had concerns about the licensing scheme anyway, so I am not at all concerned about that delay. We had also raised concerns about the costs. I would not be happy if those powers were

used without our having some indication of the cost of the scheme.

I am actually quite supportive of the letter's content. It is an interesting lesson for people who are observing the legislative process. We think that we have passed all the laws, but we have not—what matters is when the statutory powers are drawn down in each section of the act. The letter clearly sets that out.

**The Convener:** I concur with pretty much all the comments that have been made. Jamie Greene made a good suggestion that we look at some data in relation to the provisions on emergency workers and proxy purchases. I am happy to take that forward.

The letter is a bit light touch, so it would be helpful for us to have more detail, in particular on some of the key points that members have raised. Across the committee, there are various levels of concern about pretty much all the key updates that have been provided.

I am happy for us to write back to the minister to seek not only some data, as Jamie Greene outlined, but more detail on the key points that were outlined in the correspondence and a reassurance that every effort will be made to keep the timescales on track and minimise slippage. There is public interest in this issue. Pauline McNeill's point about costs is well made, and we will incorporate that in our correspondence.

I think that Katy Clark agreed with the suggestion that we contact the minister by way of a follow-up letter. I see that she is nodding.

**Jamie Greene:** We have just spent 20 minutes talking about a letter. If the minister was sitting here, we probably could have resolved all the issues without the need for further communication. If the minister feels the need to come and talk to us, she would be very welcome to do so. It would save the need for a game of ping-pong, with letters going back and forth, in which people can hide behind niceties that do not mean anything, as we often see in these letters that are drafted by civil servants. I mean no disrespect to the civil service, but we could just ask the minister some direct questions—she is welcome to be accompanied by advisers if need be. We could probably settle the matters quite easily with an appearance from the minister on the subject, perhaps tied in with some other issues.

**The Convener:** Okay. That is noted.

Thank you all very much. That concludes our public items of business.

10:31

*Meeting continued in private until 13:03.*





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