



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Standards, Procedures and Public Appointments Committee

Thursday 31 October 2024

Session 6



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Pàrlamaid na h-Alba

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
22nd Meeting 2024, Session 6

CONVENER

*Martin Whitfield (South Scotland) (Lab)

DEPUTY CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

COMMITTEE MEMBERS

*Joe FitzPatrick (Dundee City West) (SNP)

*Sue Webber (Lothian) (Con)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Detective Chief Inspector Craig Chisholm (Police Scotland)

CLERK TO THE COMMITTEE

Catherine Fergusson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament
Standards, Procedures and
Public Appointments Committee

Thursday 31 October 2024

[The Convener opened the meeting at 09:30]

Interests

The Convener (Martin Whitfield): Good morning, and welcome to the 22nd meeting in 2024 of the Standards, Procedure and Public Appointments Committee. I have received no apologies this morning.

I want to welcome back a former member of the committee, in the form of Sue Webber MSP. Under agenda item 1, I ask her whether there are any relevant interests that she would like to declare.

Sue Webber (Lothian) (Con): Thank you very much for those kind words, convener. I have no relevant interests to declare.

The Convener: That is excellent—thank you. Once again, welcome back.

I hope that the committee is content for me to write to Oliver Mundell MSP to express both my thanks and the committee's thanks for his work while he was on the committee.

Decision on Taking Business in
Private

09:30

The Convener: Agenda item 2 is a decision on taking business in private. Does the committee agree to take in private item 4, which is consideration of applications for the role of committee adviser in connection with our inquiry into committee effectiveness, and item 5, which is further consideration of the recommendations of the gender-sensitive audit?

Members indicated agreement.

The Convener: I am grateful.

Scottish Elections (Representation and Reform) Bill

09:31

The Convener: That brings us to the substantive part of today's meeting: agenda item 3, which is an evidence-taking session on the Scottish Elections (Representation and Reform) Bill. I welcome to the meeting Detective Chief Inspector Craig Chisholm of Police Scotland. Good morning, detective chief inspector.

Detective Chief Inspector Craig Chisholm (Police Scotland): Good morning.

The Convener: Before we begin, I would like to express our thanks to you and your colleagues for your assistance with our evidence taking today. The notice that we gave you was much shorter than what we would normally provide, and your assistance in the matter is deeply appreciated, given the timetabling of the bill.

The purpose of our evidence taking today is to allow the committee to understand a little bit more the operation of the sex offender notification requirements—or SONR—orders under part 2 of the Sexual Offences Act 2003 and other related orders, in connection with proposed amendments to the Scottish Elections (Representation and Reform) Bill. It is proposed that individuals subject to such orders would be disqualified from being a candidate or from continuing to hold elected office as a local authority councillor in Scotland or, indeed, as an MSP. The committee has previously expressed its support in principle for such a provision, but we want to ensure that we have a proper understanding of these orders in advance of stage 2 proceedings on this bill.

If it is all right with you, DCI Chisholm, I will invite the committee to put some questions to you on the matter. However, I will exercise my privilege as convener and go first, if that is all right. If you require any further explanation of what our questions mean or, indeed, if you would like the opportunity to consider your answers further and write to us later, I am more than happy for that to happen, given the relatively short notice that you have had and, more importantly, given the significance of this aspect with regard to the bill.

Just to kick off, can you explain the role of Police Scotland and, as I understand it, chief inspectors in relation to the sex offender notification requirements? What happens on a day-to-day basis? Who has responsibility for this matter, and what sorts of orders and individuals do you deal with?

Detective Chief Inspector Chisholm: First of all, thank you for inviting me here today. I hope to be able to help you with my knowledge.

If it makes sense, it might be wise to talk through the notification requirements first of all, just to get a better understanding of them. They are commonly referred to as the sex offender notification requirements—or SONR for short. Indeed, if you talk to a lot of police officers, you will hear that they refer to them as SONR.

They are not a sentencing option for the court, but an automatic consequence of conviction for a relevant sexual offence. Any offender who has received a conviction or a finding in respect of a specified sexual offence under schedule 3 of the Sexual Offences Act 2003 is automatically subject to the notification requirements under part 2 of that act and identified as a registered sex offender.

There is one exception to that, where a sheriff or a judge has the ability to apply SONR in respect of paragraph 60 of schedule 3 of the Sexual Offences Act 2003. To utilise that, the sheriff or the judge must make the decision that there is a significant sexual aspect to the offender's behaviour in relation to an offence that is not listed in schedule three of the Sexual Offences Act 2003. An example of that is where there is a sexual element to the behaviour of somebody who commits a breach of the peace in that offending. A sheriff or a judge could then apply paragraph 60, which would mean that the individual would then become a sex offender.

When paragraph 60 is applied by the sheriff or the judge, the duration of the SONR is again dictated by the sentence that is issued for that conviction and not by the sheriff or the judge. Therefore, the length of time that a registered sex offender is subject to notification requirements is dictated by the sentence that is issued for that conviction and age at the time of the conviction. The notification periods are dictated by section 82 of the Sexual Offences Act 2003, and those are listed in a table. Therefore, the sheriff or the judge does not get to decide how long somebody is on the register for; that depends on the sentence and it is related to what is listed in the table.

The Convener: Therefore, appearing on the register is not actually part of the sentence; it is something that flows as a result of the conviction or, indeed, the judge deciding, in limited cases, that the offending has a sexual element and that the individual should be on the register.

Detective Chief Inspector Chisholm: Yes—exactly. Once someone has been convicted, they will be sentenced, and the length of the sentence will dictate how long somebody is on the register for, subject to notification requirements.

The table is self-explanatory. You can be put on the register indefinitely or for 10 years, seven years, five years, two years—it depends on the sentence. However, I would add that nobody is really on the register indefinitely because there is legislation in Scotland that means that the police are duty bound to review the notification requirements after 15 years.

The Convener: What test do the police use to decide whether the notification period should come to an end? Is a set of tests applied?

Detective Chief Inspector Chisholm: It is basically a risk assessment. If it is assessed that an individual still presents a risk of serious sexual harm to the public, the decision will be made to make a continuation order. That can be for up to 15 years, but it is determined by the police. It could be done for two years and reviewed at that point but it could be another timeframe. That is the responsibility of the chief constable, but that decision is discharged to detective superintendents in each of the 13 policing divisions in Scotland.

The Convener: Therefore, although the wording “indefinite period” is used, the period of time that an individual spends under the notification is reviewed and, if the individual remains in a notification situation, it is because the police have reviewed the situation and assessed that individual as posing a continuing risk.

Detective Chief Inspector Chisholm: Yes, that is correct. Also, if the individual who is subject to the continuation order does not agree with the decision, they can appeal to the sheriff.

When an offender is under 18 on the relevant date, the length of time that they are subject to notification requirements, as described in the section 82 table, is halved. Therefore, in the case of someone who would otherwise be subject to notification requirements for 10 years, that would be halved to five years if they were under 18.

Sue Webber: What happens on the person’s 18th birthday, if the offending happens when they are 17, say?

Detective Chief Inspector Chisholm: The relevant date for under-18s with regard to the length of time that they are subject to SONR is usually the date when the person offends.

Sue Webber: Therefore, their birthday is irrelevant.

Detective Chief Inspector Chisholm: Yes.

Sue Webber: It is not the case that someone will turn 18 and then be subject to the adult notification requirements.

Detective Chief Inspector Chisholm: No. Notification requirements require offenders to

notify to the police certain personal details, along with any subsequent changes to those details, within prescribed timeframes. Any failure to do so is a criminal offence, which is punishable by imprisonment.

Any offender who is subject to a sex offender order, a sexual offences prevention order or a sexual harm prevention order is automatically subject to notification requirements by virtue of being subject to such an order. Any offender who is convicted of breaching a risk of sexual harm order or a sexual risk order is subject to SONR and becomes a registered sex offender as a result of the breach.

The Convener: I will explore that in a bit more detail. Some notifications arise from a criminal conviction under schedule 3, as you described, but sexual risk orders are also civil orders. Is that right?

Detective Chief Inspector Chisholm: Yes.

The Convener: For the purposes of the bill, we are looking at registration. Registration could have been occasioned through a civil case, which involves a different burden of proof and such things, but Police Scotland would treat individuals who were subject to notification requirements in exactly the same way, irrespective of why the notification arose. Does that make sense?

Detective Chief Inspector Chisholm: Yes, that is correct.

The Convener: Under a civil order, once the formal notification is made, the individual is required, as you said, to notify the police of their name, address and various other details, and to keep that information up to date if circumstances change. Are the police made aware in any other way of individuals who should update the register, or is the obligation on the individual?

Detective Chief Inspector Chisholm: The obligation is on the individual, but we will try to accommodate their circumstances and needs as best we can. We will look at cases on an individual basis. If an individual has diverse issues, such as mental health issues or others, we will take that into consideration and ensure that they are aware of their obligations under the notification requirements. The situation is quite challenging, so when we consider the number of sex offenders across the country, we very much take a bespoke approach to the individual.

The Convener: Under the notification system, the interaction between the police and the individual in front of them is a bespoke—to use your word—process.

Detective Chief Inspector Chisholm: Yes. Each individual who is subject to a notification requirement as a sex offender is monitored and

managed by the police and other MAPPA responsible authorities in the community. Ultimately, we do that to manage the risk that they present to their communities, and it is for us to mitigate and negate that risk as best we can in order to protect the public.

The Convener: You used the acronym MAPPA, which has appeared in chunks of our evidence. Would you like to explain what that is, rather than who it is?

Detective Chief Inspector Chisholm: No problem. Give me two seconds to find the right notes—I have made quite a few notes so that I do not tell you the wrong stuff.

The Convener: That is fine.

Detective Chief Inspector Chisholm: Since 2007, all registered sex offenders in Scotland have been subject to management through the multi-agency public protection arrangements, or MAPPA. Those provisions were introduced by sections 10 and 11 of the Management of Offenders etc (Scotland) Act 2005. The arrangements are well established across the country and, through on-going review and learning from significant case reviews, we ensure that practice remains current and effective.

MAPPA exists across the United Kingdom—the arrangements are subject to different legislation and guidance in England, Wales and Northern Ireland, but the underlying principles and intentions are the same across the country. MAPPA are neither a body nor an organisation. The arrangements are probably best thought of as an overarching set of principles and guidance. They enable the agencies that are involved predominantly in the management of registered sex offenders to share information effectively, which allows the agencies to better assess and manage the risks that are considered to be posed by the offenders. That is done on a case-by-case basis, as I said.

It is simply not possible to eliminate risk entirely. However, the ultimate objective of MAPPA and of the agencies that are involved in the management of MAPPA offenders is to protect the public. That is done by minimising the risk of harm that is presented by offenders in so far as it is possible to do so.

The key agencies that are involved in MAPPA are referred to as “responsible authorities” and include Police Scotland, local authorities, the Scottish Prison Service and health boards—particularly for restricted patients, although they have other duties in relation to other things.

09:45

Police Scotland has dedicated sex offender policing units in each of the 13 policing divisions. The trained specialist officers in those units have responsibility for the management of registered sex offenders in the community, and they have the support of local policing colleagues and other specialist resources.

Local authority involvement is provided predominantly by criminal justice social work, children and family social work and housing departments. That support can be extended to encompass a broad range of services, depending on the individual circumstances of the offenders.

The Scottish Prison Service is responsible for the management of registered sex offenders while they are in custody, and it contributes to informed risk assessment and risk management planning for offenders who are to be released back into the community following any period in custody.

Health boards’ involvement relates to their specific responsibility to individuals who are defined as restricted patients, who are predominantly individuals who are subject to detention in a hospital setting. However, health boards are also required to share information about, and to assist with arrangements in relation to, any other offender. That is where health information and expertise are relevant.

There is a duty to co-operate on other agencies that are identified through legislation, which are required to co-operate and share information with the responsible authorities in respect of the management of MAPPA offenders.

Basically, those arrangements are all intended to ensure that all available information is gathered, shared and used to build as complete a picture as possible for each offender. That allows for better identification of any key risks that might be presented and the implementation of appropriate measures to mitigate those risks.

The Convener: So, MAPPA is the best vehicle for sharing data to ensure that the various appropriate bodies are aware of those individuals who come under the notification scheme, know their location and know what support is needed. However, nothing under MAPPA removes from the chief constable the administrative obligations that exist under SONR. Those remain with the chief constable, although they delegate them, as you have said. Therefore, the final responsibility with regard to matters such as the indefinite period still rests with Police Scotland and the chief constable.

Detective Chief Inspector Chisholm: Yes. The responsibility for an individual’s obligations in relation to the notification requirements sits entirely with Police Scotland. That is why we are

involved in the management and monitoring of all registered sex offenders. Ultimately, if an individual is subject to notification requirements, they will have to attend a prescribed police station to provide the information that is required at the relevant times on the relevant dates. If they do not do that when they are due to do so, it is, as I said, a punishable offence, and we can arrest the individual and present the case to the Crown Office and Procurator Fiscal Service.

The Convener: The other bodies that are involved in MAPPa, especially the health bodies, have other obligations that relate to the care of the individual—indeed, they have very strong obligations to undertake certain actions. That is completely separate from the SONR stuff. We are simply talking about people's best endeavours with regard to notification so that everyone is aware of an individual's risk profile because, at the end of the day, MAPPa is about protecting the public from the specific risks that someone might present. It is not a sentence; it is about how an individual can remain in the community, while being monitored appropriately to a level that provides reassurance to the public that, as far as possible, they are safe. Is that right?

Detective Chief Inspector Chisholm: Yes—pretty much. The purpose of MAPPa is about rehabilitation and getting an individual back into the community, but when it comes to the notification requirements, the onus is very much on the police to manage that process effectively. That becomes part of our MAPPa process because, when someone becomes a registered sex offender, we will go and visit that individual. We will talk through their responsibility and the requirements that they will be under, because it can be quite confusing for people to follow the legislation. We try to keep individuals right in that respect, but we will be honest and open with them about the fact that, ultimately, it is their responsibility to comply with the notification requirements.

The Convener: Some of the offences that lead to notification can occur in other parts of the United Kingdom and other countries. How does that work, in relation to the practicalities? If an offence is occasioned overseas, are you as satisfied as you can be that, if the notification criteria are met, the individual involved will come forward, notify properly and come within the system?

Detective Chief Inspector Chisholm: That information usually comes from other law enforcement partners internationally. When a person has been convicted of an offence in another country, and that would, had they been convicted in the UK, have resulted in SONR applying, an application can be made to the court

for a notification order. If the order is granted, the offender to whom the order applies becomes subject to SONR and is managed as a registered sex offender in the same manner as if they had been convicted in the UK.

When an individual is being deported from a country such as America or Australia, which is quite common, we will be informed by our partners that the person is returning to the UK and we will get all the relevant information about the offence. We will apply to the courts for a notification order, and they will become a registered sex offender, in the same way as they would have been if they had been convicted of the crime in Scotland.

The Convener: I assume that Police Scotland, through the chief constable, takes full responsibility for the notification enforcement and requirements, and that the overseas court would have nothing to do with that.

Detective Chief Inspector Chisholm: That court would have nothing to do with it—the issue would be completely handled in the UK. I add that MAPPa is a UK measure and, ultimately, does not prevent people from moving across the UK. I will just reiterate that there is not an actual register, although people think that there is a register. There is a system called the violent and sex offender register—ViSOR—which is a Home Office database on which sex offenders are recorded. Ultimately, all police forces and other agencies across the UK use the same system, so all the information is on it. Therefore, when people move across the UK, we can transfer the case, and the lead agency will take responsibility.

It is important to recognise that, through MAPPa, there will always be a lead agency for an individual. If somebody goes to court and is sentenced to a community payback order, the lead agency for the case will be the justice social work department for the relevant area, supported by all the other responsible authorities, and particularly the police. Although justice social work will be the lead agency, we still have responsibility for the notification requirements.

Alternatively, if somebody gets a couple of years in prison and is then released on licence, the lead agency will be justice social work while they are on licence, but when the licence ends, Police Scotland will become the lead agency. It works like that until the end of their SONR notification period, whether that is five, seven, 10 years or whatever it may be.

The Convener: So, in effect, rather than a register, the database and MAPPa allow for the pooling of the information, irrespective of someone's location and which agency is the lead agency in respect of the individual.

Detective Chief Inspector Chisholm: Yes.

The Convener: To go back to the bill, one question that keeps returning to us is about someone who presents for election but is in the notification system. A person who proposes themselves for election has an individual responsibility to sign a declaration, and it is already a criminal offence if that is incorrectly done. How challenging would it be for Police Scotland, if it was presented with an individual's details, to see whether they were in the notification system? I am not talking about making a judgment on whether the person can or cannot stand, but would Police Scotland be able to say to, for example, a returning officer or another relevant person, whether an individual was subject to notification requirements? How challenging would it be for the police to check that, if you were presented with a name and address?

Detective Chief Inspector Chisholm: For the police, that is not challenging at all. However, I suggest that that would probably be a responsibility for the MAPPA-responsible authorities or the lead agency for the case. For example, if a councillor came on the register, subject to notification requirements, I would expect a disclosure to have already been made to the relevant body about that individual, probably even before they became a registered sex offender. I would expect that to already be in the public domain. If, for example, a councillor gets arrested for a sexual offence, it is the responsibility of the investigating officer to consider whether any relevant disclosures would be required, because of the risk that that individual may present to the public.

The Convener: Notwithstanding anything in the bill, there is already an assessment made of every individual whom a lead agency comes into contact with as to whether notification is the correct way to move forward, so there is work happening even before there is a legal requirement for notification, either because of the specific schedule or a decision of a judge, because of the content of why the individual is before them. Is that correct?

Detective Chief Inspector Chisholm: It would be before that. Even before somebody went to court, we would have to consider whether that person presents a risk. If a councillor comes in for a sexual offence that is related to children and they are a member of voluntary organisations, we would have to consider the relevant disclosures to those organisations to make sure that they can keep their members safe. What I am trying to say is that, in such a case, we would probably already have made a disclosure before the person even became a registered sex offender.

The Convener: That is very helpful. Referring back to the individualised way in which the matter is dealt with, it all sits on a risk assessment of

those individuals that is made for the public. It is quite reassuring to hear that, even without some formal things happening, the risk that the public is being put at by that individual is already assessed, as you say, by Police Scotland and the other lead agencies.

Detective Chief Inspector Chisholm: Disclosures are a very big part of MAPPA. There are many different schemes and ways and means that we can disclose, such as through child protection, adult protection, public interest disclosure and so on. We always go down the route of individuals self-disclosing in the first instance, and we would then verify and check that, to make sure that the full disclosure had been made. If not, we would then follow it up as appropriate.

Sue Webber: This might have been covered on day 1, so I am sorry if it has. We have heard a lot about what happens if an existing councillor or a serving councillor has an offence, but what happens to stop them from standing in the first place? That would be out of your hands, would it not?

Detective Chief Inspector Chisholm: Yes—completely. I do not know the ins and outs of governance around that. It would relate to the governance and the checks and balances that would have to be made.

Sue Webber: Do you mean in terms of selection?

Detective Chief Inspector Chisholm: I mean in terms of selection or somebody coming forward to stand.

The Convener: Do members have any other questions or comments?

Ruth Maguire (Cunninghame South) (SNP): We have covered a lot of ground. It is particularly helpful in the context of the bill to understand that there is not really an indefinite notification period with the reviews and the appeal.

The Convener: DCI Chisholm, would you like to add anything else?

Detective Chief Inspector Chisholm: It is a very complex field. I understand that it is quite difficult to grasp; sometimes it is still difficult after years of working in the field. It is still challenging. If anything else comes up, feel free to ask, and I will provide as much information as I can to help. That is not an issue at all.

The Convener: I thank you, your colleagues and Police Scotland for managing to do this at much shorter notice than is normal. It has been an incredibly helpful evidence session. I am glad that you have offered to come back to us if we have additional questions. I will reciprocate: if there is

anything that would like to add that you could not add, please feel free to contact us.

Detective Chief Inspector Chisholm: I am sorry—I would like to raise a couple of points on the letter that was submitted, dated 24 October.

The Convener: Just for confirmation, that is the letter from the Scottish Government to the committee in which it outlines its thinking on amendments that it might lodge.

10:00

Detective Chief Inspector Chisholm: Yes. That struck me when I read the letter. Paragraph 4 of annex A on page 3, which starts with the words

“While no new SOPOs or RoSHOs can be imposed”,

ends with the words

“the latest possible date for them to cease to have effect being 31 March 2028.”

I query that: it is probably incorrect. In fact, I will just read the full paragraph in order to explain.

The Convener: Yes—that makes sense.

Detective Chief Inspector Chisholm: We need to remember that SOPOs and RoSHOs were replaced in 2023 by sexual risk orders. The full paragraph reads:

“While no new SOPOs or RoSHOs can be imposed, transitional and savings provisions in section 40 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and regulation 4 of S.S.I. 2023/51 mean that orders existing at that date remain in operation, the latest possible date for them to cease to have effect being 31 March 2028.”

I am not too sure what is meant by that, because although SOPOs are granted for a minimum of five years, they can be granted for 10, 20 or 30 years. Therefore, they will not cease to have effect at that point: there will still be orders in operation. That is just a little technical matter.

The Convener: Therefore, it would be helpful for the committee to contact the Scottish Government to ask for clarification in respect of the statement that all SOPOs and RoSHOs will finish on 31 March 2028 and to ask when they will actually finish.

Detective Chief Inspector Chisholm: They will finish at the time that was determined when they were issued. I should add that, although SHPOs and SOPOs are issued by the courts for a certain period, as part of our processes Police Scotland always keeps them under review. We can make a request to the court to discharge a SOPO, if we feel that the individual no longer presents a risk, or we can require that an order continue in place.

The Convener: That is a parallel of chief constables’ responsibility to review indefinite notification requirements and to actively remove

orders that cease to be needed. If a chief constable chooses not to remove an order, the decision could still be sent for review to a sheriff at the request of the individual to whom the order applies.

Detective Chief Inspector Chisholm: No—that applies to the review for those who are placed on the sex offenders register indefinitely, but we can review SHPOs and SOPOs and sexual risk orders and make an application to the court for those to be discharged.

The Convener: If the decision is taken not to discharge those orders, those would continue. In that case, would the individual then have a right—

Detective Chief Inspector Chisholm: In that case, the order would continue until its end date. If we considered that the individual continued to pose a risk, we could submit another application to the court. However, there is quite a high threshold for a sheriff or judge to issue another order. There must be some form of behaviour on the part of the individual in the interim period to justify that.

The Convener: That is what I was going to ask about. Therefore, there would have to be additional evidence that related to the period after the issuing of the first order, and common sense says that, if there was not that evidence, it is unlikely that that would be pursued, unless there was a very cunning reason for that. However, it would be the subsequent behaviour that would be looked at by the courts and, if it was appropriate, that would come under the new scheme of notification.

Detective Chief Inspector Chisholm: Yes. Once a new order was issued, the individual would be subject to notification for that period. The only anomaly is that individuals who are subject to sexual risk orders are not subject to SONR initially. Does that make sense?

The Convener: Yes, that makes sense. Thank you for that. I see a wonderful letter going to the Scottish Government.

Detective Chief Inspector Chisholm: I raise the matter just because I do not know what the Government means by giving that date, because although those orders are issued for a minimum of five years, they can be issued for much longer. There are some orders from years ago that are still in place because they were issued for much longer periods.

The Convener: I thank you for that—that is exactly one of the purposes of bringing experts in to give evidence. I thank you, your colleagues and Police Scotland generally.

I now move the meeting into private session.

10:04

Meeting continued in private until 11:02.

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The deadline for corrections to this edition is:

Monday 2 December 2024

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

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