EQUAL OPPORTUNITIES COMMITTEE

Tuesday 1 February 2005

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Tuesday 1 February 2005

EQUAL OPPORTUNITIES COMMITTEE
3rd Meeting 2005, Session 2

CONVENER

*Cathy Peattie (Falkirk East) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)
*Frances Curran (West of Scotland) (SSP)
*Marlyn Glen (North East Scotland) (Lab)
*Marilyn Livingstone (Kirkcaldy) (Lab)
*Mrs Nanette Milne (North East Scotland) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)
Linda Fabiani (Central Scotland) (SNP)
Patrick Harvie (Glasgow) (Green)
Carolyn Leckie (Central Scotland) (SSP)
Mr Jamie McGrigor (Highlands and Islands) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Zoé Tough

ASSISTANT CLERK

Roy McMahon

LOCATION

Committee Room 2

Scottish Parliament

Equal Opportunities Committee

Tuesday 1 February 2005

[THE CONVENER *opened the meeting at 10:00*]

Items in Private

The Convener (Cathy Peattie): Good morning and welcome to the third meeting in 2005 of the Equal Opportunities Committee. I particularly welcome our new senior assistant clerk, Zoé Tough, to the committee; I hope that she enjoys working with us. I also take the opportunity of thanking Ruth Cooper, our previous senior assistant clerk, for the valuable contribution that she has made to the committee. She has been of immense help in our work on the Prohibition of Female Genital Mutilation (Scotland) Bill. We are sorry to lose Ruth, but give a warm welcome to Zoé.

No apologies have been received.

Under item 1, members are to decide whether to take item 3 in private. The item deals with the committee's approach to its report on the Prohibition of Female Genital Mutilation (Scotland) Bill. Are we agreed?

Members *indicated agreement*.

The Convener: Do members also agree to take in private items on our report on the FGM bill at future meetings?

Members *indicated agreement*.

Prohibition of Female Genital Mutilation (Scotland) Bill: Stage 1

10:02

The Convener: Under item 2, we continue our evidence taking on the Prohibition of Female Genital Mutilation (Scotland) Bill. I give a warm welcome—sunshine and everything—to Hugh Henry, the Deputy Minister for Justice, who is accompanied by Scottish Executive officials Paul Johnston, Susie Gledhill and Valerie Montgomery. I invite the minister to make an introductory statement before we move to questions from the committee.

The Deputy Minister for Justice (Hugh Henry): Thank you, convener. I know that the committee has been taking evidence about how horrific female genital mutilation is. Like the committee, the Executive is committed to doing what we can to stop women and girls having to suffer in this way.

Female genital mutilation has been unlawful in the United Kingdom since 1985. The Westminster all-party parliamentary group on population, development and reproductive health raised concerns that people might be evading the law by taking their daughters out of the country on a so-called "holiday" in order to have FGM performed on them. In 2003, following the group's work, the UK Government legislated to increase the protection for women and girls in England, Wales and Northern Ireland.

The bill that is currently before the Scottish Parliament will offer the same level of protection in Scotland as that which is provided in the rest of the UK. It does three things. First, it increases the protection against being taken abroad for FGM. It will be unlawful to take or send a UK national or permanent UK resident abroad for FGM. It will also be unlawful for a UK national or permanent UK resident to perform FGM abroad. There is pressure on communities in Scotland to send girls overseas for FGM. Equally important, the bill will provide support for grass-roots movements against FGM within those communities.

Secondly, the bill increases the maximum penalty for FGM from five to 14 years. As that is the highest sentence that a court can impose, short of life imprisonment, it will show how serious an offence FGM is. We hope that it will deter those who may be considering having a girl cut. The increase in the penalty also sends out a strong signal to professionals that FGM is viewed as a serious offence in the eyes of the law and that appropriate steps should be taken to protect girls who are at risk.

Finally, the bill changes the terminology used from "female circumcision" to the more appropriate term "female genital mutilation". I believe that "mutilation" is the right word to describe the harm and suffering that the procedures cause. We cannot shy away from the realities of what happens to the women involved.

We consulted on the draft bill in July and August 2004 and received 59 responses, the vast majority of which welcomed the bill. I believe that my officials have sent a copy of the consultation report to the committee. We heard about the harrowing personal experience of members of the Somali women's action group and I put on record my thanks to them for talking about such a difficult and sensitive issue, which could not have been easy.

To eradicate FGM, action will have to be taken in a number of areas, such as health, social work, education and policing. The sexual health strategy, which has just been published, tackles FGM, as does the guidance on responding to domestic abuse. My colleagues are considering how work in their portfolios can help to protect girls and assist those who are suffering because of FGM. We hope to learn from the excellent work that you have heard about in London and other parts of England.

The bill is an important tool to protect girls and women from female genital mutilation. The parliamentary process that has taken place has provided an invaluable service in helping to raise awareness in communities that might practise FGM and among the professionals who work with those communities. The bill will have a direct effect by supporting community movements against FGM and it sets the framework for wider measures to tackle it. I believe that it shows that female genital mutilation is unacceptable in Scotland and that we want to protect girls and women in Scotland from that horrific practice.

The Convener: Thank you. I have a few questions on consultation. Why was such a short consultation held during what was in effect a holiday period? Concerns have been raised about the time given for the consultation.

Hugh Henry: I understand that. One of the difficulties that we had was that the rest of the UK had been covered in 2003. We were unable to act when the Female Genital Mutilation Bill was going through the UK Parliament, because that coincided with our parliamentary elections, which meant that there was a gap. Although a relatively small number of people are affected, we did not want too long a delay, in case anyone was affected who could otherwise have been protected. We wanted to act quickly. Extending the consultation period would have had the unfortunate consequence of causing other parliamentary delays; we had to manage a fairly heavy parliamentary agenda, with other bills going through, but managed to procure a slot.

Hindsight is a wonderful thing, but we thought that, because a limited number of people would be affected, a limited number of organisations would be interested directly. We thought that we would be able to get views in a relatively short space of time. We realised that there was not a huge geographical spread of interest and that that interest was concentrated among specific groups. We thought that we would be able to cope with the consultation in a relatively short period.

The Convener: On the nature of the consultation, did the process consist only of a published call for written responses or did the Executive hold consultation discussions with particular groups and, if so, with which groups? Given that a small, specific group of people in Scotland is likely to be affected by FGM, what efforts did the Executive make to contact the relevant communities, including the Somali community?

Hugh Henry: We offered to have a range of meetings in case people preferred to discuss the issues with officials rather than providing written evidence. To the best of my knowledge, we received a response about having a meeting only from someone from the African-Caribbean network. Meetings were on offer to anyone else who wished to take part. It was right to make that offer, because such a sensitive and traumatic issue could well cause personal problems for people who might want to participate in the process.

We recognised that there could have been language or educational difficulties with putting things down in writing. Furthermore, people might have hesitated to put down on paper details of what could be a very personal experience, which might have some cultural ramifications in their community. We made the offer to meet but, for whatever reason, there was only the one response. We were not aware of the Somali women's action group, which I believe was created only at the end of last July.

The Convener: Was information available in alternative formats and languages? Concern has been expressed to the committee about how the consultation has taken place. We received some good evidence from Glasgow City Council, which felt that the number of people involved was not enough to warrant producing papers and that it would be better to go out and work at a local level. The council's work and its community links seem to have given rise to some really good evidence. Would the Executive consider using such links to reach people? People in excluded groups can often experience difficulty in getting information or even in finding out that information is available.

Hugh Henry: There are two issues. One is the need to move quickly and effectively to give legal protection. However, the much more fundamental issue is about continuing work, educational awareness and support. I take the point that you and Glasgow City Council have made about the need to get into the communities concerned with people who understand them and the issues involved. I suggest that the bill is merely one part of the work that is required. It is one thing for us to set the legal framework, but we know that we are up against a lot of cultural resistance.

The bill is unusual in that it does not just give protection to people here; it also tries to extend protection to those who have a base here but who travel abroad. We believe that it is right for us to play our part, with other countries throughout the world, in trying to eradicate what is a totally unacceptable practice.

The Convener: The consultation report on the draft bill suggested three areas for change. However, the policy memorandum notes:

"No changes were made to the draft Bill as a result of the consultation."

Can you explain why, or indeed how, it was decided not to make any changes as a result of the issues raised by respondents?

Hugh Henry: We considered some of the issues raised. The issue of extraterritorial powers is complicated. We were keen to ensure consistency throughout the UK. We did not want people from certain communities who had come to this country to seek refugee status as asylum seekers to feel that some of their cultural views could be better protected by coming to Scotland because the law in the rest of the UK prevents FGM and sending people abroad for that purpose; we wanted to ensure a degree of consistency. However, that consistency also applies to trying to form a unified view on international obligations and responsibilities. We considered some of those issues around the extraterritorial powers.

As I said, we need to do further work to ensure that the subject is properly integrated into the relevant work on child protection, domestic abuse, sexual health and maternal health. On Friday, we announced under the sexual health strategy that the sexual health and well-being learning network will develop guidance on FGM. Therefore, we have taken steps to recognise that further matters need to be addressed.

10:15

Elaine Smith (Coatbridge and Chryston) (Lab): The submission from Kathleen Marshall highlights the lack of consultation with children and young people—perhaps the committee should also address that point—although she mentions that the sensitivity of the issue might make such consultation difficult. On the other hand, the majority of girls who might be affected by the bill are between five and seven years of age when the procedure happens to them. I can understand the need to be sensitive in talking to children about female genital mutilation but, if it is happening to them, it might have been wise to talk to them about it. The submission from the commissioner for children and young people goes on to say that it is important that young people's views are taken into account in shaping whatever educational and other measures flow from the implementation of the bill. How does the minister respond to that?

Hugh Henry: There are two separate issues. Elaine Smith is right to highlight the measures that will come from the bill, such as the educational work that will need to be done.

I think that Kathleen Marshall's wider point about the need to consult young people probably pertains to all pieces of Scottish Parliament legislation that affect young people. However, I am not sure that our approach to seeking the views of children and young people should be different for this bill just because it particularly affects them. In this instance, I think that the necessity to protect children probably overrides the requirement to consult children. I would not have been comfortable about delaying the bill simply to ascertain the views of some of the girls who might have been affected between the ages of five and seven. In addition, there would have been difficulties in taking evidence on a very horrific procedure from such young children and there are cultural and language issues. In this instance, the need to provide legislative protection probably takes precedence over the general desire to consult young people on Scottish Parliament legislation.

Elaine Smith: Convener, perhaps the committee can pick up the commissioner's point about how we engage with young people across the board. We could seek the commissioner's assistance on how to do that. I raise the point merely because it has been raised in evidence to us.

Shiona Baird (North East Scotland) (Green): The need for clarity over what procedures will be covered by the bill was raised several times in evidence. Will the minister explain why the bill does not include procedures that are listed under the World Health Organisation classification type IV?

Hugh Henry: I know that type IV female genital mutilation encompasses a range of procedures, some of which involve injury to the vagina rather than to the labia and will not, therefore, be covered by the bill. The bill covers procedures that involve mutilation of the clitoris or labia. I recognise the

sensitivities and difficulties involved, but we need to be sure that we do not catch other procedures, such as tightening procedures on women who have had a number of children. I know that the committee has taken evidence on that. Notwithstanding that, we do not have evidence that type IV female genital mutilation is necessarily prevalent in Scotland.

We think that the bill strikes the right balance. It is right to have a degree of consistency across the UK. We also think it right not to include inadvertently other procedures within the scope of the bill, as that might have unfortunate consequences on women.

Shiona Baird: With type IV, are you concerned that you will exclude piercing, which is a fashion procedure in the west? Might it be better to have better definitions, so that the bill is absolutely clear?

Hugh Henry: There are already procedures that are unlawful under the Prohibition of Female Circumcision Act 1985 and we do not propose to change them. Equally, as I explained, we do not want unintentionally to catch other procedures. If any of the measures that Shiona Baird describes are currently lawful, they will not be affected. If they are unlawful, they will remain unlawful.

Shiona Baird: Based on the evidence that we have received, there is concern about clarity. Would you be willing to take on board that evidence and employ the four World Health Organisation classifications somewhere in the bill, to make it absolutely clear what we are and are not talking about?

Hugh Henry: There is a slight difficulty. It is right to put on record that our policy intention is not to criminalise genital piercing. I do not think that that would come within the scope of the offence, because the procedures envisaged appear to be far more severe. However, we also need to examine our legal procedures. We cannot define every action in the legislation. Even where legislation has been framed, there is still a requirement for an offence to be committed, for it to be reported, for the procurator fiscal to make a determination and for the courts to take a decision.

If we felt that clarification would be helpful, we would consider it, but I am not at this stage persuaded that having detailed, strict interpretations in the bill is the way forward. In addition, it is right to point out that the WHO is rethinking and reformulating the definition of female genital mutilation and I would be worried that a more specific definition in the bill could miss some of the forms of FGM that the WHO might describe. On balance, we have taken a reasonable approach, but I will reflect on Shiona Baird's question.

Ms Sandra White (Glasgow) (SNP): That issue has given us cause for concern. We heard evidence from the World Health Organisation last week, which did not indicate that anything was changing. I am sure that the convener will consider your comments.

Hugh Henry: That is the advice that I have been given. I would be happy for my officials to liaise with the committee clerks.

The Convener: As Sandra White said, we had a WHO representative here last week and she seemed clear about what should and should not be included in the definitions. I do not know whether you have that information, but we will want to discuss it in more detail in our report.

Ms White: The definition of type IV refers to inserting herbs and corrosive substances into the vagina to cause bleeding and tightening. Women can also get tattoos in the area of their vagina. In Scotland, people under 18 cannot get a tattoo on their arm, because that is illegal. However, the concern is that, if the type IV practices are not classified, they will be legal. I want to raise the anomalies and the difficulties that we will have if type IV is not included in the bill, so that you can look into the matter.

Hugh Henry: That is a reasonable point and we will reflect on it. We do not believe that there is a problem, but we will look at the matter again.

Elaine Smith: I have some understanding of the issue, having taken a member's bill through the Parliament. I had to clarify exactly what "child" meant in that bill. It seems that it would make for good legislation and clarity if the definition of type IV mutilation were contained in the bill. However, if it is not going to be in the bill and you do not think that it needs to be, will it be spelled out in guidance?

Hugh Henry: There will be guidance on a number of the issues, and we will reflect further on that specific matter.

Ms White: The question has been raised in evidence to us whether infibulation after childbirth is included in the provisions of the bill. There are concerns that that matter needs to be made explicit in the bill. Do you agree that, in the interests of clarity, the bill should state that re-infibulation following childbirth is an offence, just as infibulation is considered an offence?

Hugh Henry: I appreciate that point, but we do not think it necessary to make explicit provision for that practice, as it is already an offence under the bill. Guidance for professionals is available from the British Medical Association and the Royal College of Obstetricians and Gynaecologists, which states that

"it is illegal to repair the labia intentionally in such a way that intercourse is difficult or impossible."

We think that that is sufficient.

Elaine Smith: I have had a couple of meetings with the Somali women's action group outwith the committee's meeting with that group and I have two related questions. First, could there be an issue with the resuturing that is required after an episiotomy or a tear? Secondly, given the fact that FGM is illegal, is there a danger that medical practitioners or surgeons could carry out caesarean sections rather than risk getting into such problems? Do you foresee women electing to have caesarean sections, with all the problems that are involved in such a major operation? Have you considered those issues?

Hugh Henry: It is difficult for me to say whether I foresee women electing to have that procedure. To be honest, that would be entirely speculative. I could not give any objective answer or an answer that could be validated. If a procedure is necessary for a woman's physical heath, it would not be an offence under the bill.

Elaine Smith: Given what I have heard about the issues surrounding caesarean sections, the minister's colleagues in the Health Department might want to look into that.

Hugh Henry: We will certainly refer the matter to our colleagues in the Health Department, to make them aware of the concerns that have been expressed.

Ms White: We have heard evidence that there is pressure on doctors and midwives to carry out caesareans because of the culture that the women come from. Doctors have said that they elect to give caesareans rather than perform natural deliveries. Have you approached any representative bodies of surgeons, plastic surgeons and so on to investigate the prevalence of such practice?

Hugh Henry: We have spoken to them generally, but not specifically about caesarean operations. Following today's meeting, we can contact them about that.

Ms White: I have a follow-up question on cosmetic surgery, although I think that you answered it when you answered Shiona Baird's question. Have you spoken to surgeons specifically about the consequences of cosmetic surgery and about the prevalence of type IV FGM?

Hugh Henry: There have been some general discussions and we are aware of the comments by some surgeons about cosmetic surgery. We do not want the bill to create an inconsistency within the UK such that we become an attractive destination for people who could get cosmetic surgery in Scotland that would not be available in the rest of the UK. That is not the type of tourist traffic that we want to encourage. There are sensitivities and I realise that there are also significant issues. We have had some discussions and we will continue to discuss matters, but consistency throughout the UK is important.

10:30

Ms White: The minister has answered most of my questions, but I am sure he will agree that the opposite of what he suggests could happen. We would not want people to be able to elect to have such cosmetic surgery here, but it could go that way depending on how definitions in the bill are interpreted. I am just picking up on the minister's point about consistency and what he said about not wanting to see cosmetic surgery being prevalent here.

Hugh Henry: Sandra White has the advantage of me, convener. We have attempted to use the same definitions. I am not aware of the potential for that to happen, but I will certainly reconsider the definitions to see whether there could be some unintended consequence. I am not aware that that is the case, but we will certainly examine the issue again.

The Convener: We have received evidence that cosmetic surgery—legal or otherwise—is happening in Scotland and London. We need to be clear about what the bill means for cosmetic surgery. Will it outlaw it altogether?

Hugh Henry: The bill will ensure that the law is the same throughout the UK, so if there is a problem here, it will exist elsewhere and vice versa. However, as far as the legislation goes, we should also remember that procurators fiscal will still have discretion; it would not automatically be the case that every act of cosmetic surgery would be an offence. The procurator fiscal would have to consider the circumstances. However, it is important to put on the record that we are not making changes to the law in relation to cosmetic surgery.

The Convener: Even if the law is not working in the rest of the UK, we have an opportunity to ensure that our legislation is up to date. We have a responsibility to ensure that our legislation is viable.

Hugh Henry: If there is wider concern that the law on cosmetic surgery is not working, that is a different issue that will probably require a different consultation process that we would have to discuss with our colleagues in the Health Department and the rest of the UK. Again, convener, you have the advantage of me; the matter is not in my portfolio and I am not entirely familiar with it. However, if there is a problem, we will have to examine it.

Marlyn Glen (North East Scotland) (Lab): Despite all the evidence that we have heard and all the reading that I have done, I am still not clear. I am aware that there will be a UK-wide consultation on cosmetic surgery, but I am not reassured that we will be consistent with the UK legislation. If the UK law is being flouted at the moment, our legislation will be, too. I am not reassured that the bill differentiates clearly between FGM and elective vaginal cosmetic surgery.

We have read a lot of evidence and many people have talked to us about the bill. If the bill were passed in its present form, does the minister envisage that there would be prosecutions of cosmetic surgeons who were found to have carried out illegal procedures? It seems to me that the bill would make certain cosmetic procedures illegal.

Hugh Henry: Again, even if I agreed that Marlyn Glen's interpretation was correct, it would not be for me to determine whether there would be prosecutions. Procurators fiscal would have a distinct role in that. It would be wrong for a Government minister to try to second-guess or influence their decisions.

I repeat that we are not making changes to the law. If certain cosmetic surgery procedures fell within the scope of the offences that are set out in the bill, they would be unlawful. However, a procurator fiscal would have discretion as to whether to bring a prosecution in any case. Therefore, even if Marlyn Glen is correct that the bill would make certain cosmetic surgery procedures unlawful, that would not automatically mean that a prosecution would result from such surgery. That would be a matter for a procurator fiscal.

Marlyn Glen: I understand that, but that is where our concern about the exact definition comes from. We want clarity about what would and would not be unlawful and whether there would be exceptions. If there are to be exceptions, perhaps they should be included in the bill to ensure that the law is as clear as possible.

What is the minister's view of the inclusion of an age limit in the bill, which would allow specified procedures to be carried out on consenting adults with the agreement of suitably recognised medical personnel?

Hugh Henry: We wanted to ensure that protection against FGM was as strong as possible. We were a bit worried that to allow FGM by consent would weaken the current legal position, which does not provide for consent. We are aware that, because of cultural and family pressures, FGM could remain an issue for adults in certain communities. We hesitate to say, for example, that it would be right to carry out FGM on someone over the age of 18 who freely gave consent. Such a position would fly in the face of everything that we seek to achieve.

Marlyn Glen: It could, however, be argued that a western woman who elects to have cosmetic surgery is responding to cultural and family pressures in the same way. There is a fine line. For example, we have talked previously about genital piercing. We might want to allow that for an adult and say that it is an exception. However, genital piercing is included in the type IV definition in relation to babies.

Hugh Henry: Again, we are not proposing to change the 1985 act. To repeat my earlier point, we are not making changes to the law in relation to cosmetic surgery. A fundamental difference is involved in respect of the bill. If there is a need—as the convener and members have suggested—to take a wider look at cosmetic surgery, that is a different matter. The bill deals with a specific issue in relation to a practice that has been illegal since 1985; we seek to extend the protection that has been available since then. To seek to do more would mean that we would stray into areas beyond the scope of the bill. It is valid to raise the broader concerns about cosmetic surgery in its widest sense.

Marlyn Glen: I realise that matters have moved on hugely. As you said in your opening remarks, the practice itself used to be called "female circumcision". However, the difficulty is that, according to evidence that we received, we do not know how prevalent the practice is. A comparison could be made with child protection issues; we did not think that child abuse was so prevalent, but as people have become more confident and have reported incidences of such abuse, its prevalence was uncovered.

Hugh Henry: We have moved on. However, I have to say that we do not believe that the practice is prevalent in Scotland. The problem is that it has been very difficult to get information from some of the communities in question. Members should bear it in mind that we are not introducing a new offence; although the 1985 act referred to "female circumcision", the procedure that was outlawed in that legislation is still the same. We are simply attempting to extend the protection that is available. In any case, it does not matter whether the practice is prevalent. To be frank, I think that one such act is one too many.

Marilyn Livingstone (Kirkcaldy) (Lab): Although the witnesses from whom we took evidence are pleased with the bill and feel that it will make a difference, they said that it is only one part of a bigger picture. Many of them raised issues such as training, education and support for communities; I want to focus on those areas. In

your opening remarks, you talked about reaching out to communities. What is the Executive doing to support professionals and to give them guidance on, and training in, dealing with someone who is unfortunately suffering from the effects of something that happened to them as a child?

Hugh Henry: Although that is not strictly an issue for the bill, it is a fundamental concern. I know that professional bodies such as the Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and the British Medical Association all issue guidance and training to their members, which is to be welcomed. As I said, guidance on FGM is included in guidance to health care workers on domestic abuse. Moreover, as part of our sexual health strategy, we have announced that the sexual health and well-being learning network will develop guidance on the matter for practitioners.

Across the Executive—perhaps more so for my colleagues who deal with health and social work issues—there is a need to work together with a range of agencies to ensure that further guidance is integrated with existing relevant work on child protection, domestic abuse, sexual health and maternal health issues. We also want to learn from best practice elsewhere. After all, some communities in the UK have greater direct experience of the matter, so we would seek to learn from them how best to address some of the critical issues that Marilyn Livingstone identified.

Marilyn Livingstone: I am really pleased by that last comment. According to evidence that we have received, expertise exists in other parts of the UK, so I am glad that we will tap into that.

There are clearly at-risk groups, as you have defined them, in the community. What steps will be taken to raise awareness among those groups with regard to preventing FGM and dealing with its consequences?

10:45

Hugh Henry: The guidance to which I referred earlier is critical, as is integrated and co-operative work across departments of the Executive and agencies, which we need to ensure are working towards the same purpose. The training of staff and professionals who engage with the communities is important because they should know what to do when they come across cases of FGM. The last thing we want to introduce to those communities is a legislative hammer—this is not simply about taking a punitive approach. We want to punish people who engage consciously in a horrific act, but we have to consider the wider context of the trauma that many people have experienced prior to our arriving at this point.

It is incumbent on us to approach the matter with sensitivity and to consider education, awareness raising and confidence building in the communities. The most effective way of eradicating FGM from any communities in Scotland that still practice it is not just to say that it is against the law to do it here or to send a child abroad to have it done; it is about persuading people that it is wrong and that it has no place, for either religious or social reasons, in their culture within this country. I hope that, given the links that people in those communities have with the countries they come from, they could start to influence what is happening to friends and relatives there. Whatever little we can do in this country to stop FGM happening anywhere in the world is justified.

Elaine Smith: You said that the bill is not simply about punitive measures, but it seems from our scrutiny that it is. You said that the relevant communities are best placed to effect change. That is right—we heard from Somali women that persuasion to change is best done by people within their community. You said at the beginning that we need to provide support for grass-roots movements. How do we do that, given that from a justice point of view the bill is about punitive measures?

Hugh Henry: Again, there are two issues. One is about the legislation that we require to state that in this country FGM is not just unacceptable but illegal and that it is unacceptable for someone in this country to have it done elsewhere. That is what the bill is about and that is what I have responsibility for from a justice perspective. Beyond that, we get into the wider areas of supporting women and children and providing advice and assistance for refugees and asylum seekers, which cuts across a wider range of portfolios and agencies. I do not think that the bill is the place for us to resolve issues around providing support mechanisms, education and training and raising awareness in a range of communities.

The work needs to be done. I have referred to the guidance that we think a range of organisations need to put in place. That said, to be fair, many organisations provide such guidance at present. A lot of work requires to be done by our local authorities, which are the key players in local delivery of services. Clearly, they have partnerships, as we do, with some important voluntary organisations.

The bill is not the place in which to resolve some of the wider issues. As I said, the bill should not be seen in isolation from the responsibility that a range of organisations and partners have to address the issue.

Elaine Smith: The reason why Marilyn Livingstone raised the issue is the lack of support, education and so forth at the moment. Certainly,

the impression that I gained from the evidence is that there is not much of those. As the minister said, the provisions in the bill will simply extend the provisions of the 1985 act. That is a problem because those provisions have been in place in Scotland since 1985. Where is the grass-roots support and education?

Hugh Henry: We are starting to stray into the more complex issue of what the Scottish Executive should be responsible for and what local authorities should be responsible for. I agree that the Executive is responsible for supporting national frameworks and national organisations. However, what we do, we do nationally—as I have said in recent months in discussions that I have had with a range of organisations on family mediation and other support work, for example.

Because of the frustrations that organisations have at local level, they say that the Executive should make decisions about what should happen at local level, including decisions about who should get what in terms of finance. That is a much bigger issue, however, and it is one that poses questions about subsidiarity and about who should be responsible for allocation of money and resources to a range of organisations at local level.

The considered view of Parliament may be that Parliament and the Executive should determine what each and every group is given at local level. However, if we did that, it would change fundamentally the Executive's relationship with local government. We need to strike a balance between the Executive's setting national frameworks and introducing legislation, and its persuading and encouraging our partners at local level to do what they should do. It is a bit like our work on domestic abuse and child protection; we set the legislative framework and the guidance, but implementation and practice are done locally.

Elaine Smith: I understand what the minister is saying, but it does not explain fully why medical assistance is not in place; for example, it does not explain why midwives who are familiar with FGM are not already in communities.

Hugh Henry: The point to which I return is that it is not the bill's responsibility to address those problems. Clearly, Elaine Smith should address such issues to her local health board. Indeed, given that she is also talking about social work support services, she should raise them with the appropriate social work agencies. We are starting to move beyond the bill into the wider responsibilities of Parliament and what local providers make available. Those are different matters altogether, although they are legitimate.

The Convener: There is a view that we have to change things, which means that people will need to work at local level to do that. Based on the evidence that we have heard, Elaine Smith is absolutely right to question how that is to be taken forward.

Marilyn Livingstone: The evidence that we have heard has been quite strong. Although people welcome the bill, it is acknowledged that support for communities and professionals needs to run alongside it. We have heard about best practice in other parts of the United Kingdom.

When we took evidence from the Scottish Refugee Council, we heard that its network of contacts could assist in making contact with relevant groups. Have you had discussions with organisations such as the Scottish Refugee Council on the issue?

Hugh Henry: I am advised that we have had a general discussion about identifying how many people may have endured female genital mutilation, but we have not yet entered into discussions about developing support and awareness work. However, such discussions will take place.

Marilyn Livingstone: On support and contacting groups that have knowledge, I wanted to say before Elaine Smith came in that we have been told in evidence that the way to make change is to get respected leaders in communities to come out publicly against FGM. Perhaps work on that needs to be considered. You are right—even if all the proposals were implemented, we would need huge support from communities to identify who the key people are in them who could help and support the work. Discussions not only with people in the Scottish Refugee Council but with others who have been mentioned today would be a way of taking things forward.

Hugh Henry: That is a perfectly valid point. Leaders in communities have a key role to play. I return to a point that I made earlier: it is not simply a matter of passing a law and hoping that it will have the desired effect; it is clear that there are more profound and fundamental issues in some communities that must be addressed. We are talking about changing habits that have existed for many years and about changing a practice that is—unfortunately—embedded in certain communities. Things cannot simply be changed overnight by passing a law. We must encourage leaders; we must make them confident and ensure that those who are responsible for supporting groups and people are aware of the need to develop leaders in the community.

I repeat what I said earlier: it would be an advantage if, in attempting to achieve the bill's aims, we gave confidence, courage and awareness to people so that they can start to change and influence practices in communities

elsewhere in the world. However, that takes us from the specifics of the bill into broader issues of community development and awareness raising, which are needed but will not be addressed specifically through the bill.

Marilyn Livingstone: Evidence has clearly highlighted the need for guidance and training, but the bill's financial memorandum does not recognise the costs that will be involved in those. We have been asked for clarification of how the costs that will inevitably arise will be met.

Hugh Henry: The financial memorandum deals only with any new costs that will be directly caused by the bill. I hope that we have identified realistic financial costs.

On the broader issues, I return to our previous discussion. The financial memorandum does not address additional measures that should be put in place regardless of whether we were using the bill to extend protection. It should be remembered that the bill will not fundamentally change the law on female genital mutilation. The points that Marilyn Livingstone is driving at should be addressed in any case. I am aware of and accept that there is a need for awareness raising not only of the current situation, but of how there might be an extension of protection, so that people who have UK residency are aware that they may leave themselves liable to prosecution if they attempt to send someone abroad for female genital mutilation. Part of the awareness training will have to address that.

There is also a continuing need for training, awareness, counselling and support generally in relation to this horrific practice. We think that we have realistically addressed what will be needed as a result of the bill, but we accept that more needs to be done in relation to the wider issue.

11:00

Nora Radcliffe (Gordon) (LD): Let us return to the specifics of the bill. You suggest that the scope of the bill is quite narrow and that it is just about extending protection so that there is extraterritorial effect. However, the stated aim of the bill is

"to restate and amend the law … and to provide for extraterritorial effect".

The scope is perhaps a wee bit wider than you are saying. There is scope for the bill to do more than just extend protection so that there is extraterritorial effect.

Hugh Henry: That is right. Apart from changing the terminology from "female circumcision" to "female genital mutilation", the bill increases the penalty significantly from five years' to 14 years' imprisonment. However, I am not sure that, apart from that, we are significantly changing the scope of the existing legislation beyond addressing the extraterritorial matters to which you refer.

Nora Radcliffe: I want to address the concerns that have been raised with us and with the Executive, through its consultation, about the mental health exemption, which is seen as a potential loophole. Have you considered making the wording of the provision more explicit, so that the bill is clear and unambiguous on the issue?

Hugh Henry: No. The bill states that it is "immaterial" whether any person believes that female genital mutilation is required as a matter of custom or ritual. We think that the phrase "physical or mental health" is well understood by the courts. It is used in other legislation. We recognise the fact that certain operations—for example, operations for sex reassignment and for the shortening of grossly elongated labia—are required for mental health reasons, and that has been properly addressed elsewhere. I do not think that there is any reason for us to change the stance that we have taken in relation to mental health. It is reasonable and allows us to consider individual circumstances in deciding whether an operation is necessary. The framework is robust and the definitions and terminology are well understood by the courts, so I do not think that there is any need for us to look at that again.

Nora Radcliffe: Would you consider taking a belt-and-braces approach in specifying, for example, that two competent people should decide whether what is proposed is acceptable under the exemption, as happens for the termination of a pregnancy and other procedures?

Hugh Henry: It is a difficult area. There could be circumstances in which a medical practitioner would need to make a swift decision, and whether time would allow for another practitioner to be consulted in order to provide certification is a matter for debate. Also, we would not wish to interfere with medical judgment at the time. I am, therefore, not persuaded to make the change that you suggest.

In the unlikely event that a course of action could lead to prosecution, it would be a matter for the court to decide whether the medical practitioner had acted appropriately. Indeed, that is the situation in relation to a number of procedures now, and not just in medical terms. If people make a certain judgment, it is ultimately a matter for the courts to decide whether their action is legal or illegal. I am satisfied that what we are suggesting does not prejudice the protection that is offered by the bill, nor does it unnecessarily endanger medical practitioners.

Nora Radcliffe: Are you not worried about the strong evidence that exists that people see the mental health exception as a potential loophole?

Hugh Henry: We will certainly reflect on the evidence, but we think that, in any dispute, it is best left to the courts to decide on the individual circumstances. Having said that female genital mutilation is unacceptable, I would hesitate to say that a provision whereby two doctors could automatically decide that someone can undergo female genital mutilation would be an acceptable change to the bill.

Nora Radcliffe: I can envisage a scenario in which somebody, perhaps somebody medically qualified from one of the communities in which the practice is accepted, uses the exemption as an excuse or defence. You say that the courts will decide, but who would prosecute if the scenario arises within the community? There seems to be a danger of the mental health exception forming a potential loophole. If there are ways to make such a loophole less likely to be used, we should seek them.

Hugh Henry: I recognise the valid concerns that have been expressed by Nora Radcliffe, but we do not think that that loophole would exist in practice. Section 1(4) states:

"For the purposes of determining whether an operation is necessary for the mental health of a person, it is immaterial whether that or any other person believes that the operation is required as a matter of custom or ritual."

We think that—

Nora Radcliffe: But the mental health exemption says that, if the person is under severe mental pressure because of the consequences of doing or not doing the procedure, which is the loophole—

Hugh Henry: We will know, because subsection (4) says that it does not matter—that it is "immaterial".

Nora Radcliffe: People are not proceeding on the basis that FGM is a

"matter of custom or ritual."

They are proceeding on the basis that not to do so would impose a mental strain on the person because they were being excluded from the community.

Hugh Henry: But we then get back to the wider discussion about mental health. There are very clear definitions of mental health. The courts understand what the definitions of physical and mental health are, and I think that medical practitioners generally understand the parameters within which they must operate in relation to that definition.

Nora Radcliffe: I return to the analogy with termination of pregnancy, to which we could apply all the same arguments. In determining whether a termination is acceptable for reasons of mental health, we require two medical practitioners to agree. I cannot see why you are so set against having the same degree of protection for this equally radical procedure.

Hugh Henry: It would introduce unnecessary complications, and it could introduce unnecessary delays. We think that the courts would be able to interpret the mental health exemption appropriately in individual circumstances. We will certainly reflect on the comments of Nora Radcliffe and others on the matter. However, as things stand, we do not think that there is a loophole, nor do we think that there is sufficient justification for change. However, we will look at the matter again.

Nora Radcliffe: You mentioned delay. To me, a comparison of a delay in gender reassignment, labia shortening or whatever with a delay in the termination of a pregnancy just does not stack up. I do not think that the delay argument is valid.

Hugh Henry: I can only repeat that I am not persuaded that there is a loophole.

Nora Radcliffe: We will continue to try to persuade you, minister.

Hugh Henry: We will look at the matter again.

Mrs Nanette Milne (North East Scotland) (Con): My question follows on from the comment by the Scottish Refugee Council in evidence that

"the bill still will not protect children who are seeking asylum."—[*Official Report*, *Equal Opportunities Committee*, 18 January 2005; c 776.]

Several witnesses have expressed concern at the lack of protection that is available to girls and women who are not UK residents, such as children who are seeking asylum, who might be taken abroad for the procedure to be carried out. Has any consideration been given to how protection might be extended to such people?

Hugh Henry: That is a difficult problem, which exercised our colleagues at Westminster when they considered their legislation. There is a technical issue about the competence of the Parliament and the scope of the bill. Presumably, something could be done, but there could be ramifications in relation to international responsibilities and obligations, and we are unsure of the net result.

We would be attempting to impose penalties on someone who in a sense has no rights, or for whom we have no responsibility within the UK, but who sends someone beyond the UK for action to be taken. Let me be clear: if they attempt to do something that is illegal within the UK, an offence will be committed, so children are protected. In addition, the minute that someone gets refugee status, they will automatically receive protection in relation to the extraterritorial powers.

With the bill, we are already seeking to introduce unusually wide jurisdiction, in that there is no requirement for dual criminality, so we are already pushing at the bounds of legislative competence. It would be highly unusual in international law for us to take jurisdiction over acts committed abroad by people who are not UK residents. We and our colleagues at Westminster have struggled with that, because we know that there is a potential problem in relation to people in some of the communities who do not currently have refugee status. I am not sure that there is an easy answer to some of those broader questions.

Elaine Smith: Children who seek asylum and come from communities where FGM is extremely common do not have the advantage—if you want to call it that—that people from such communities who have been living in Scotland have in knowing that FGM is illegal under our law. It could be argued that those children will be the group that is most in need of the bill's protection. I argue that we might be more in line with international obligations if we were to close the loophole.

I refer again to Kathleen Marshall, the commissioner for children and young people, who states in her evidence:

"Some children are excluded from its protection"—

referring to the bill—

"in a way that appears discriminatory in terms of article 2 of the Convention on the Rights of the Child – in particular, the children of those seeking asylum in the UK, and others whose 'leave to remain' is temporary, who are possibly at greatest risk of mutilation".

Perhaps in closing the loophole, we would be more in line with international obligations.

Hugh Henry: That is one interpretation. I repeat my earlier point that when children come to this country they are protected against any such acts that are carried out within this country. However, there are limits in international law to how wide we can extend our extraterritorial powers. International law requires a tangible link to Scotland. Establishing a link becomes more difficult if someone is temporarily here without any legal rights and then goes abroad, where something happens.

There is no way that I will define international law at this meeting—it would not be competent for me to do so. Our advice is that we have already stretched legislative boundaries in what we are attempting to do. We are not convinced that we have the legislative competence to go beyond that. The problem was examined when the legislation was changed in 2003 at Westminster.

11:15

Elaine Smith: I hope that the issue will be reconsidered in terms of the United Nations Convention on the Rights of the Child, because children carry those rights wherever they go.

Hugh Henry: I understand what Elaine Smith says. We should put the matter in the context of the wider circumstances that bring people here. I am sure that an exception to the rule will always exist, but let me give an example. A woman with children flees Somalia—which has been referred to several times—to avoid persecution and is in Britain as an asylum seeker but has not been given refugee status. Would that woman for cultural reasons want to send her children to Somalia to have FGM carried out and then have them brought back to the United Kingdom? A reasonable view might be that, having fled persecution and oppression, that woman would not want voluntarily to return to Somalia and then come back to this country. An exception could always exist to that—God forbid that it should ever happen.

We have considered the matter as broadly as we could. We think that we are straying at the margins of legislative competence, notwithstanding what Elaine Smith says. We are consulting the Home Office on difficulties and the matter has not been concluded. We want to resolve some of the ambiguities and difficulties. The issue is not easy to resolve.

Ms White: After seeing the evidence, which you and the clerks have also seen, I think that a woman who fled persecution in the form of female genital mutilation and who brought her children here—people sometimes arrive in families—would at times experience pressure from the community in which she lived and from the men in that community. That pressure would usually result in her husband or another relative—but not the woman—taking her children outwith the United Kingdom, back to their homeland or somewhere else to have the horrific procedure performed and then bringing the children back.

We open our doors to asylum seekers and they come here. We encounter female genital mutilation in this country because people are being sent back for the procedure. We are talking about children from as young as three months old up to seven and eight-year-olds.

Women's groups have given evidence that they abhor the practice, but that we must not criminalise the women on whom the practice has been carried out. We must be much more sensitive to the issue, which is unfortunately prevalent in Scotland and in the United Kingdom. Of course we want matching legislation across the board. Everyone here has accepted the bill in good faith and we have spent weeks on gathering evidence.

The act that was passed at Westminster might not be good. Perhaps the position can be

improved here. I am not making a political point. We have examined the bill in good faith and I think that the bill could be improved. I ask the minister to realise what is happening in communities and to asylum-seeker children. We should examine that. If the bill were changed in the way that I think would improve it, would that be acceptable to the Scottish Executive? If the bill did not mirror the 2003 act, what problems would you foresee?

I feel as if the only answer that we are getting is that you want continuity and that it does not matter what we say and do here today, or what we have done in the past weeks, as things will not change because the Westminster legislation has gone through. I would really like an honest answer.

Hugh Henry: I thought that I had explained the position. The Westminster legislation caused some difficulty when it was being considered. Members there sought advice on some of the issues of extraterritorial competence. I explained earlier that we are continuing to discuss those issues with our colleagues at Westminster. We will continue to do so because we acknowledge that some difficulties may have been caused.

I am not seeking consistency simply because Westminster has enacted legislation but because there could be legislative implications if the Scottish Parliament exceeds its competence. Sometimes that can be tested in a court of law only once it has been done; that is true of a number of things. The nub of the issue is about what it is competent for us to do within international law, notwithstanding the view of the commissioner for children and young people. That is only one view, and other views say that it might not be possible for us to follow the commissioner's analysis.

We have to reflect carefully on our international obligations and what international law says; that is why we are consulting carefully. We have not automatically discarded provisions just because they are in the English bill; we have considered them very carefully.

Sandra White makes other points, and I think that they show that we need to be careful in our use of language. Sandra White said that the practice is prevalent in Scotland. Using the strict definition of the word "prevalent", I suggest that the practice is not prevalent. FGM in Scotland is illegal for asylum seekers, refugees or anyone else. Is it prevalent? If it is, it would be useful for us to be able to identify that prevalence.

However, if we are talking specifically about extraterritorial issues and people sending their children back, is that prevalent? We have seen no evidence that people who come to this country are sending substantial numbers of their children back to countries such as Somalia for the procedure to be carried out, and then bringing them back to Scotland. Let us remember the difficulty that those people have had in getting out of their home country in the first place, so it would not be easy for them to send their children back and then have them returned to Scotland.

Sandra White makes a point about women being under pressure from the communities and from men, but the evidence from the Somali community is that the vast majority—I am trying to remember the percentage; it could be 60 to 70 per cent—of the family units of Somali origin in Scotland are headed by a woman. There are very few Somali men here. If that minority of men—who have also fled Somalia to avoid oppression—are putting pressure on those families to send their children back for cultural reasons, that introduces a level of complication of which I was unaware. If that is happening, it would certainly re-emphasise the need for education in those communities.

As far as those who are seeking asylum are concerned—we are talking about a small number who are not afforded protection—we need to stop saying that the practice is prevalent and get some more evidence on how many asylum seekers are sending their children back to those countries to have the procedure done. I would not use the word "prevalent". I hesitate to say that the practice never happens but, if it does, I would like to see the evidence.

Mrs Milne: My understanding is that it is not the men in the Somali community who are putting on the pressure; the pressure tends to be exerted by the senior women.

Hugh Henry: Exactly. Nanette Milne is right about that.

Mrs Milne: Another concern arises from the Executive's briefing, which says that if a UK resident were to organise for a non-UK resident to carry out FGM on an asylum seeker or any other non-UK resident outwith the UK, that UK resident would not be committing an offence under the bill. Is that the case and, if it is, will you clarify why that is so?

Hugh Henry: Yes, that is correct.

Mrs Milne: Why is that the case?

Hugh Henry: In such a situation, the UK resident would be committing an act in relation to someone who had no tangible link to Scotland. That takes us back to the legal status of such individuals.

The issue is who would carry out the FGM. If it was carried out abroad on someone who had no tangible link to Scotland, no offence in law would be committed, because the law does not cover individuals who have no rights here. The act would take place in a country over which we had no

jurisdiction and would be carried out by someone who would not be subject to UK law. If the FGM was performed by a UK doctor or a UK resident, they would be covered by the law, but that is a separate matter.

Mrs Milne: I understand that, but there seems to be a loophole. I would have thought that a UK resident who instigated the committing of the crime of FGM, wherever it was carried out, would bear some responsibility for it.

Hugh Henry: For a crime to have been committed, we need to define in law who the victim of the crime is. We have sought to consider the position of asylum seekers who do not have legal status here. If we cannot define their status in law, how can we control an act that is committed on them in another country by someone who is a resident of another country? At that point, we reach the limits of international law. The victim and the resident would have to have a direct and substantial link to Scotland. If the victim had no tangible link to Scotland, the constraints of international law mean that we would have problems.

Mrs Milne: Could anything be done under common law—under the offence of assault, for example?

Hugh Henry: The assault would not be happening here. If the assault happened here, we would be talking about a crime, but if it took place in another country and was committed by someone who was not a UK resident, it would be hard for us to take action. We are already pushing at the limits. If there was an easy way of tackling the issue, we would adopt it.

Frances Curran (West of Scotland) (SSP): According to a report from the centre for reproductive health at Ghent University, of the six European countries that have implemented anti-FGM legislation, Britain is the only one that has not included the offence of attempted FGM. Why has such an offence not been included in the bill? Will you consider creating such an offence?

Hugh Henry: That is possibly to do with the difference between the legal systems in the other countries and that in Scotland. Here, any attempt to commit an offence would be an offence in and of itself.

Frances Curran: If we followed the example of those other countries by making specific provision on attempted FGM, would that not strengthen the bill?

Hugh Henry: I suppose that I could turn that round and ask what would be different about female genital mutilation that would make the attempt to commit that offence different from attempts to commit any other offence. Why would we not put an attempt to commit any other offence into Scots law and make specific provision for that? Section 294 of the Criminal Procedure (Scotland) Act 1995 states:

"Attempt to commit any indictable crime is itself an indictable crime."

That is very clear.

11:30

Frances Curran: I would like to ask you another question. Amnesty International Scotland's evidence said that it wanted to go even further than to make attempted FGM a crime; it also raised the question of incitement. Are you saying that that would be taken under the general law rather than specifically in the bill? Would you argue that Amnesty has got what it wanted in its evidence because incitement would be covered under the general law in Scotland instead of specifically under the bill on FGM?

Hugh Henry: Yes, because conspiracy and incitement to commit crimes are offences under Scots common law.

Marlyn Glen: I return to the question of the prevalence of the practice. Basically, it is the absence of baseline data that is the problem, so it will be difficult to monitor the impact of the bill and of any other initiatives that are put in place to support it. What efforts are being made towards the systematic collection of baseline data of relevance to the provisions of the bill?

Hugh Henry: There are a number of offences that will clearly be recorded if we can identify them. As Marilyn Livingstone said, there is on-going work to be done with the communities with regard to education and awareness. Local agencies need to work directly with those communities to ensure that there is awareness of the law and of the requirement to operate within the law, and to try to change some of the cultural attitudes. Any offence would be recorded in the normal way. Under the child protection guidance, any professional who has reasonable concern that a child may be at risk should take steps to protect that child. Our normal child protection procedures should also cover the recording of incidents.

Marlyn Glen: It seems that people in England are trying to deal with the idea that all the evidence is anecdotal by examining maternity hospitals and asking what they are seeing, and using that as baseline data. They also see a need for more informal attitudinal studies. Does the Scottish Executive currently have any plans to monitor the impact of the legislation?

Hugh Henry: Marlyn Glen raises reasonable issues. She also identifies a weakness, in that the methodologies are not precise and are not as well

developed on this subject as they are on others. I recognise that any research would not be straightforward. We need to reflect on some of the evidence that the committee has taken on these matters and we need to consider whether we need to do any further research into prevalence. We also need to balance that by asking ourselves what level of research would be required, how much it would cost, whether it could be justified given our other demands for work and whether the cost would be disproportionate. We must examine all those issues and it is a matter that we need to think through carefully.

Marlyn Glen: That would be helpful.

Elaine Smith: I turn to some of the evidence that we have heard about prosecutions. We have heard that there might well be prosecutions under the legislation once the affected communities become more aware of the legal system and gain an understanding of the protection that it provides. That might be true not only of the bill but of existing legislation. There are difficulties in communities, and the culture that we are dealing with is such that people actually think that FGM is a good thing for their daughters' future opportunities and even their future health. Are there sufficient support mechanisms in place to support those members of communities who might blow the whistle on FGM?

Hugh Henry: First, I refer the committee to my earlier comments on the need for support mechanisms at a local level and the role of councils and voluntary agencies.

On the second aspect of the issue that Elaine Smith raised, we have been improving the services that we give to those people who report crime—whistleblowing is a fairly crude term—who are vulnerable witnesses. We have attempted to improve that support in sensitive cases in which identities need to be changed and in serious cases in which people need to be moved.

In cases that arise under the bill, a balanced judgment might need to be made about whether—notwithstanding some of the other work that needs to be done in a community—someone requires help to remain within their community. In that case, the police and social work agencies might be involved. However, in some circumstances, people might well need to be helped to move out of the community. Again, police, social work and housing agencies would need to be involved in that.

We have structures in place to support people who give evidence, but I accept that those structures could always be improved and that we might need to reflect on whether specific issues that arise from the bill will need to be dealt with in guidance. However, one thing that we will want to avoid is moving those who take a stand against female genital mutilation. As I discussed earlier in response to the questions of Marilyn Livingstone and others, we need to develop and enhance the support for community leaders.

Elaine Smith: Will the Executive consider taking steps to ensure that an understanding of the support mechanisms is communicated to the relevant communities in a way that they can understand? Will that not need to come from the centre? I understand your comments about the difference between what is dealt with by the centre and what is dealt with by local authorities, but do you accept that the Executive also has a role in that?

Hugh Henry: On a range of issues under the bill, we will need to consider what guidance is appropriate for local authorities, voluntary organisations, police and others. I hope that that will be as comprehensive as is needed. We will also ensure that the issue is referred to the Lord Advocate and the Solicitor General. We will discuss with the Crown Office and Procurator Fiscal Service how some of the substantial training that it is carrying out on how vulnerable witnesses should be treated is applied to people who give evidence in cases that arise under the bill.

Elaine Smith: On a slightly different subject, I want to pick up on Sandra White's earlier question, which I am not sure received a proper answer—my asking it shows that it was definitely not party political. Throughout your evidence, you have said that you will reflect on various issues and we welcome that commitment. However, you also said that the bill was unable to coincide with legislation at Westminster because of the Scottish Parliament elections in 2003. That implies that the issue would otherwise have been Seweled. Moreover, you have constantly referred to the need for consistency across the UK. That worries me slightly, because it seems that you want the bill to be identical to the one that was passed at Westminster. If that is the case, it will seem a waste of time to the consultees to have put in so much work in giving evidence to the committee. However, I would say that that work has been a useful way of raising awareness of the issue.

We have a chance to improve the 2003 act. Given that you have talked about consistency, are you minded to resist any differences because you want an identical act or are you open-minded about going back, examining the issues that you said that you would reflect on and having a Scottish act that is different if the committee is able to persuade you that there are areas of the bill that could be improved?

Hugh Henry: We have departed from the 2003 act where we believe that doing so is helpful. We have made our bill gender neutral, which is

different from the 2003 act. We would consider doing anything that would enhance Scots law and our ability to effect legislation.

I know that this is not the time to have a debate on the wider issue of Sewel motions, but they, too, provide committees with an opportunity to take evidence and enable the Executive to include certain issues relating to Scots law that we believe require to be dealt with differently from how they are dealt with in the rest of the United Kingdom. We have done that and we will continue to do that. In that kind of principled way, there would be no difference.

If you look at the situation objectively, you can see that there are not huge differences between this bill and the 2003 act. The debate at the time would have been to do with whether the differences would have warranted there being a stand-alone bill compared to other bits of legislation that we were considering. That would be a matter of political judgment by the parties and the Parliament. In fact, as others do, you could apply the same argument to every Sewel motion. However, the reality is that we could not have dealt with every matter that has been dealt with by a Sewel motion through stand-alone legislation because the Parliament would not have had the time to cope with that. Sometimes, we decide that it is appropriate to take the Sewel motion route because, by using a UK bill, we can make the changes that Scotland requires or because we think that the UK bill is entirely consistent with our intention. With regard to the matter that we are discussing, the consistencies are such that I believe that the matter could have been dealt with through the Sewel procedure. However, for various reasons, that route was not taken and the matter has come before us in a different way.

We believed that we had to take action. We could have stuck with the provisions of the 1985 act, but we thought that, as action had been taken in the rest of the UK, there was a political imperative to ensure that there was consistency across the UK. We did not want women and children in Scotland to have less protection than was available elsewhere in the UK. That is why we have introduced the bill and have taken the opportunity to change the legislation. If there is anything further that can be done, we will do it, if it is consistent with our obligations to this Parliament and our international obligations.

Clearly, we want to avoid an imbalance. We do not want women in this country to have less protection than those in England and Wales and, equally, we want to avoid a situation in which people could come to this country to have acts carried out that could not be carried out elsewhere in the UK.

Elaine Smith: I wanted to clarify that point because I did not think that the position was clear in your answer to Sandra White. However, the response that you have given now is welcome and reassuring.

The Convener: I echo that and thank the witnesses for their attendance.

We will now move into private session to discuss further our approach at stage 1 to the Prevention of Female Genital Mutilation (Scotland) Bill.

11:44

Meeting continued in private until 12:39.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 9 February 2005

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committes will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Astron Print Room.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron