

FINANCE COMMITTEE

Tuesday 21 April 2009

Session 3

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FINANCE COMMITTEE

9th Meeting 2009, Session 3

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

*Jackie Baillie (Dumbarton) (Lab)

COMMITTEE MEMBERS

*Derek Brownlee (South of Scotland) (Con)

*Linda Fabiani (Central Scotland) (SNP)

Joe FitzPatrick (Dundee West) (SNP)

*James Kelly (Glasgow Rutherglen) (Lab)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

Murdo Fraser (Mid Scotland and Fife) (Con)

*Kenneth Gibson (Cunninghame North) (SNP)

Lewis Macdonald (Aberdeen Central) (Lab)

Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

George Burgess (Scottish Government Criminal Justice Directorate)

George Dickson (Scottish Government Police and Community Safety Directorate)

Wilma Dickson (Scottish Government Criminal Justice Directorate)

John Gilruth (Perth and Kinross Council)

Jim Hunter (North Strathclyde Community Justice Authority)

Chris MacIntosh (Crown Office and Procurator Fiscal Service)

Alastair Merrill (Scottish Prison Service)

June Murray (North Lanarkshire Council)

Tom Nelson (Scottish Police Services Authority)

Annette Sharp (Scottish Government Criminal Justice Directorate)

Alastair Sim (Scottish Court Service)

Rachael Weir (Scottish Government Criminal Justice Directorate)

CLERK TO THE COMMITTEE

Mark Brough

SENIOR ASSISTANT CLERK

Lewis McNaughton

ASSISTANT CLERK

Allan Campbell

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 21 April 2009

[THE CONVENER *opened the meeting at 14:06*]

Criminal Justice and Licensing (Scotland) Bill: Financial Memorandum

The Convener (Andrew Welsh): Good afternoon and welcome to the Finance Committee's ninth meeting in 2009 in the third session of the Scottish Parliament. I ask everyone—members and public alike—to turn off their mobile phones and pagers.

We have received apologies from Joe FitzPatrick. In his place I welcome Kenneth Gibson, who is attending as a Scottish National Party substitute. As this is the first time that Kenneth Gibson has attended a Finance Committee meeting in that capacity, I invite him to make a declaration of any interests relevant to the committee's remit.

Kenneth Gibson (Cunninghame North) (SNP): The vineyards in Provence and the château in Tuscany are, I think, the only things that I wish to declare at this time. Sorry, I have no declarations whatsoever to make in relation to the work of the committee.

The Convener: I am tempted to ask more, but I shall resist that temptation.

Agenda item 1 is to take oral evidence on the financial memorandum to the Criminal Justice and Licensing (Scotland) Bill. The committee has agreed to adopt level 3 scrutiny on the financial memorandum. That means that, as well as seeking written evidence, we will take oral evidence from affected organisations and from the Scottish Government bill team. The written evidence that has been received is included in members' papers as paper FI/S3/09/9/3.

Members will also recall that we wrote to the Cabinet Secretary for Justice to ask how he will ensure that certain licensing provisions, which were originally intended to be included in subordinate legislation, are subjected to appropriate scrutiny. Paper FI/S3/09/9/4 is a letter from him that outlines how he proposes to proceed with those provisions in a separate bill.

I welcome the first of our three witness panels. John Gilruth is the lead officer on criminal justice and substance misuse services at Perth and Kinross Council, Jim Hunter is the chief officer of

the north Strathclyde community justice authority, and June Murray is head of legal services at North Lanarkshire Council. Do the witnesses wish to make a short opening statement?

John Gilruth (Perth and Kinross Council): I thank the committee for the opportunity to submit evidence on this important bill, which we believe will reshape the nature of criminal justice social work in Scotland. I express my support and my council's support for the key intention of developing a standard community payback order with variable component parts to reflect both the desire for public restitution and the complex nature of offenders' needs. I further support the desire to reduce the number of offenders in prison, particularly of those who are imprisoned for periods that are so short as to prohibit the undertaking of realistic rehabilitative work.

However, I urge caution on the part of the Government in requiring local authorities, in effect, to double the average number of community service hours worked per offender per week and to take on responsibility for supervising the potentially significant number of persons who are currently sentenced to periods of imprisonment.

In particular, I ask the committee to bear in mind the complex needs of those in the churn of short-term adult imprisonment, many of whom have substance abuse, mental health and chronic relationship difficulties. Many recidivate and do not normally comply with orders. Most have complex needs that require well-constructed care and supervision arrangements.

Over the past four years, Government funding for local authority core criminal justice functions—probation, community service, social inquiry reports and throughcare—has not kept pace with inflation. Those form the basis of our activity. The funding formula that informs the grant to local authorities does not necessarily take into account the greater cost of supervising court orders across dispersed rural populations. The funding formula that is employed at the level of criminal justice partnerships—now known as community justice authorities—is sometimes based on activity levels that are four, five or six years out of date and do not reflect current or immediately projected activity levels.

I ask the committee also to remember that the additional staff who will be needed to oversee the new community payback orders will need to be managed, accommodated and supported administratively. Additionally, in rural areas, they will need to travel substantial distances to supervise offenders. Funding needs to reflect the true local costs of delivering services and the complex needs of those whom Government wishes to prevent from being sentenced to periods of imprisonment.

The Convener: Do our other witnesses want to make a short opening statement?

Jim Hunter (North Strathclyde Community Justice Authority): I have no statement to make. We made a written submission on which I am happy to take questions.

June Murray (North Lanarkshire Council): I do not have a long statement to make. I am head of legal services for North Lanarkshire Council and I appear before the committee in my capacity as clerk to the licensing board. I welcome the opportunity to be here. North Lanarkshire Council will limit its evidence to the licensing provisions of the bill, from which section 129 is, of course, being removed.

The Convener: Thank you for your presence. We look forward to hearing your responses.

If you had been allowed more time to consider the financial implications of the bill, would you have recommended changes to the estimated costs? If so, what would be the extent of those changes?

Jim Hunter: We had three weeks in which to consider the financial assumptions. That did not give us a great deal of time in which to consult our board members or local authority partners.

We have a couple of concerns about the financial memorandum, the first of which is its assumption that existing core funding for probation, social inquiry reports, community service orders and supervised attendance orders is adequate. In our view, that is not the case. Community justice authorities distribute grant to local authorities in two ways: core and non-core grant funding. Each year, we are permitted to seek approval from the Government to vire money from non-core to core funding. This year, six of our eight local authorities either have asked for approval to vire money or are in the process of doing so. North Strathclyde community justice authority is seeking approval to vire about 7 per cent of non-core funding to core funding. That is evidence that existing core funding is not sufficient for purpose. We are concerned that, if we have a large increase in the number of community payback orders, we may have to vire further moneys from non-core to core funding.

14:15

Our second concern is that the financial memorandum might slightly underestimate the number of additional social inquiry reports that sheriff courts might request. When a sheriff sentences someone who is over 21 to a second or subsequent prison sentence of any length, they are not required to seek a social inquiry report and, in most cases, they merely proceed to make

the sentence. Given the presumption against short sentences, we are a bit concerned that sheriffs might ask for social inquiry reports in most cases. They might do that to have the full information about the community options that are available in order to make up their minds that none of those options is suitable, which would mean moving on to a short-term prison sentence. If that were to happen, many additional social inquiry reports that have not been costed in the financial memorandum might be required. Much better men than me have tried to guess what sheriffs' reaction to legislation is likely to be and I could be completely wrong, but what I described is a realistic prospect.

The Convener: How much is the shortfall that you are concerned about? What would be the consequences if the shortfall materialised?

Jim Hunter: In 2006-07, about 18,000 prison sentences were imposed in Scottish courts. About 14,000 of them were for less than six months. I am not sure how many were first sentences or repeat sentences, but a reasonable guess is that at least half were repeat sentences. That means that 7,000 or more additional reports could be requested if the scenario that I relayed came into effect.

John Gilruth: The convener asked whether we can quantify the current situation. I can say with some accuracy that our local budget is between £70,000 and £100,000 short. We have an integrated service in which criminal justice services are delivered alongside substance misuse and youth justice services. Between us, we can achieve synergies. However, the criminal justice budget just to deliver existing services has a shortfall. That is the platform from which we seek to build.

The Convener: You mention a shortfall, but are the costings in the financial memorandum accurate?

John Gilruth: My sense is that the costings are not inaccurate, on the basis of the additional demand that might be expected. I am not sure whether they take into account the additional infrastructure costs that are involved in accommodation, management, clerical support and transport, but the costs for the additional staff who will be required are probably fairly accurate.

Jim Hunter: I agree with Mr Gilruth. The costs that are outlined in the memorandum look fair.

Jackie Baillie (Dumbarton) (Lab): I will press you on that, particularly in relation to scale. It is evident that the policy intention is that anybody who would have served a sentence of less than six months will have a community payback order. The prison population figures that I have found for 2006-07 suggest that 14,686 people are serving

sentences of less than six months. Would dealing with such numbers not require a quadrupling of what you provide for people who have community service orders, for example?

John Gilruth: I can respond only by talking about the local situation, where we have checked the position. Usually, the Scottish Prison Service provides figures in the form of a snapshot, but we asked our colleagues to look into the situation further. As we have a prison on our doorstep, that was not quite as difficult as it might have been. We came up with the figure of 170 people receiving sentences of up to six months. That is slightly less than the number of people whom I have on probation and slightly more than the number whom I have on community service. That would be a significant addition, but we take it into account that we have a building and managers in place. However, additional management and accommodation costs would be incurred. On that basis, we believed that the core figure was not unrealistic for staff but that the support systems had not been fully budgeted for.

Jackie Baillie: But a local figure of 170 would be more than the envisaged take-up of between 0 and 20 per cent. Would that be a fair comment?

John Gilruth: That would be a fair comment.

Jackie Baillie: So the overall scale is in question.

John Gilruth: If the figure is purely for the first stage, it is likely to be adequate. However, the next question would concern the pace at which one might wish to develop things.

Jackie Baillie: The population is about 14,000—or, in your local case, 170. Are those people more likely to be subject to a community service order than, for example, a supervised attendance order? Obviously, one is more expensive than the other.

John Gilruth: I am sorry, can I just check what you mean? Are you asking about the situation at present or after the bill comes into force?

Jackie Baillie: After. I have made the simplistic assumption that, if a person merits a custodial sentence, it is more likely that any measure as part of a community payback order will be more robust than a simple supervised attendance order.

John Gilruth: That is our sense as well. We suspect that many people will be working in the community, and that many will be under community supervision requirements. However, we also have the sense that the total number asked to do unpaid work may rise. That seems to be an increasingly popular means of payback.

Jackie Baillie: That is interesting.

Mr Hunter mentioned the level of reoffending. How many people currently breach their community service orders, their probation orders, or their supervised attendance orders? From your experience, do you expect the number of such breaches to rise under the new proposals, because of the additional freedom that people are being given? What will the additional cost be?

Jim Hunter: It is difficult to say whether the number will rise. At the moment, the breach rate for probation orders and community service orders—the two main orders—probably ranges between 20 and 30 per cent. The breach rate is a bit higher for supervised attendance orders.

People who are subject to the new community payback order with a condition of unpaid work will be required to start on the same day and to move very quickly into their unpaid work, and they will be required to complete the work in a much reduced time. That may have the effect of reducing the breach rate, because we will be striking while the iron is hot—taking someone from the court and getting them started on their placement straight away. It has always been my experience that the longer the period between the sentence being passed and the people starting their unpaid work, the more chance there is that the people will breach their order. People can view it as a sign of softness if things are allowed to drag on. That effect may work in the order's favour and reduce the breach rate. I think that that is a reasonable assumption, although it will be interesting to see whether it is correct.

Kenneth Gibson: Mr Gilruth has touched on some issues that I wanted to ask about. Perth and Kinross Council's submission is interesting. I note your concern that, of the £10 million that will be allocated nationally, Perth and Kinross will get about £190,000 but the actual costs will be between £250,000 and £280,000. You have already said that your budget is short by about £70,000. What budget does your department have at the moment?

John Gilruth: The budget for community-based social work is around £1.3 million.

Kenneth Gibson: So the additional cost may be 10 per cent.

Situations can vary depending on the individual case and the rurality implications, but roughly how much does a report cost? I know that, in a way, I am asking, "How long is a piece of string?"

John Gilruth: No, you are not, but I would need to switch on my phone to give you the precise answer. I checked the figures a little while ago and stored the answers in my phone memory. However, if memory serves, the cost per social inquiry report is about £300 in a given year. The allocated sum is something like that. The figure for

supervising a probation order is about £1,350, and more than £2,000 is allowed for a community service order. However, the biggest costs are incurred around probation and, I suggest, people who are on licence afterwards; £1,350 comes nowhere near the cost of supervising a sex offender or other high-risk offender who is subject to a probation order for three years.

Kenneth Gibson: I understand that. Rurality is also an issue. How concerned are you about rural local authorities—or mixed rural-urban local authorities such as Perth and Kinross Council—getting a fair share of the allocated resources?

John Gilruth: It is a continuing bleat from rural local authorities. However, Perth and Kinross Council covers 2,000 square miles and half our population resides outwith a radius of 5 miles from Perth or Kinross. We cannot write large tracts off as sheep, as we used to do 25 years ago, and think that we will get only a small number of people on community service, because people sometimes deliberately migrate to rural communities seeking anonymity. Throughout Perth and Kinross and other rural local authority areas, there are numbers of people who require to be supervised at high level, and the unit costs in such areas are considerably higher.

Kenneth Gibson: You pointed out that the training requirements will have to be enhanced considerably. Regardless of the costs and assuming that the financial resources could be found, would you have the staff available and how long would it take to ensure that they were properly and effectively trained to deliver an effective service in your local authority?

John Gilruth: In the current environment, I am reasonably confident that we could get the people in place. Most of them would already have the training that we are talking about because they would be social workers or would have a background as social care officers or in working with offenders and supervising in a prison context. If they were going to work in community service, I guess that we could have a staff group in place within six months.

Kenneth Gibson: Would there be a need to enhance secure accommodation in your local authority?

John Gilruth: No.

Kenneth Gibson: Mr Hunter, do you have any comments to add on that?

Jim Hunter: None just now, thank you.

Kenneth Gibson: I will ask June Murray some questions on licensing. Orkney Islands Council's submission states that the costs that relate to the bill's licensing aspects

"cannot be met without further funding being made available"

to local authorities. However, East Ayrshire Council contradicts that and says that section 129, which will be removed, is

"the only provision likely to have a financial impact"

on the authority. Does North Lanarkshire Council agree with East Ayrshire Council that there is unlikely to be much requirement for additional funding, or with Orkney Islands Council that additional resources may still have to be found?

June Murray: North Lanarkshire Council's greatest concern was the prospect of increased costs arising from section 129. Obviously, that might be subject to discussion elsewhere.

We are probably somewhere in the middle. We might not be quite as concerned as Orkney Islands Council, but we have concerns about section 124, which contains proposals for informing individual taxi operators of the setting of taxi fares. That is a new arrangement. The cost has been quoted as £1.08 per letter, but that estimate is limited to the postage cost. In fact, the originating of letters and the administration of dispatching letters must also be taken into account. It depends on whether one considers the administration cost to be marginal or significant.

Kenneth Gibson: What is North Lanarkshire Council's view of that?

June Murray: Our view is that, because it is a new arrangement, which will involve additional work and, therefore, an additional staffing resource, there will be a cost.

Kenneth Gibson: Are we talking about hundreds of pounds or thousands of pounds? North Lanarkshire Council is one of Scotland's largest authorities—it has a population of a third of a million or so—and its view of that might indicate the costs for other local authorities.

June Murray: We will probably require an additional clerical officer to handle the additional administration. That will require around £15,000 per annum.

Kenneth Gibson: If we extrapolate from that figure, we might be talking about expenditure throughout Scotland of £200,000 to £250,000 for all the licensing aspects of the bill. That is a ballpark figure, but is it a fair assumption?

14:30

June Murray: I think that it is a fair assessment. Perhaps we should try to mitigate the cost by dealing with the matter through the trade consultation process; there could be intimidation to the trade rather than to individual operators.

Kenneth Gibson: Do Mr Hunter or Mr Gilruth want to comment on licensing or costings?

Jim Hunter: No.

John Gilruth: No.

David Whitton (Strathkelvin and Bearsden) (Lab): Mr Gilruth, you talked about the possible increased cost of supervising the new community payback orders. In your submission you said:

"In order to oversee the additional offenders on Community Payback Orders, I would anticipate that between 2 and 3 Community Service Supervisors, 1.5 Community Service Officers and between 1 and 1.5 Social Workers will be required."

I understand that there is a national shortage of social workers and social care staff, so where will you get those people from?

John Gilruth: To date, we have succeeded in recruiting the staff that we require.

David Whitton: Are people in place in all the posts that you mentioned in your submission?

John Gilruth: I have not had difficulty in recruiting for vacancies that we experienced during the past year.

David Whitton: You represent just one local authority; every authority will have to recruit staff to implement the new legislation. Are there enough staff around?

John Gilruth: I suspect that it will be possible to find social care officers, who are usually employed to oversee fairly large numbers of people, and community service officers and supervisors. If there is a shortfall I suspect that it will relate to social workers.

The Convener: Can you quantify that?

John Gilruth: I cannot, because that has not been our experience locally.

The Convener: If the other panellists have no further comments on that, we will move on.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I want to ask more about the cost of community payback orders. Excuse my ignorance, but is there currently a requirement to carry out a social inquiry report before providing a disposal for probation or a community sentence?

John Gilruth: Yes. That is routine.

Jeremy Purvis: It is routine, but is it a statutory requirement?

Jim Hunter: Yes.

Jeremy Purvis: The bill will not change the law in that regard, so the assumption about the increase in the volume of community disposals is therefore the critical aspect. Mr Gilruth, you said that there is roughly an even balance between

people who are on probation, people who are on a community sentence and people who are serving prison sentences of less than six months. Is it reasonable to assume that there will be a 20 per cent increase in the workload? If the bill's policy aim is met, I presume that there will be a 30 per cent increase in the use of community payback orders, because 30 per cent is broadly equivalent to the proportion of people who are serving sentences of less than six months.

Jim Hunter: We would probably be leaping into the dark if we tried to come up with an estimate. Currently, justice of the peace courts cannot sentence a person to community service. JPs to whom I have spoken over the years have been keen to get their hands on the disposal, which they regard as valuable for them. The 20 per cent figure might therefore represent an underestimation of how JPs will use the order. However, the new order will be used only as an alternative to custody, and district or JP courts do not sentence many people to custody. The danger would arise if the net were to widen and JPs used the order in cases in which in the past they would not have sentenced the person to custody. We need to keep an eye on that. A 20 per cent increase in the sheriff courts' workload is probably a reasonable starting point. As I say, it is a bit of a leap in the dark and it is difficult to come up with a figure, but 20 per cent would not be an unreasonable figure for the sheriff courts.

Jeremy Purvis: We are looking at the recurring costs. The Government has said what the initial costs will be and has set out the recurring costs based on assumptions of an increase in workload of either 10 per cent or 20 per cent. The cost estimates indicate how much the CJAs will be provided in resource if only two thirds of the intentions of the bill are implemented.

John Gilruth: In my written submission, I talk not only about the introduction of community payback orders but about the attempt to prevent people from going to prison. In some respects, I am more concerned about the figure of 14,000 prisoners that was cited earlier and the local figure of 176 prisoners. Although the situation can be addressed incrementally, there are a lot of people in that group, many of whom have complex needs. Some of them have been on probation or have been given community service a number of times before, and sentencers are saying that there is no point in using those sentences again. However, some of those people might be considered for the new community payback orders. To help those people, there will not be a standard approach; there will be a very structured approach right down to the level of the working day. As I said before I came in here, that is not dissimilar to the approach that we take at present with some high-risk offenders, and that is expensive.

Jeremy Purvis: We are also looking at the requirements that are to be attached to the community payback orders. The Government cites the example of the single community order in England, which has a menu of requirements attached to it that could well be added to the community payback order. However, the Government proposes no increase in the resource that is currently provided to ensure that those requirements are met. That does not match with what you have said about the resource that local authorities expect to receive to enable the new system to work.

John Gilruth: We are talking about a challenging new group of people with highly complex needs, and I suspect that it will test the system all round.

Jeremy Purvis: I hate to say it, but that is a politician's answer. It is a very good one. I think that we would all be very proud of that kind of answer.

John Gilruth: The national standards that apply to probation will simply not be adequate for some of those people. We cannot simply have somebody reporting in once a week or have somebody visiting them at their house once a week. The approach that will need to be taken is the approach that we currently take with some high-risk offenders. In effect, we have to enable them to put a structure round their day. We have something called accommodation support that is much more than that—it is life support. Those people need to be supported in attending appointments and we ensure that the appointments are followed up in order that they keep their employability. We need to bring in drug and alcohol services, not simply make contact with those services a condition of probation, and ensure that the people turn up. We need to construct probation as a supportive exercise—as opposed to simply a sentence—for people with multiple needs, and there will be complex multiple inputs.

Jeremy Purvis: The Government believes that there need be no change to the average number of conditions that are currently attached to a probation order, which is estimated to be 1.2 conditions per probation order. I do not want to put words into your mouth, but is it your view that that number will have to be increased if the orders are to be fully effective in meeting the bill's intentions?

John Gilruth: Yes. For some of the people, it will need to be increased.

Jim Hunter: The bill introduces a quite complex set of inter-effects. Justices of the peace will get orders that they have never had before; a supervision requirement will have to be attached to orders for 16 and 17-year-olds in addition to any

other requirements; and there will be a presumption against short-term sentences. What the Government has done in the memorandum is probably the best that it could do. It has made some reasonable assumptions. However, if the bill is passed, it will be necessary to monitor closely the first year or 18 months of implementation, because I am not sure that anyone really understands yet how some of the measures will affect others. At this stage, it is difficult to predict that.

The Convener: We are hearing the voice of experience.

Linda Fabiani (Central Scotland) (SNP): Mr Hunter, I have a small question for you. You said that justices of the peace do not often deal with custodial sentencing but they might use the orders to displace non-custodial sentencing, which could increase costs. You mentioned the need for monitoring. Is the use of non-custodial sentencing already monitored through the justice system? How will we know whether that is happening? How can we prevent orders from being used inappropriately, which would obviously have a bearing on cost?

Jim Hunter: District courts publish annual statistical information, just as other courts do, so the Government knows how many prison sentences, fines and probation orders district courts impose year on year. At the moment, the number of probation orders that they impose is small—well over 90 per cent of district court sentences involve fines. In the first year or two after the bill is passed, it will become apparent whether there has been displacement from prison sentences or fines to the new community order. Orders will cost the Government much more than fines, so there will be concern if they displace fines. We will look for orders to displace prison sentences, as they are cheaper than such sentences.

David Whitton: You will have seen the written evidence that East Ayrshire Council has submitted on the financial implications of the provisions relating to remand and committal of children and young people. The council says that those provisions will place an additional burden on local authorities, through increased demand for alternative remand accommodation. Would you like to comment on that issue? I ask the question because the number of places and, consequently, the number of staff in the secure unit in my constituency are being halved. That prompts the question of where people will go if they are referred to secure accommodation.

John Gilruth: I am currently employed in criminal justice services, so I will pass on the question. Provision of secure accommodation is an issue for all local authorities and is a major

problem for the larger conurbations. We make minimal use of secure accommodation. The alternative is to provide young people with a complex, structured whole day. That is demanding, but it can be done in most cases. I will not comment beyond that.

Jim Hunter: We did not cover the provisions to which you refer in our written evidence. We have not considered the issue.

David Whitton: Am I right in saying that there are not many secure units? I cannot remember the exact number—there are either six or eight. If it is thought necessary that a young offender should go to a secure unit, but they cannot do so, surely the burden of finding another way of supervising them will fall on you.

John Gilruth: Yes.

Jeremy Purvis: Linda Fabiani asked about the use of orders by JP courts. Am I right in thinking that a high proportion of short-term prison sentences continue to be imposed for fine default and that community payback orders—along with unpaid work and other requirements—will become mandatory in that area? A direct read-across is easier to get by looking at the estimates of how many orders are going to be provided in certain areas. The order will not really be a choice of disposal under the bill.

Jim Hunter: I think that you are right. District courts have been able to impose supervised attendance orders on fine defaulters for a number of years. The new community payback order will be available to the courts for that purpose. You are right that there is a straight read-across.

Jeremy Purvis: You do not think that that changes sufficiently the assumption of a 10 per cent or 20 per cent increase in workload.

John Gilruth: It would depend on the individual area and the individual court. After supervised attendance orders were introduced, certain local authorities, such as Angus Council and Perth and Kinross Council, had a massive take-up, which was not linked entirely to population or the number of known offenders in the area; it was just that some courts chose to use the orders. That has changed significantly over the past two to three years. As Jim Hunter said, the risk might be that the community payback order, which is a new sentence, appears to offer something new, proves very popular in some areas and will be much more expensive to deliver.

The Convener: I want to close this evidence session. Mr Gilruth gave us figures from memory. If he wishes to correct them, he should write to us, which would be appreciated. Do the witnesses wish to make any final remarks?

John Gilruth: I just want to thank you for the opportunity to give evidence.

The Convener: I thank you all for being here and sharing your expertise.

I will suspend the meeting for a few moments to allow our next panel to take their seats.

14:46

Meeting suspended.

14:48

On resuming—

The Convener: I welcome our second panel of witnesses: Chris MacIntosh is from the policy division of the Crown Office and Procurator Fiscal Service; Alastair Merrill is director of corporate services at the Scottish Prison Service; Tom Nelson is director of forensic services at the Scottish Police Services Authority; and Alastair Sim is director of policy and strategy at the Scottish Court Service. I believe that none of the witnesses wishes to make an opening statement.

Jeremy Purvis: I will start with a general question, which is addressed to everyone on the panel. I think that you all indicated in written evidence that you were broadly content with the assumptions about costs that were made in the financial memorandum. I ask each of you to highlight the provisions in the bill that you expect to have the most significant impact on your organisation and to say whether you will have sufficient flexibility in your on-going budgets and structures to address that.

Chris MacIntosh (Crown Office and Procurator Fiscal Service): It appears that the cost of the provisions on disclosure will be the major cost for the Crown Office and Procurator Fiscal Service. We have experience in disclosure because disclosure obligations have been with us for a number of years, and they will now be codified. We based our cost estimates on that experience and we feel that that empirical evidence makes them the best available estimates.

Alastair Merrill (Scottish Prison Service): As Mike Ewart said in his letter to the committee of 10 April, the bill's provisions will have no significant financial impact one way or another on the Scottish Prison Service. The financial memorandum contains a number of illustrative costings that are based on applying the full economic cost of a prisoner place to the Government's assumptions about prisoner numbers, which we believe are a fair reflection of the costs.

Tom Nelson (Scottish Police Services Authority): The bill's provisions on disclosure will affect the Scottish Police Services Authority's forensic services. We provided indicative costs for that in the paper that we submitted to the committee.

Alastair Sim (Scottish Court Service): There are two big issues for us. First, the move towards the increased use of community sentences and a reduction in short prison sentences will bring costs for administration and judicial salaries. Provision will need to be made for an expanded range of review hearings when people are sentenced to community payback orders. Secondly, where sheriffs still choose to give someone a sentence of six months or less, they will have to spend time in court explaining the reasons for that. That will have a marginal cost, because it will increase the amount of time taken by the court to get through its business, which will have a marginal impact on our need to pay for additional part-time shrieval resource. Such costs are reflected fairly in a range of assumptions in the financial memorandum.

The financial memorandum also reflects the fact that there will be costs for the Scottish Court Service from the new disclosure regime. In particular, there will be costs in ensuring that we build an information technology system to support that regime. Again, those costs are reflected fairly in the financial memorandum. We said in our letter to the committee that, to the extent that the bill imposes new costs on the SCS, we would expect funding to follow.

The Convener: Whenever I hear about an IT system being built, I hear alarm bells. Are you sure that that can be done at a reasonable cost?

Alastair Sim: It is the sort of thing that we do a lot. As soon as new provisions are introduced into law, we work either to adjust our existing criminal cases computer system or to build add-ons. When we looked at the bill, we thought that we were talking about a non-trivial investment of probably £50,000 to £100,000 in bolt-ons to our existing IT system. It is non-trivial, but not shuddering.

The Convener: So existing technology would cover it—nothing experimental is involved.

Alastair Sim: That is right—it will not be fancy and high-falutin'.

The Convener: That is reassuring.

Jeremy Purvis: My colleagues will ask about the issues that the panel has highlighted, but I have a second general question on the areas in which the financial memorandum estimates that there will be savings. What are your views on that? The Government has indicated, for example, that there will be savings to the SPS in relation to the early removal from the United Kingdom of

short-term prisoners and savings to the SCS in relation to jury service and bail review appeals. Given that there will no doubt be cuts in your respective budgets, are you content that the savings that are estimated in the financial memorandum have been properly assessed?

Alastair Merrill: As you are aware, the Scottish Prison Service already operates significantly above the design capacity for which we are funded, so, at the margins, regardless of whether additional or fewer prisoners enter the system, there will be no impact in terms of increasing costs or releasing savings. Although we accept that the calculations to which you refer are illustrative of the savings that could be achieved, hard cash savings will not materialise until such time as the prison population has gone down to design capacity level or below.

The Convener: How do you manage to operate above the design capacity?

Alastair Merrill: We have been squeezing in additional prisoners for a number of years. The design capacity of our prisons will rise to just under 7,600 places by the end of the current financial year. That is the level for which we are funded. As of today, the prison population is a little over 8,100.

The Convener: Do you wish to follow up on that, Jeremy?

Jeremy Purvis: No. Other colleagues will follow up on that specific point. However, I would like to find out whether the Scottish Court Service agrees with the proposed savings.

Alastair Sim: What the financial memorandum says about savings is entirely fair, but I draw your attention to paragraph 895, which deals with the savings on jurors' expenses. The clear implication is that if savings are made on jurors' expenses, they will be recycled and used to improve the system for the reimbursement of jurors, which has been the subject of complaint and controversy for some time. As that is a matter of policy for the Scottish Government, the next panel might want to comment on it. The financial memorandum is saying that the relevant proposal will not produce savings for the Scottish Court Service. Any savings will be recycled to enable the jury system to work better.

The Convener: Were you involved in making those savings estimates?

Alastair Sim: Yes.

The Convener: We move on to Derek Brownlee. Oh, sorry—Linda Fabiani has a point to make.

Linda Fabiani: I would like to follow up on Jeremy Purvis's questions to Mr Merrill. I

understand that the bill will not have an impact in the short term—I can see that—and that, as far as the prison infrastructure and everything else are concerned, the basics remain, because you have been operating over capacity, but surely there must be savings to be made in the medium and certainly the longer term as the bill's effects kick in.

For example, given that you are working over capacity at the moment, there must be staffing costs associated with overtime and general costs to do with the basics of ensuring that prisoners are properly and ethically looked after. I find it extremely difficult to accept that the bill will result only in negligible savings. How have those figures been arrived at? I will be open: we are talking about a Government agency and, let us face it, Government agencies and civil service departments generally like to hang on to what they have rather than give anything back. If Mike Ewart is saying on behalf of the SPS that no savings are possible in the medium to long term, there must be a bit more work to be done.

The Convener: Who wishes to rise to that?

Alastair Merrill: There are two questions on two different issues. I was answering the specific question about the savings that the financial memorandum suggests could be made from the measures on the early removal from the UK of short-term prisoners and the remand and committal of children and young people. The savings that the financial memorandum calculates could be made as a result of those measures, which are in the range of tens of thousands of pounds, relate to proportions of prisoner places that one could assume will no longer be needed once the measures have come into place.

My point in relation to those measures is that, given that the SPS is working with a budget of something over £400 million and that the population is already about 400 over the design capacity of the cells, the savings will not actually materialise. The measures will just mean that we will be slightly less overcrowded than we currently are.

15:00

Linda Fabiani has already alluded to the second issue, which concerns the longer-term benefits of the bill. We indeed see longer-term benefits coming out of the measures, particularly the presumption against custodial sentences. Those benefits will materialise in two ways. First, there is a possibility that, if the measures contained in the bill have an impact on the average prison population such that, together with other measures in the Government's offender management strategy, they reduce the average prison

population to a point at which structural changes could be made, which would allow us to save significant amounts in relation to the prison estate or people, cash savings would materialise. We are not at that point yet, however—it is a long way off.

The second area where there would be benefits, and where those benefits would be much closer, lies in reducing the churn in the prison population—the number of people who go through reception and cycle through the system, which chokes up prison staff in moving people around rather than delivering proper sentence management. There would be benefits there, not in cash savings but in a better use of resources and a better sentence management regime. I am not sure whether that helps to answer the question.

Linda Fabiani: I am still not convinced—but thank you.

The Convener: You spoke about the prisons becoming “slightly less overcrowded” than at present. You are therefore saying that overcrowding will continue. What does “slightly less overcrowded” mean in actual figures?

Alastair Merrill: The assumption around the removal from the UK of short-term prisoners was that up to seven prisoners might be eligible for early removal. That would reduce the churn in the system by seven.

The Convener: Overcrowding means stress in any system.

Alastair Merrill: Yes. There is already significant overcrowding, and there is therefore significant stress in the prison system.

Jackie Baillie: I ask this question as a very simple person. In 2006-07, there were 14,686 people serving sentences of less than six months. That accounted for 81 per cent of all custodial sentences. What is the saving that you are predicting on your £400 million budget? What saving are you required to find? You are estimating that only seven prisoners will be removed early, out of 14,686. I am confused.

Alastair Merrill: I am sorry if I have confused you. The figure of seven was an illustration of the provisions in section 19, and it was the largest saving that was quoted in the financial memorandum with regard to the early removal from the UK of certain short-term prisoners. That was a Scottish Government assumption.

A lot of analytical work has been done by Scottish Government colleagues regarding the effect on the Prison Service of the reduction in short-term custodial sentences. I could recite it here, but perhaps it would be better to refer to it in writing to give the committee a fuller explanation. The net effect, as I think is mentioned in the

financial memorandum, is that even a 50 per cent reduction in short-term sentences would probably result, in the longer term, in some 300 prisoner places—not prisoners—no longer being required.

Jackie Baillie: Would that have an impact on staffing? Will your paper tell us that?

Alastair Merrill: We would still be operating above the design capacity, unless other factors come into play that reduce the overall population further.

Linda Fabiani: I think that I would like to have a paper on that specific point, convener. I appreciate the offer of a paper, which I think would be very useful.

The Convener: I call Derek Brownlee. Sorry—I beg your pardon—I meant David Whitton.

David Whitton: That is all right, convener.

I assume that the Scottish Prison Service will still go ahead with building Low Moss prison, which will increase capacity. I ask as I have a constituency interest, but perhaps Alastair Merrill is not the person to answer that question.

Alastair Merrill: Yes, we are still committed to building that prison, the working title of which is, I believe, still Bishopbriggs prison. However, no final decision on that has been taken.

David Whitton: That is very unfortunate. The name should be Low Moss, but I will let that go by.

I want to ask about the costs for the Scottish sentencing council that will fall on the Scottish Court Service. First, is Mr Sim quite happy with the estimate? Secondly, is he happy that the Scottish Court Service will be able to absorb those costs?

Alastair Sim: On the first question, we think that the estimate is certainly in the right ball park.

On the second question, let me make two points. First, if the provision of support for the Scottish sentencing council was imposed on the Scottish Court Service as a new duty, we could not absorb those costs. We would need to be specifically funded for those substantial extra costs. We are already achieving major efficiency savings, which we are investing in integrating the district courts into our operations. That involves major costs and major estate refurbishments. We also have a major programme to keep Parliament house up the road fit for purpose as the home of Scotland's supreme courts. Therefore, we could not absorb those costs.

Secondly, on the policy side, the financial memorandum is quite carefully hedged in what it says about whether the duty will necessarily come to the Scottish Court Service. As members are no doubt aware, under the Judiciary and Courts (Scotland) Act 2008, the Scottish Court Service

will be recreated as a new statutory body with a judicially chaired board—the Lord President will be the chair—on which there will be a judicial majority. The new body, which is likely to be in existence when the bill comes into force, will want to take a view on whether the Scottish Court Service is the right home for the Scottish sentencing council. The suggestion in the financial memorandum makes administrative sense—I can see why the Scottish Government has included that—but I think that the financial memorandum is careful not to express the issue as being an absolutely settled item of policy.

David Whitton: That kind of begs the question why the Lord President, rather than an act of Parliament, should decide where administrative support for the Scottish sentencing council should come from.

Alastair Sim: The matter can certainly be prescribed in an act of Parliament or—I do not know exactly how it will be cast—in subordinate legislation under an act of Parliament. What I am saying is that the current Scottish Court Service cannot commit the new body to taking on a function or express a view on what the new body might think about taking on that function.

James Kelly (Glasgow Rutherglen) (Lab): I have a couple of questions for the Scottish Court Service. On the disclosure provisions, paragraph 738 of the financial memorandum notes:

“There is no indication of the numbers of cases likely to occur at each stage of the proceedings”.

What estimates does the Scottish Court Service have on the additional court time that will be needed as a result of the additional requirements on disclosure?

Alastair Sim: I have the relevant paragraph in front of me in my notes, but I would like to pursue the point in more detail in writing. We made certain assumptions—to be honest, we do not anticipate a huge volume of cases—but the sums that we have done would be better expressed in writing than orally. I think that our calculations are reflected fairly in the financial memorandum. We do not anticipate huge volumes of business as a result of the bill, but it would be helpful if I could write to the committee on that.

The Convener: That would be acceptable.

James Kelly: Yes, it would be useful to have that in writing so that we can see what methodology was employed to ensure that the figures stack up.

My other question follows on from the convener's earlier point about IT costs, many of which will fall on the Scottish Court Service.

Will you think about rationalising the implementation of the changes by putting together a package that streamlines the number of changes that are required, rather than simply implementing a change programme for each issue?

Alastair Sim: We certainly want to introduce the changes as efficiently as we conceivably can. We have a relatively brand spanking new operating system for criminal cases and we will build changes into that. In general, the task should not be particularly difficult.

The Convener: Will you use existing staff or bring in expertise to make the changes?

Alastair Sim: For most of the changes, existing staff will be used. The disclosure stuff looks a wee bit newer and we will have to think about how we resource that.

James Kelly: Will the likes of community payback orders and serious organised crime offences be dealt with in the same operating system?

Alastair Sim: Yes. They will be new parts of the nice, modern operating system that we have.

The Convener: My next questions are for the Crown Office and Procurator Fiscal Service. The financial memorandum uses court figures from 2007-08 as the basis for the cost estimates for the provisions on disclosure. What are the relevant figures likely to be for 2008-09? What fluctuation might be expected? Are you content that staff resources are sufficient to meet any increased demands?

Chris MacIntosh: We have figures that go back a number of years for cases in the various courts. On the basis of those figures, we are confident that the figure in the memorandum—although it is an estimate—is reasonably accurate about what to expect in the following year.

The Convener: On the provisions on witness statements, the financial memorandum says that the costs of £216,000

“are the upper limit of what is anticipated as COPFS will continue to consider methods of carrying out the work that will reduce the financial burden, e.g. through making effective use of IT systems”.

What work are you doing and do you plan to do to reduce the financial burden of those provisions?

Chris MacIntosh: It is too early to say. We do not know the final shape of the provisions, so we do not know what sort of animal we will be dealing with. We cannot set up an IT system until we have the final shape of the provisions, although background work is being and has been done to provide the estimated figures.

The Convener: What timetable is involved? When will you know?

Chris MacIntosh: That is difficult to say. I can write to the committee with that information.

The Convener: Thank you. I call Derek Brownlee—I believe that I missed him out earlier.

Derek Brownlee (South of Scotland) (Con): I will return briefly to prisons and cost. If I picked up correctly what Mr Merrill said, the SPS is funded for about 7,600 prisoners and is dealing with about 8,100. It is obvious that the system has a significant element of fixed costs. From an internal operating perspective, I presume that the SPS considers in its forward planning a range of assumptions about the prisoner population. What ranges of prisoner population does the SPS assume that it might have to provide for?

Alastair Merrill: If I may make a minor pedantic correction, we are funded for prisoner places rather than prisoner numbers. We use a number of cost factors. The full economic cost per prisoner place is the average cost calculated on a resource accounting basis and takes account of running costs, prisoner-specific costs, overheads, depreciation, costs of capital and so on. That is the figure that is used in the financial memorandum—it is a shade over £40,000. The actual figure for 2007-08 was £41,470.

Over and above the design capacity, the actual cost is the marginal cost element. That cost varies from establishment to establishment but, in essence, it is the cost of victualling—keeping the prisoner fed and clothed—and providing person-specific add-on services. That cost is in the range of £3,000 to £3,500 on average—the figure depends on the establishment and the circumstances of the individual.

15:15

On overall numbers, last summer, we commissioned a study on what is called an assessed operational limit, which is the level beyond which each establishment cannot operate without seriously infringing health and safety or other legal obligations. That is a dynamic assessment and it is particular to each establishment. A fairly detailed explanation of that was given to the Justice Committee last autumn. Again, I would be glad to provide information on that to the Finance Committee separately. The limit is used by each establishment for internal planning purposes to manage the overcrowding, and by the service as a whole to manage population levels throughout the establishments.

Derek Brownlee: In simplistic terms, you generate a significant saving only when you get to the stage at which you can close a prison wing or an entire establishment, and you generate significant additional cost only when you are forced into creating an entirely new wing or

establishment. Are those the sort of margins that we are talking about?

Alastair Merrill: In essence, yes.

Derek Brownlee: What sort of numbers would be involved in that? Obviously, a population of 8,100 must be close to your limit.

Alastair Merrill: Assuming a design capacity by the end of this year of about 7,600, we would require a reduction of 500 in average prisoner numbers before the average population was down to the level of the design capacity. We would require a significant reduction on top of that before it would be possible to close an establishment. Closing a house block in a jail would realise some savings at the margins in staffing costs, but there would still be the wider costs of running the other house blocks in the jail.

Derek Brownlee: You are almost saying that, until an establishment opens or closes, the changes in costs are the more marginal ones that you described earlier.

Alastair Merrill: Yes.

Derek Brownlee: I seem to recall in the dim and distant past in the previous session of the Parliament evidence from the SPS about the costs of a prisoner place. If I recall correctly, there was a significant disparity between the cost of a prisoner place in SPS prisons and the cost in privately operated prisons. Is that still valid, or have those figures been superseded by events?

Alastair Merrill: We have a key performance indicator in our annual plan for the average cost per prisoner place, which covers the public and private sectors. That is the annual cost, rather than the full economic cost. I think that the figure last year was £36,500, although I would need to check that in my papers. I am not aware of a significant disparity between the sectors although, depending on accounting conventions, I am sure that one could create different figures.

Kenneth Gibson: I am sorry, but I want to return to the same issue. Jackie Baillie asked about the savings if we had a 50 per cent reduction in the figure of 14,686 prisoners who serve short-term sentences. You said that the reduction would be the equivalent of about 300 prison places. If we reduced by 50 per cent the figure that Jackie Baillie gave, we would have 7,300 such prisoners. The fall in daily prisoner numbers surely assumes a sentence of less than two weeks per prisoner, so surely the reduction in prison places would be more substantial than 300.

Alastair Merrill: As I said earlier, there are two ways of looking at it. One is reductions in the average number of prisoners, that is, the number of people who are locked up each night in our establishments, where the impact would be

minimal—it would be up to 300 places if we had a 50 per cent reduction. The other way is to consider the reduction in churn, or the number of people going through reception. You are right that there would be a significant reduction but, as you say, the average time that short-term prisoners spend in prison is two or three weeks, which means that one prisoner place equates to 26 people spending two weeks in prison.

Kenneth Gibson: Indeed. We are talking about people who are in prison for a short time.

Alastair Merrill: Yes.

Jeremy Purvis: You mentioned in written evidence that the snapshot figure for prisoners currently in the estate was 8,066. Do you have information on how many of those are serving a sentence of six months or less?

Alastair Merrill: Yes. I do not have it to hand, but it is somewhere in my pile of papers.

Jeremy Purvis: It would be helpful to have that figure, because it is critical. If the Government assumption is that there will be a 20 per cent increase in the number of community sentences, that needs to be squared with the current snapshot prison population. The relevant aspect is not necessarily how many people receive the disposal over the course of the year; it is the impact on capacity. I do not know whether you have found the paper.

Alastair Merrill: No. I am sorry, but I do not have the figure to hand. Rather than continuing to rummage through my papers for it, perhaps I could include it in the follow-up.

The Convener *indicated agreement.*

Jeremy Purvis: That figure is critical, so it would be helpful if you found it and gave it to the committee at the end of the meeting.

The previous panel estimated that about a third of prisoners would serve a sentence of less than six months, which is broadly equivalent to the proportion who would be on probation and the proportion who would be subject to a community service order. The previous panel expected that of those prisoners, about three quarters might receive a community payback order. That would be the impact on the current daily prison population.

Alastair Merrill: I will come back to you at the end of the meeting if I find the relevant statistic in my bunch of papers.

James Kelly: In your written submission, you refer to the financial impact on the SPS of amendments to section 18 of the Custodial Sentences and Weapons (Scotland) Act 2007. The financial memorandum states that those

amendments will have no direct cost impact. Is that correct?

Alastair Merrill: The memorandum acknowledges that implementation of the bill will not be possible until the prison population has been reduced to a point at which resources are available to support it. It is also worth noting in that context that, as I understand it, the amended 2007 act will have fewer financial consequences than the unamended act.

James Kelly: Will the amended 2007 act result in any net savings or net costs for the SPS?

Alastair Merrill: That is impossible to answer at this stage. We accept that there will be additional costs, but our assumption is that the act will not be implemented until the prison population has reduced to the extent that the costs can be offset against the subsequent savings.

Linda Fabiani: We have all homed in on poor Alastair Merrill and Alastair Sim. I would like to hear a general opinion from Mr Nelson about where his organisation is coming from on these matters.

Tom Nelson: As I said at the outset, SPSA forensic services will certainly be affected by having to put in place disclosure procedures. We cannot do that work within our current budget. We will be looking for support.

The Convener: I want to bring this evidence session to a close. I offer our panellists the last word.

Chris MacIntosh: I return to a question that I could not answer, about the paragraph in the financial memorandum on what the Crown Office is doing to limit the additional costs in relation to witness statements. I am grateful to my colleague, who has more expertise in the area. The answer is that one matter that is being pursued is the centralised printing of statements, so that when somebody in the Wick office presses a button, the statements will be printed in a centralised printing unit in Glasgow and distributed from there. There will be a minimal saving.

The Convener: Thank you. I draw the session to a close. I thank the witnesses for their expertise and information, which will be of great assistance to us. We will pause while we prepare for today's final panel.

15:27

Meeting suspended.

15:30

On resuming—

The Convener: We move on to our third and final panel of witnesses. Given the wide-ranging nature of the bill, the panel is larger than normal—*[Laughter.]* I meant larger in number; I want to make that clear.

I welcome the Scottish Government bill team: George Burgess, George Dickson, Wilma Dickson, Annette Sharp and Rachael Weir. I invite Mr Burgess to make introductory remarks.

George Burgess (Scottish Government Criminal Justice Directorate): I am head of the criminal law and licensing division in the Scottish Government, which is responsible for co-ordinating the Scottish Government's effort on the bill.

As the committee knows, the Criminal Justice and Licensing (Scotland) Bill contains 148 sections and runs to more than 150 pages. It contains provisions on around 85 distinct topics, ranging from small tweaks to the criminal law to major justice and licensing reforms. Given the bill's size, we thought that it would be most helpful to draw to the front of the financial memorandum all the topics that we consider to have a significant financial impact. For that purpose, we defined "significant" as anything with an impact of more than £400,000 per year. We hope that that presentation helps the committee.

The bill team is larger than usual, as the convener said. I am fortunate to be joined by colleagues who are more expert than I am in particular aspects of the bill. Wilma Dickson will be happy to deal with sections 14 and 17, which include provisions on community payback orders and associated provisions on the presumption against short periods of imprisonment or detention. Annette Sharp will handle questions on amendments to the Custodial Sentences and Weapons (Scotland) Act 2007. George Dickson will assist with queries on serious organised crime provisions. Rachael Weir will deal with questions on sections 85 to 116, which will provide a regime for evidence disclosure in criminal trials. I have left out quite a few sections; I will do my best to answer questions on the remainder of the bill.

It might help if I confirm the recent developments on two sections, which the convener mentioned at the start of the meeting. The committee is aware that Bruce Crawford wrote to the Justice Committee and the Health and Sport Committee last month to announce that we would seek to remove sections 129 and 140 at stage 2. Those sections contain provisions on the sale of alcohol to under-21s and provisions on a social responsibility levy, which will be brought back in another bill later in the year.

David Whitton: The witnesses have been listening to the evidence that the committee has

taken. Do you want to comment on the financial assumptions? No one seems to think that you have got them right.

Wilma Dickson (Scottish Government Criminal Justice Directorate): Perhaps I should respond, given that community payback orders are of considerable interest to the committee. Mr Gilruth raised two separate issues. He was correct to say that we are not adding to the assumed core costs of the orders, other than adding assumptions for the extra bits that we are adding—if you see what I mean.

I will explain that a bit more clearly. Mr Gilruth's concern is that the base unit costs for orders are not high enough. In the bill, we have assumed the core costs rolling forward, and calculated—in the first table in my section of the financial memorandum—the extra costs that are attributable to the additional features that we are adding, such as review hearings and provision for electronic monitoring for breach. The first table—the one that finishes with the additional recurring costs of £3.4 million—tells you how much we reckon it will cost to provide the same number of orders with the additional features for which the bill provides. The base unit costs of the orders are not increased. I hope that that is helpful information.

I preface my next remarks by saying something that I think everyone has said: it is genuinely difficult to predict future sentencer behaviour, especially when sentencers retain the discretion to impose a sentence of six months or less if they feel that it is required. Mr Gilruth based his costings on the assumption that all people, or virtually all people, who currently get a sentence of six months or less will flip over and get a community payback order. In the financial memorandum, we assume increases of 10 and 20 per cent in the use community payback orders, most of which will be attributable to down-tariffing from short sentences. I am therefore not sure that we are all that far apart on the unit costs. However, we make different assumptions on the speed of change.

That is all that I want to say on that point, although I am happy to come back to the committee on it.

David Whitton: How did you come up with the figure of 10 to 20 per cent?

Wilma Dickson: Behaviours do not change overnight. We believe—and I think that folk agree—that the range that we have chosen is reasonable for the likely costings projected over the next few years, as the shift occurs. I would be the first to admit that these are illustrative assumptions based on predictions of sentencer behaviour. Most folk agree that the shift will be gradual, although there might be disagreements

about the speed of change. However, I take the point that people have made about the need to monitor delivery.

Shall I carry on and pick up the points that were made on community payback orders?

The Convener: Yes, of course.

Wilma Dickson: When my mouth dries up completely, I will stop.

The assumption on social inquiry reports was also queried. I accept that we will have to monitor the issue very carefully. As Mr Gilruth said, a social inquiry report is required if you are thinking of sentencing someone who has never had a custodial sentence before or someone who is under 21, however many custodial sentences they have had before. In most of the most vulnerable cases, the current law will continue and a social inquiry report will be required. Judges have the right to require social inquiry reports in other cases, and they frequently do. I therefore agree with Mr Gilruth that we have not built in costings for additional social inquiry reports, but I also agree with him that we will need to keep that under careful review.

David Whitton: I want to go back to the figure of 10 to 20 per cent. Mr Hunter said that, of the 18,000 sentences in 2006-07, 14,000 were for less than six months.

Wilma Dickson: I have had more time to rake around in my folder than Alastair Merrill had, so would it be helpful if I went through the analytical services calculations on how we arrived at the assumptions?

David Whitton: Yes.

The Convener: Please do—as long as you guarantee not to leave us behind after the first sentence.

Wilma Dickson: I will do my best. I have written it all down, because I cannot remember anything for very long.

As Alastair Merrill said, we can calculate the impact of a reduction in short sentences in two ways. First, it can be calculated based on churn, which is the number of people who come through the admissions process, are assessed and go through the core screening but are in prison for a short time only. More than 80 per cent of admissions are for sentences of six months or less, so if we cut that percentage, we will cut the churn and free up quite a lot of prison officer time.

However, we would not free up an awful lot of space in prison. The other calculation, which I got our analytical services to make, is the impact that a 10 per cent reduction in the number of sentences of six months or less would have on the prison population. Counter-instinctively, the

answer is that it would free up only about 50 places, because the average amount of time that someone on a short sentence—that is, a sentence of six months or less—spends in prison is only three weeks. Bear in mind the fact that what counts is not the length of the sentence—there is 50 per cent remission on sentences of that length—but the amount of time that the offender is in a bunk.

Quite counter-instinctively, the two ways of calculating the impact differ widely. Our statisticians estimate that an offender who is sentenced to six months or less spends about three weeks in prison, because the statistics are loaded with sentences of three months or less—they are bottom heavy—and, on average, such prisoners spend three weeks in a prison cell. Given that, you can get 16 and a bit prisoners through a prison place in a year, and although reducing the number of short sentences would save quite a lot of churn, which would free up prison officer time to be more productively used on those who need to be in prison, it would not save a huge number of prison places.

David Whitton: You estimate a reduction of 10 to 20 per cent in the number of short sentences. If 14,000 people were on sentences of less than six months and there was a reduction of 50 per cent, that would mean that 7,000 folk would be thrown on to community payback orders and the local authorities would have to deal with them. Are you confident that the funding would be in place to help local authorities to deal with them?

Wilma Dickson: That is a fair point in that, if we displaced 250 prison places, we would need 4,000 additional non-custodial disposals, which is a high displacement rate the other way. I think that that is the point that you are making. We do not assume that all those people would be displaced; we assume that only 10 or 20 per cent of people on short sentences would be displaced. That would be the major factor in the number of community payback orders. With offenders no longer being sentenced to prison, the most likely outcome—but not the only possible one—would be a community payback order. It is technically possible, although quite unlikely, that offenders would be displaced to fines. It is most likely that they would get level 2 community payback orders, as the other witnesses confirmed.

We make two assumptions: that the number of community payback orders will essentially derive from a reduction in the number of short sentences, and that our best estimate of the extent of that shift in the initial years is between 10 and 20 per cent. We have costed that.

David Whitton: Yes, but you assume—correct me if I misunderstand you—that sheriffs will be reluctant or slow to take up community payback

orders and will still use their powers to sentence people because they do not like being told what to do by anybody else when it comes to sentencing. However, if it goes the other way, with sheriffs deciding that they quite like the new disposal and that it is a much better way of dealing with people, many of whom should not be in prison in the first place, to what extent will there be capacity to meet unexpected demand?

Wilma Dickson: All I can say is that our costing already shows a need for substantial additional expenditure. In the financial memorandum, we have not costed a situation that we estimate to be some way down the track, and I accept that, if there was a complete flip in the next year or two, that would lead to costs that are higher than those for which the financial memorandum allows. That is a fair comment.

15:45

David Whitton: The financial memorandum states that the administrative functions of the Scottish sentencing council will

“be provided by the Scottish Court Service”.

Can you explain how you arrived at the estimate of between £1 million and £1.1 million a year that appears in the financial memorandum?

George Burgess: As Mr Sim said in the previous evidence session, the figure in the financial memorandum is based on the assumption that the administrative functions of the Scottish sentencing council will be grafted on to the new, reformed Scottish Court Service—although the bill does not provide for that explicitly—so that we do not have to bear all the costs that would be incurred by setting up an entirely new body. Paragraph 664 and subsequent paragraphs of the financial memorandum describe the different types of costs. In developing those paragraphs, we looked at the operation of the Sentencing Advisory Panel and the Sentencing Guidelines Council in England and Wales. Again, looking at examples from elsewhere, we made assumptions about the way in which the Scottish sentencing council will conduct its business. The figures that we have developed cover staff costs, displacement of judicial time and other on-costs.

David Whitton: We heard from Mr Sim about a new organisation, which the Lord President will chair, that may not be happy about the Scottish Court Service undertaking the work. If the Lord President says no, what will you do?

George Burgess: If the Lord President says no, we will have to consider whether the Scottish sentencing council should be set up as an entirely separate non-departmental public body or whether its administrative functions could sensibly be

grafted on to another body. As Mr Sim said, the approach that we propose seems to make eminent administrative sense. There is a great deal of logic in the Scottish Court Service, headed by the Lord President, and the Scottish sentencing council, which will also have a judicial head, being closely associated. However, if the Lord President objects, we will have to find other ways of proceeding.

The Judiciary and Courts (Scotland) Act 2008, which Mr Sim mentioned, provides ministers with the power, after consultation with the Lord President, to confer additional support functions on the Scottish Court Service, which already provides support for a variety of smaller advisory and executive bodies. There will need to be further discussions with the Lord President as the bill progresses, to establish whether he is content for the administrative functions of the Scottish sentencing council to be assigned to the Scottish Court Service. All that we have presented is based on that assumption, but we do not say that the Scottish Court Service will definitely provide the functions concerned.

The Convener: Your response has suitably stirred the committee.

Jeremy Purvis: I have two questions for Ms Dickson about community payback orders. I listened carefully to your explanation of displacement from prison places to community payback orders. The first question—which you may say is not relevant—is one that I put to Mr Merrill. What proportion of the 8,066 people who are in prison, according to the snapshot of 8 April from the Scottish Prison Service, are serving sentences of less than six months?

Wilma Dickson: About 8 or 9 per cent of the total population.

Jeremy Purvis: So of the 8,000 who are currently—

Wilma Dickson: I did not catch where the figure of 8,000 comes from.

Jeremy Purvis: It comes from the snapshot of the current prison population that the Scottish Prison Service provided to the committee. We were told that on 8 April the prison population stood at 8,066. What proportion of those prisoners are serving sentences of less than six months?

Wilma Dickson: I do not have the exact figure to hand. It is between 8 and 9 per cent, which equates to 600 or 700 people.

The Convener: Can you provide us with the exact figure?

Wilma Dickson: Yes—that is no problem. The figure is well below 10 per cent.

Jeremy Purvis: You said that the estimate of a 10 to 20 per cent change was the best judgment at this stage with regard to sentencing practice.

Wilma Dickson: And the speed of change.

Jeremy Purvis: And the speed of change. Section 17—"Presumption against short periods of imprisonment or detention"—puts a duty on those giving a short sentence to state why there is no better option for the person being sentenced.

Wilma Dickson: Yes, that is correct.

Jeremy Purvis: Presumably, one explanation for giving a short sentence could be that there are no community services of a sufficient standard with regard to the seven potential requirements in a community payback order. The bill will therefore be skewed not by sentencing practice, given the statutory presumption against short sentences, but by the budget available in any given area. The financial memorandum states clearly that there will be no budget increases for the additional requirements in the community payback order. As far as the financial memorandum is concerned, the budget is frozen—it will be increased only on the volume of orders that are made.

Wilma Dickson: And on the elements that we are adding—for example, the electronic monitoring on breach of an order and the review hearings.

Jeremy Purvis: A sheriff might want to put three requirements on a community payback order, but the financial memorandum states clearly that the Government believes that there will continue to be an average of 1.2 requirements per order. A sheriff could therefore state that he was sentencing a person to prison because the local authority had insufficient provision for the requirements on a community payback order.

Wilma Dickson: Yes, that is a possibility. I cannot say that that was at the forefront of our minds when drafting the provision in section 17, which is like the existing presumption against jailing someone under 21. Ministers have always said that they wish to leave discretion with the judiciary, and the Cabinet Secretary for Justice acknowledged that there may be circumstances in which a judge wants the option of a short prison sentence for an individual, given an accumulation of past offences and the nature of their current offence. In such a case, the judge simply has to explain what the particular circumstances are.

I take your point, Mr Purvis, but what you describe is not what primarily underlies the way in which section 17 is drafted. It essentially gives sheriffs the discretion, which the Government has always said it would leave them, to impose a short custodial sentence if they feel that that is the only sentence that sufficiently displays the court's condemnation of the person's course of action.

Jeremy Purvis: Yes, I understand that, and I imagine that the Justice Committee will consider the policy aspect, but I am looking at the financial aspect—whether the financial memorandum matches the policy intention and what is in the bill.

Section 17 provides:

“A court may pass a sentence of imprisonment for a term not exceeding 6 months on a person only where the court considers that no other method of dealing with the person is appropriate.”

The financial memorandum states that that will apply to between 10 and 20 per cent of individuals; it does not state that it could be applied on a scale from 0 per cent to 100 per cent for all those who could get the disposal of a payback order.

It would be fine if a short sentence was simply a further option that was open to discretion, but it is not open to discretion. There is a statutory presumption and, when a sentence of not more than six months is passed on an individual,

“the court must—

(a) state its reasons ... that no other method of dealing with the person is appropriate, and

(b) have those reasons entered in the record of the proceedings.”

Why does the financial memorandum not state that that could apply to 100 per cent of all those who are currently sentenced to less than six months?

Wilma Dickson: Essentially, that is the same issue as the one that Mr Whitton raised.

Let me clarify one thing. We have costed for the additional requirements that will be imposed as the number of community payback orders increases. That perhaps does not entirely pick up your point because we have not assumed that an increased number of requirements will be imposed. An assumption about the current number of requirements imposed is built into our costings for the additional number of community penalties. I think that your point is that you are not content that the costings cover the potential range of requirements that could be imposed or the extent to which the shift could happen more rapidly.

Jeremy Purvis: There is an issue about the requirements, but it is probably right for the Justice Committee to consider that in more detail. That committee will need to consider whether the bill will satisfy the policy intentions.

My main question is about what the financial memorandum says about the use of community payback orders, given the presumption against prison sentences of less than six months. If the bill is passed, there will be a statutory presumption against prison sentences of less than six months.

By law—except in the case of very short-term sentences of 15, rather than five, days, which is a separate aspect—a prison sentence of less than six months will be able to be applied only if no other method for dealing with the person is appropriate. Therefore, a fair financial memorandum should not suggest that the upper limit for the number of such orders will be one fifth of the number of people who are currently given a sentence of less than six months. The figures are certainly not clear, given the statutory presumption against using such sentences other than when no other method of dealing with the person is appropriate. My question is about the ceiling that seems to have been set.

Wilma Dickson: I take the point, but I can only reiterate that the financial memorandum gives a best-guess assumption about the speed of change in sentencer behaviour in the few years after the legislation is brought into force. Essentially, those are the years that are covered in the financial memorandum. The committee might feel that our estimate is much too low. I understand that point.

Jeremy Purvis: An element will be recurring costs, on which we are supposed to form a judgment. Given an environment in which a statutory provision requires courts to decide that a sentence of less than six months can be imposed only when no other method for dealing with the person is appropriate, community payback orders will surely be used in more than a fifth of cases. We cannot judge what the on-going recurring costs will be if the Government has arbitrarily decided that the upper limit of its estimate is that such orders will be used in only a fifth of cases.

Wilma Dickson: There is no intention to set an arbitrary limit in the financial memorandum, so I am sorry if the committee has received that impression. The intention is to provide the best possible prediction of likely change in the near future. I think that you are articulating a concern that the estimate should have been for 100 per cent.

Jeremy Purvis: I just think that the 20 per cent figure is remarkably low. I have not been able to find in the financial memorandum—forgive me if you can point this out to me—anything that suggests that that is the best estimate only for years 1 or 2. Once the statutory presumption is in place, surely the number of community payback orders will grow to more than one fifth of the number of people who currently receive a sentence of less than six months.

The Convener: An esoteric but very important point has been raised. It might be useful if the officials could think the issue through again and come back to us, as we have taken the matter as far as we can for the moment. We would all like a response on what is a very specific point, so it

might be useful for the officials to consider it before replying.

16:00

Wilma Dickson: Can I clarify what the committee wants? Committee members tell me that they are not happy that we have used such a low range of assumptions in a context in which there is obviously a policy intention to achieve a more major shift away from short sentences and given the drafting of section 17.

Jeremy Purvis: Yes.

The Convener: What we want is an accurate measurement whereby the financial memorandum reflects the actual costs and problems involved. Accuracy is what we are after. Would it be sensible for you to think more about that point and respond to us in writing rather than pursue it now?

Wilma Dickson: I am very happy to respond in writing, but all I can say is that these are assumptions and predictions. I can do the very best I can, and I am happy to come back. I think that the point is about what is a fair assumption in the circumstances of the bill.

Kenneth Gibson: Let us move on to licensing.

You will have heard the questions asked to June Murray and John Gilruth on the impact on the bill following the removal of sections 129 and 140 on licensing. Some local authorities, such as Orkney Islands Council, say that the cost relating to licensing aspects of the bill cannot be met without further funding. Dumfries and Galloway Council appears to support that view, although East Ayrshire Council says that, following the removal of section 129, the only provision that is likely to have a financial impact is the one on the proposed notification process. What will be the overall impact on the bill of the removal of sections 129 and 140 on licensing? What will be the impact on the bill of the remaining licensing proposals? This question may be down to George Burgess as the guy who fills in all the gaps.

George Burgess: You will see from the financial memorandum that the social responsibility levy provisions and the age 21 provisions were among those that were flagged at the beginning as—

Kenneth Gibson: Large numbers

George Burgess: Yes, having large numbers attached to them. The licensing provisions that remain in the bill are of a much smaller order in terms of finances.

I am afraid that I am not entirely clear as to the particular provisions to which Orkney Islands Council's submission refers. I suspect that its comments may relate to section 129 and may

have been submitted before the Government's announcement about the future of that section, although they may relate to other provisions. I am not clear which provisions it thought might raise an issue.

Kenneth Gibson: Might there be some confusion about when the submission was made and to what sections it relates? As a committee, should we go back to the local authorities to clarify, given the removal of sections 129 and 140, whether they still have financial concerns and the extent of those concerns?

George Burgess: Some of the issues raised by others were about specific sections—

Kenneth Gibson: Yes, Dumfries and Galloway Council.

George Burgess: On taxi licensing, for instance. That is fine, and the point is still clear, but in relation to the Orkney Islands Council's submission it may simply be a matter of timing and that the comment relates to a section that is now for another day. By all means, if Orkney Islands Council has concerns about sections that will remain in the bill, we will be happy to look at them.

Kenneth Gibson: Regardless of its view, what is your view on the impact on local government of the licensing provisions that remain?

George Burgess: In the financial memorandum we cost the provisions that will remain in the bill. We think that quite a few will lead to a more efficient licensing system and potential savings for the licensing boards and police in operating it.

Kenneth Gibson: Effectively you are saying that the system should be met from existing budgets.

George Burgess: The Cabinet Secretary for Justice made it clear that he expects the liquor licensing regime under the Licensing (Scotland) Act 2005 to be self-financing out of fees. Over the years, the current regime under the Licensing (Scotland) Act 1976 has ceased to be self-financing, so there is a significant subsidy from the council tax payer to the cost of administering it. With regard to licensing, the Civic Government (Scotland) Act 1982 contains a statutory requirement to attempt to balance the costs and income from fees, so we expect the authorities to set their fees at a level that achieves cost recovery.

The Convener: Linda Fabiani has a quick point on the issue that Jeremy Purvis raised.

Linda Fabiani: I apologise to Wilma Dickson for returning to it; George Burgess is probably involved, too. Assumptions need to be made and it is fine to obtain clarification, but we should not assume that the figure could be 100 per cent,

because a great deal hangs on the word “appropriate”, which is in the bill. It might be a good idea to get our clerks to look out what the Justice Committee said about appropriateness for sheriffs, because we all know that one of the great things about our judicial system is the discretion that is available to the judiciary.

I seek clarification on the figure of 14,600, which we are hearing a lot about.

Jackie Baillie: It is 14,686, to be precise.

Linda Fabiani: Jackie Baillie wrote that down. It is the number of people who received sentences of less than six months. Do we have an idea of how many of those sentences related to repeat offences or how many of the people who received them ended up with sentences that ran concurrently?

Is it the case that a social inquiry report is needed every time someone comes to court, even if they are a repeat offender? Excuse me if that information is in the paperwork and I have missed it. Is it the case that a social inquiry report stands for a certain length of time?

Wilma Dickson: A social inquiry report has a shelf life—I am trying desperately to remember whether it is three months or six months. There is a requirement to obtain a new social inquiry report after a short period of time and, if I write to the committee, I will confirm what that period is. I should remember off the top of my head; I know that it is three months or six months.

Your other point was about repeat offending.

Linda Fabiani: As it relates to the short sentences that are handed out.

Wilma Dickson: I do not have the figures with me, but we can confidently say that there is a very high level of repeat offending.

Annette Sharp (Scottish Government Criminal Justice Directorate): I do not have the figures to hand, but the Scottish Prison Commission considered the issue. It recommended that there would have to be exceptions to any presumption against prison because there are sex offenders, violent offenders and people who have a long list of previous convictions. We asked our analytical service colleagues to examine the potential impact of excluding those people, and they calculated that in almost 50 per cent of cases there would be a presumption against sending someone to prison. We can get those figures broken down if that is helpful.

Wilma Dickson: In other words, a substantial proportion of offenders would have a track record of one conviction or more. We can easily get you the exact figures.

The Convener: Derek Brownlee has been extremely patient.

Derek Brownlee: I have a relatively quick question on the assumptions about the sentencing council, which we touched on earlier. It strikes me that, for a body with a budget of just over £1 million and a staff of 11, a chief executive salary of almost £100,000 seems rather excessive in these straitened times.

George Burgess: I agree. A salary of £100,000 would be excessive, but the figure that is given in the financial memorandum is not a salary. It represents the complete cost to Government of the post, which is pitched at deputy director or division head level. I would love to receive a salary of £100,000.

Derek Brownlee: It is mentioned that the costs of the sentencing council are based on

“similar organisations in terms of size”,

so would it be accurate to say that similar organisations with similar budgets and similar staffing complements have a chief executive post, the total cost of which is around £100,000?

George Burgess: Broadly, yes. The post in the Sentencing Guidelines Council and Sentencing Advisory Panel for England and Wales is graded at the same level. Another post that I can think of that is graded at an equivalent level is the chief executive of the Scottish Criminal Cases Review Commission. I am sure that the committee has seen information on chief executives’ pay regimes.

Typically, such a body would have a post at the proposed level. Some bodies of such a size have chief executives or secretaries who are on a lower pay scale but, equally, other such bodies have chief executives who are on a higher rate. We think that the post is pitched reasonably. Ultimately, it will be for the sentencing council to determine the level at which it pitches its chief official and other staff, but we think that we have used a good basis for the costing.

Derek Brownlee: Similarly, the assumption that the accommodation will be in central Edinburgh is not prescriptive. If the assumption that the sentencing council will meet one day a month is correct, it is excessive to spend £165,000 annually on a conference room—a boardroom—in central Edinburgh when the support service could be based in many locations around the country that are significantly less expensive.

George Burgess: Indeed. The bulk of the staff could be located pretty much anywhere in Scotland—the research functions could be undertaken just about anywhere. As for meetings of the body, when the body is to be chaired by a top judge, I suspect that a strong preference will

come from that quarter for it to be based in Edinburgh or Glasgow.

Derek Brownlee: Particularly if the budget for the council comes from the Scottish Court Service.

The Convener: Jackie Baillie is becoming impatient, which is dangerous. I want three quick questions. The first will be from James Kelly.

James Kelly: I have two quick questions. On costs that will be attributable to the Scottish Court Service, paragraph 738 of the financial memorandum says that

“There is no indication of the numbers of cases likely to occur”

as a result of the new disclosure requirements. Given that, how was the estimate of 4,200 cases in paragraph 761 arrived at?

Rachael Weir (Scottish Government Criminal Justice Directorate): It would probably be more accurate for the financial memorandum to say that estimating the number of cases with any certainty is difficult. Broadly speaking, we can predict on the basis of figures from 2007-08 the overall number of cases that might be dealt with, but the bill will introduce new forms of hearings. Whenever we enter into such an arena, it is difficult to predict the numbers with accuracy.

That said, we thought that it would not be satisfactory for us simply to say that it was impossible to predict the figures, which is why we attempted an estimate in paragraph 761. I understand why that might be seen to be contradictory, but the intention in paragraph 761 was to put some flesh on the numbers.

James Kelly: How was the estimate of 4,200 arrived at?

Rachael Weir: The estimate of 4,200 cases at preliminary hearings or first diets was based on the figures that the Scottish Court Service provided for preliminary hearings at present.

James Kelly: I have another quick question, convener.

The Convener: Okay.

James Kelly: Paragraph 746 says that police costs will be £5.3 million, but the table below the paragraph says that the costs will be only £3.5 million. Why does the table not include the £4 million for training costs in 2009-10?

Rachael Weir: The figures in the table are deliberate. The reason for that is linked with what Mr MacIntosh from the Crown Office and Procurator Fiscal Service said about the disclosure provisions in general.

The disclosure regime is being put on a statutory footing, although it exists already. There are

currently obligations incumbent on the Crown in relation to disclosure and, as a consequence, the police require to take certain actions to ensure that the Crown is fully equipped to perform its functions.

There is currently a programme of training to ensure that officers are in the best possible position to carry out their functions. That is not a direct cost of the bill as such. We have reflected the direct costs of training separately in the table; other costs are incurred to ensure that officers are in the best possible position to implement the legislation in due course.

16:15

James Kelly: So the £4 million of costs for 2009-10 do not directly relate to the bill.

Rachael Weir: They do not.

David Whitton: I have a quick question for Mr Dickson, who has been sitting quietly waiting for his chance. On the involvement in serious and organised crime, paragraph 700 of the explanatory notes says:

“We anticipate around 2 new cases per year.”

George Dickson (Scottish Government Police and Community Safety Directorate): Yes. That was based—

David Whitton: How do you get to that number?

George Dickson: That was based on information given to us by the Crown Office and Procurator Fiscal Service.

David Whitton: So there will be two new cases, but we might get a bundle of other cases that we would normally get anyway.

George Dickson: Yes—there is a likelihood of a prosecution for different offences, but the information from the Crown Office indicated that there are likely to be only two prosecutions for the new offence that we are creating.

David Whitton: I am not sure who might answer this question about the Custodial Sentences and Weapons (Scotland) Act 2007. You will have seen the responses that we have received from the Scottish Prison Service and the Scottish Legal Aid Board on the matter. Why has the likely impact of that legislation not been included in the financial memorandum for the bill?

Annette Sharp: The impact of the changes to be implemented under the bill is included in the financial memorandum, at page 123. As it shows, the Government estimates that, once the 2007 act is modified, the consequent sentence management regime would cost less than the measures contained in the act as it stands.

In the financial memorandum, we reflect the costs that would arise if we implemented the Custodial Sentences and Weapons (Scotland) Act 2007 as it stands. That means applying a custody and community sentence to those who are sentenced to 15 days or more. The evidence that was given during scrutiny of the Custodial Sentences and Weapons (Scotland) Bill suggested that it would be unworkable to apply such sentences at 15 days. Severe pressure would be put on the Prison Service and the local authority criminal justice services. In the financial memorandum, we have reflected on the impact of moving that threshold from 15 days to, say, a year, on the Prison Service, on criminal justice services and on the Legal Aid Board. The fewer people who are on custody and community sentences, the more the costs are reduced, as would be the case at the two-year stage—if the measures are applied, as recommended by the Scottish Prisons Commission, to all those who are serving two years or more. In that case, the costs reduce.

David Whitton: So you think that you have answered the points that the SPS and the Scottish Legal Aid Board have made about that.

Annette Sharp: Yes.

David Whitton: Okay. I will let them be the judge of that—I am not sure that I am qualified to make that judgment.

I asked a witness on the previous panel about the additional burden that might fall on local authorities through increased demands for alternative remand accommodation for young offenders, particularly children. Have you any comment to make about East Ayrshire Council's comments on that?

George Burgess: That is dealt with in the financial memorandum at paragraphs 841 and 842. The normal place for those youngsters to be remanded would indeed be in secure accommodation. Only in relatively rare and—judging by the figures referred to in paragraph 842—a decreasing number of instances are they placed on judicial unruly certificates and put into the prison environment. That is a policy matter, but there seems to be general agreement that putting them in the prison environment is not the right thing to do. The financial memorandum reflects the fact that there is a transfer of the responsibility from the Prison Service across to the local authority sector to provide for that.

David Whitton: Yes, but that puts the onus back on the local authority to provide some kind of secure remand facility. At the moment, there is a secure unit in my constituency that has 31 places. It is going to be cut in half and, in the future, will have only 18 places. As a consequence, the staff number will also be halved. One of the reasons for

that is the fact that people are not being put forward by local authorities for one of those places. If they are not in there, they must be somewhere else; therefore, the cost surely falls on the local authority.

George Burgess: The memorandum identifies the fact that there is a cost to the local authorities of doing that. However, if the measure is passed, it will increase the demand for local authority secure accommodation and might reduce the need for the sort of reductions to which you refer. At the same time, it would produce a saving to the Scottish Prison Service.

Jackie Baillie: I was going to ask you all about community payback orders and I will not resist the temptation, despite the fact that much of the field has already been covered.

It is helpful that—if I understand correctly—you are going away to reflect on a possible increase in the number of social inquiry reports. However, I did not hear a similar commitment to an uplift in unit cost. Could I invite you to give such a commitment, given that the policy would, on the basis of the evidence that we have received from the community justice authorities, be underresourced from the start because of the significant challenges that the CJAs face?

Wilma Dickson: I can certainly undertake to go away and think about that, but I could not say any more about it now.

Jackie Baillie: That is very useful and helpful. We will also get a paper about the assumptions regarding the scale of the likely take-up of community payback orders. Somebody from the community justice authorities described the cost estimate for the policy as a leap in the dark. I accept that assumptions have to be made, but it is our duty to test their robustness. For example, the consequence of the 14,686 prisoners who are currently serving short-term sentences all getting community payback orders would be an increase in the scale of the cost, which would be £32 million rather than what is in the financial memorandum. It is, therefore, quite urgent that we get some clarity on that.

Wilma Dickson: I am happy to take away that request. I cannot respond to it immediately.

Jackie Baillie: That is fine.

This may be a question for George Burgess. To what extent is the cost estimate accounted for in the justice budget? Will the money come from another area of spend or is it new money? Also, within what timescale do you expect the eventual cost to be incurred?

Wilma Dickson: "Protecting Scotland's Communities" states that our immediate priority is to lay a foundation for the future and build a robust

model of community sentences that commands public respect. In a sense, the first priority is to invest in getting the current sentences robust, with more effective ways of dealing with breach but also more supportive follow-up. That is the first stage, which is reflected in the first bit of the financial memorandum. The cabinet secretary has made it clear in recent public statements that investment in that area is a high priority for him—it is probably his top priority in the justice portfolio. To be fair, it is not all about investment; it is also about making more effective use of other resources. However, I accept that that argument will not get me very far this afternoon.

The answer is that we will have to find resources. That is a matter for the justice portfolio as a whole. George Burgess may want to add to that.

George Burgess: I do not have much to add. Overall, for simplicity rather than for any other reason, the figures in the financial memorandum have been based on the assumption that all the provisions in the bill will come into force in April 2010. Therefore, 2010-11 is the first year of costing. That is simply for illustrative purposes. At this stage, we have not set an implementation timetable for the whole bill, although individual policy areas might have timetables in mind for the implementation of particular measures. We have not set an implementation timetable for the whole bill—that might be counting our chickens.

Wilma Dickson: It is fair to say that, given the current economic climate, there are uncertainties ahead. After the budget tomorrow, we will be a bit clearer about the overall financial situation for the Government. It is clear that we can expect public expenditure to be quite constrained.

Jackie Baillie: I just want to be sure that I understand this. The first stage is to build confidence in the new system. Thereafter, the bill remains a high priority for the Cabinet Secretary for Justice. However, what I am not hearing is that the money is committed for a particular timescale and when all the costs will be met. You are introducing a bill, but some of it might not even be enacted.

Wilma Dickson: I would not say that. You have to accept that there are quite severe constraints on public expenditure at the moment, which affect prioritisation across the Government. The Government, across the piece, has to look at the position post budget and going into the new spending review period and it has to identify where it is going. It is rather hard for me to answer your question at this point.

Jackie Baillie: I suspect that the question is for ministers, rather than officials, but I always thought that legislation was an expression of the

Government's priorities and that resources should follow. I am slightly disturbed by the disconnect, but that is an issue to raise with others.

I want to ask about a couple of tiny things. First, we heard from Mr Merrill earlier and from you that the saving for the Scottish Prison Service was to do with the churn, rather than the number of places. That being the case, can you give me an idea of what kind of saving would result? People talked about prison officer time; I think that Mr Merrill even talked about staffing levels. When do you anticipate that the saving would be made and what will be the scale of it?

Wilma Dickson: We have to be clear whether we are talking about a cash saving or a staff-time saving. Any reduction in overcrowding relieves pressure on staff time. It frees up staff for more productive activity with people who really have to be in prison. It is fair to say that the Government's first priority is public protection, part of which has to be about delivering prisons that are fit for purpose and providing accommodation for individuals in conditions that promote their rehabilitation. That is the other side of this argument, if you like.

It is not really for me to answer the question about cash savings—it is more for the SPS to answer that. The general view is that to make substantial staff-time and cash savings you would probably have to be able to close either a cell block or, preferably, a prison. Is that a fair statement?

Annette Sharp: Yes.

Wilma Dickson: That is the general approach. We identified in the work that we did with our analytical services folk that, because people spend such a short time in prison, you have to cut an awful lot of sentences before you make a serious impact on prison places. The figure that we were given was that if the number of short sentences was reduced by 50 per cent, that would save about 300 prison places—that is not a prison. I do not want to put statements in the mouth of the Scottish Prison Service—that would be a little unfair—but that gives you an idea of the scale of the issue.

Jackie Baillie: To be fair, given that the Scottish Government funds the Scottish Prison Service, I would have looked for the Scottish Government to have a role in identifying the likely savings, whether they are cash or time-releasing savings. I hope that that can be given further consideration.

Our understanding is that justice of the peace courts will now be able to put in place community payback orders. Was that factored into the analysis of scale that was done?

16:30

Wilma Dickson: In a sense, justice of the peace courts already have the power to give probation orders, which are the largest single community disposal. Essentially, what is being added is the power to make unpaid work-related orders, which are the next biggest disposal. I fully accept that the use of such measures is likely to grow. I suspect that an element of the increase of between 10 and 20 per cent in community payback orders will be a relatively small initial increase in their use by the justice of the peace courts, but we have very little experience of how the courts will use the new disposal.

Jeremy Purvis: The community justice authorities stated in their written evidence that they had

"insufficient time to consider the financial implications of this Bill and to consult CJA Boards and other partners."

Why was that the case? That is probably a question for Mr Burgess.

George Burgess: Is that in relation to the—

Jeremy Purvis: To the financial memorandum.

George Burgess: Am I not right in thinking that the committee requested the CJAs to consider the financial memorandum?

Jeremy Purvis: We asked bodies whether they had sufficient time to contribute to the consultation exercise on the financial assumptions in the financial memorandum. You heard members of a previous panel say that the Government did not give them sufficient time to consider the financial implications of the bill. Why was that? Does the Government have a view on what the community justice authorities have told the committee?

The Convener: There is some puzzlement.

George Burgess: I am not quite clear that I understand who was consulted and on what, and at what stage the community justice authorities thought that there was insufficient time. The Government set out the proposals that are contained in the bill last autumn.

Jeremy Purvis: I will help. In their submission, the community justice authorities said:

"Community Justice Authorities were consulted regarding the Bill as outlined in the Policy Memorandum, however, we were not consulted on the financial assumptions as these were only made available to us on 13 March 2009."

They said:

"There has been insufficient time to consider the financial implications of this Bill and to consult CJA Boards and other partners."

Why was that the case?

George Burgess: I will ask Wilma Dickson to respond in a moment on the involvement of the

community justice authorities in the development of the costings. However, I am not clear why the community justice authorities should only have had the figures in the financial memorandum available to them a week after that memorandum was on the Parliament's website and in the public domain, or about what they thought they were not consulted on.

Jeremy Purvis: If you do not have a clear answer to my question this afternoon, perhaps you could come back to us on it. You will be able to refer to the written evidence that the community justice authorities provided and to read the *Official Report* of the meeting, which will contain what they said to us. There does not seem to be a clear explanation about why they were provided with or had access to information only on 13 March 2009. You could come back to the committee on that.

The Convener: It would be a good idea to follow up that matter in writing, as I do not think that we will take it any further today. The committee could write to you and you could respond.

George Burgess: Yes.

The Convener: Are you finished, Mr Purvis?

Jeremy Purvis: That was my question.

The Convener: The committee has no further questions. Do the witnesses wish to make any final statements?

George Burgess: May I be permitted to ask a question? I return to Mr Whitton's first question, which was a general question about the bill and whether we had any comments to make on what might have been identified as disparities. I think that it was clear from the discussion that followed that the question was principally about community payback orders, but I want to check whether it was wider. Are there any other bits of the financial memorandum to the bill that the committee has concerns about and which have not come up in the discussion?

The Convener: There do not seem to be. That being so, I thank George Burgess, George Dickson, Wilma Dickson, Annette Sharp and Rachael Weir for their presence at the meeting and their evidence. There will be a suspension for a few moments to allow them to leave.

16:34

Meeting suspended.

16:35

On resuming—

Decision on Taking Business in Private

The Convener: Do members agree to consider in private at a future meeting a draft report on the financial memorandum to the Criminal Justice and Licensing (Scotland) Bill?

Members *indicated agreement.*

Budget Adviser

16:36

The Convener: Item 3 is consideration of whether the committee wants to appoint a budget adviser for the second half of the parliamentary session. The current contract expires in the summer. Members have a note from the clerk, which outlines the process. Do members agree in principle to seek approval for the appointment of an adviser?

Members *indicated agreement.*

The Convener: We will seek the Parliamentary Bureau's approval, and the Scottish Parliament information centre will prepare a shortlist of candidates for the post, for discussion at a future meeting. Do members want to comment on the draft specification for the post, which is included in our papers?

Derek Brownlee: I have three minor points. First, paragraph 1.2 reads almost as though the screening of candidates has taken place—that might just be my reading of the paragraph. The screening has not happened, so the paragraph could be made clearer.

My other points are about the detail of the specification. Under the final bullet point under the heading, "Arrangements for each year's budget process", on page 4, it is proposed that the adviser should

"assist in the recommendation, where appropriate, of alternative spending priorities."

The word "recommendation" is a bit strong; we are talking about advice and not recommendations.

The Convener: Do you have an alternative formulation? Should we replace "recommendation" with "analysis"?

Derek Brownlee: Yes. My final point is also rather picky. Paragraph 5.2 proposes that

"Experience with working with politicians and committees would be a distinct advantage."

I agree, but keeping that sentence in the specification might preclude people who are not already in the system. It implies that someone who is in the system will have a better chance of being appointed. We should encourage as wide a range of people as possible to come forward.

Linda Fabiani: Perhaps we could take out the word "politicians" and just ask for experience of working with committees.

Derek Brownlee: I would be inclined to take out the whole sentence.

Jackie Baillie: I hesitate to say this, but we are strange creatures.

Linda Fabiani: Committees, or politicians?

Jackie Baillie: I take the point that saying that experience with politicians would be “a distinct advantage” gives the issue more profile than it needs. However, such experience would be preferable.

Linda Fabiani: We could say that such experience “may be advantageous”.

Jackie Baillie: There is a point about having someone who knows how to work with disparate politicians.

Derek Brownlee: That is a fair point.

The Convener: Can anyone suggest a form of words that would address the issue?

Linda Fabiani: “May be an advantage.”

Derek Brownlee: That would deal with the issue. I told you that it was a picky point.

Linda Fabiani: No, it is important. I am not as picky as Derek Brownlee, but I want to ask whether the specification that we are considering is standard. Do specifications vary hugely?

Mark Brough (Clerk): The standard contractual material is provided by the Parliament’s procurement department. The material that is specific to the Finance Committee is based on the current contract with Professor Bell but has been updated slightly to take account of developments during the past couple of years. The committee is welcome to amend that material in any way.

Linda Fabiani: That is fine.

The Convener: Our discussions on the review of the budget process and support for budget scrutiny might lead to recommendations on the role of budget advisers, but we will deal with such matters in due course.

If members are happy with the specification, we will move into private session, as we agreed at a previous meeting, to consider the evidence that we heard on public sector pay.

16:40

Meeting continued in private until 16:45.

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