COMMUNITIES COMMITTEE

Wednesday 21 April 2004
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE
15th Meeting 2004, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
*Mary Scanlon (Highlands and Islands) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)
*Ms Sandra White (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Mrs Mary Mulligan (Deputy Minister for Communities)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 21 April 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:01*]

Interests

The Convener (Johann Lamont): Welcome to this meeting of the Communities Committee. I hope that everyone had a productive and useful recess.

For agenda item 1, I welcome Sandra White as a new committee member and ask her to declare any relevant interests.

Ms Sandra White (Glasgow) (SNP): Thank you, convener. I am pleased to be a member of the Communities Committee. I have no interests to declare.

The Convener: Sandra White and I were together in the predecessor committee, so I look forward to working with her again.

Subordinate Legislation

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 (SSI 2004/117)

10:02

The Convener: Item 2 is consideration of the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 (SSI 2004/117). Members have been provided with a copy of the order and the accompanying documentation. Do members have any comments?

Stewart Stevenson (Banff and Buchan) (SNP): I read with interest the Subordinate Legislation Committee's comments on the instrument, especially its comments on regulation 6(o). Like the Subordinate Legislation Committee, I could make sense of that paragraph only by phoning someone in the Executive and having them talk me through it. The instrument is deserving of our support, but we should support the Subordinate Legislation Committee's observations about the drafting, which falls short of the standard that we should expect.

Donald Gorrie (Central Scotland) (LD): I agree. In so far as I can understand them, the regulations are ambiguous. The Subordinate Legislation Committee has hit on the right point. The matter should be raised with the Executive as an example of defective drafting.

The Convener: We must decide whether to make any recommendation on the order in our report. Are we content with the order?

Members *indicated agreement*.

The Convener: Do members agree that we should comment on the order as Stewart Stevenson has suggested?

Members *indicated agreement*.

The Convener: I therefore ask members to agree that we report to the Parliament our decisions on the instrument. Are we agreed?

Members *indicated agreement*.

Procedures Committee Inquiry

10:03

The Convener: For agenda item 3, members are invited to consider previously circulated correspondence from the convener of the Procedures Committee, which is conducting an inquiry on timescales and stages of bills. We need to comment on the correspondence and decide whether we wish to make a submission to the inquiry. We will have a brief discussion and then pull something together that will be circulated and agreed at a later meeting, if that is acceptable.

Stewart Stevenson: Alasdair Morrison and I have been asked to give the Procedures Committee oral evidence on the subject next week, because we were on two of the committees that were involved in considering the Land Reform (Scotland) Bill. That was a major piece of legislation that the Procedures Committee thinks will illustrate some of the issues that are associated with the way Parliament deals with bills. I am preparing written evidence for the Procedures Committee, which I will be happy to copy to this committee for information. The committee might come to views that are entirely different to those that I choose to express to the Procedures Committee, because each member has their own experience.

Mary Scanlon (Highlands and Islands) (Con): Although I appreciate that the Procedures Committee is examining the legislative process—stages 1, 2 and 3 of bills—I do not want us to lose sight of post-legislative scrutiny and post-implementation scrutiny. We enact in good faith bills such as the Community Care and Health (Scotland) Bill, which introduced free personal care for the elderly, and the Mental Health (Care and Treatment) (Scotland) Bill, both of which I was involved in considering, but it might be helpful if there was a process through which to determine whether what we agreed to was being implemented as we assumed it would be implemented. I wanted to flag up the point that we should consider that as well as the passing of legislation, although I realise that the Procedures Committee is not asking for evidence on that.

The Convener: One of the important things to consider is whether we have created legislation that can be implemented. We could, on a road that is paved with good intentions, pass legislation but then discover that it does not work. I hope that the learning process could be fed back into the legislative system so that some of the debates on bills could be about something other than what is going to happen later.

Mary Scanlon: I agree. We have only to consider our experience at the earliest stages of the Antisocial Behaviour etc (Scotland) Bill. We have found that actions can be taken, but that authorities seem to be reluctant, for whatever reason, to do so. I am thinking of antisocial behaviour orders in particular, although I realise that they were not introduced by this Parliament. If we consider only the procedure for the progress of bills through the Parliament, we will miss a wonderful opportunity, which I would like to be flagged up.

Donald Gorrie: I will go through the points in the Procedures Committee's paper. First, we never have enough time for anything, but I feel that evidence taking at stage 1 is done quite well and that we consult properly about most bills before they go through Parliament. The next bullet point in the paper is about the timetable for stages 2 and 3, which I think are far too rushed. We could get through as much legislation as we get through at the moment, but in a more ordered fashion.

For example, because I spent last week in bed I was a bit behind the pace, but I could still have lodged amendments to the Antisocial Behaviour etc (Scotland) Bill for debate today until 2 pm on Monday. That is ridiculous; such late lodging does not allow for consultation of outside groups and it allows only hurried consultation with colleagues in other parties and ministers. There should be a more leisurely timetable. We should have to lodge amendments a week before the stage 2 meeting. We could still timetable meetings in such a way that we got the bill through in the same time. There is an issue about the grind of weekly amendment sessions, which committees might be able to intersperse with other investigative sessions.

The minimum intervals between stages are certainly not appropriate. There should be more time for people to gather their thoughts about amendments before stage 2 starts and again before stage 3. The most important suggestion that I make is that there should be a stage 2A, or whatever one would call it, after stage 2. The various participants including—as is suggested in the Procedures Committee press release—the other committees that are involved, could examine where we have reached with all our amendments so that we can assess which have passed and which have not and try to get organised before the bill goes to full stage 3 debate in Parliament.

Finally, the timetabling of stage 3 is ridiculous. At stage 3 of a recent bill, I was given one minute to explain a complicated issue and the minister was given no time to respond. The point is that I needed a response from the minister, but he was not allowed to respond. It is absolutely fatuous to conduct our affairs on such a basis. The timetable must be much more flexible than it is at the

moment and I suggest strongly that we put together a paper. Those are the points that I would like to put in it.

Ms White: I agree with Donald Gorrie about amendments, although I cannot speak on behalf of other committee members. I do not know whether one can generalise about bills because their size varies. I am thinking back to the passage of the Housing (Scotland) Bill, which was a huge bill, although others are smaller. Can some leeway be given? We cannot treat every bill prescriptively because there are more amendments to some bills than to others.

We need to look at the timescale between each amendment stage and we also have to look at ministers' responses at stage 3, as Donald Gorrie said. As the convener knows, members sometimes withdraw amendments on the basis of ministerial replies that satisfy them.

I would also like to flag up members' bills, which are mentioned in the Procedures Committee press release. I will take advice from the clerks and the convener on whether such bills can be taken up in committee or left to the member. I know that members' bills are currently being considered. We are all concerned about what happens when a members' bill is considered and Executive consultations are undertaken. I agree with Donald Gorrie entirely, but we cannot be prescriptive about bills and members' bills and we must consider them individually.

The Convener: I suggest that we ask the clerks to draw together a paper and that we agree a committee response. It might be that we are so divided in our responses that members will have to make individual contributions, which would be entirely reasonable. People have experience of other committees and will have different perspectives of members' bills because they have or have not promoted them. It will be helpful if we can decide on the matters about which we agree as well as recognise where there are divisions.

It is important to consider timetabling for amendments. The speed at which amendments must be lodged puts phenomenal pressure on the clerking system. There is also an issue about giving members the space to consider thoroughly whether they want to lodge amendments, otherwise we could end up in circumstances whereby organisations that are geared up to produce amendments have more sway at the amendment stage than we might want, simply because it is easier to take an amendment off the shelf than to produce one oneself. It would be helpful if that could be explored. Do members agree to return to the matter at a future meeting at which we will agree the response that we will submit to the Procedures Committee?

Members *indicated agreement*.

Antisocial Behaviour etc (Scotland) Bill: Stage 2

10:15

The Convener: We move on to agenda item 4, which is consideration of the Antisocial Behaviour (Scotland) Bill at stage 2. I welcome Mary Mulligan, the Deputy Minister for Communities, who is supported by her officials. As the debate continues, if the minister wishes her officials to make comments, we will be happy to hear from them at her discretion.

Because this is the first stage 2 debate that the new Communities Committee has had, I will outline how I intend to handle it. The procedure is rather complicated, so it may be helpful for me to go through it. Members should check that they have a copy of the bill, the marshalled list of amendments that was published this morning and the list of groupings of amendments. They will note that the amendments have been grouped to facilitate debate. The order in which they will be called and moved is dictated by the marshalled list—members have to work between the marshalled list and the list of groupings. All amendments will be called in turn from the marshalled list and will be taken in the order in which they appear on that list. We cannot move backwards on the marshalled list—once we have moved on, that is it.

There will be one debate on each group of amendments. The procedure for dealing with group 4, which is headed "Antisocial behaviour orders: applicability and conditions in respect of children and consultation prior to making of application", will be slightly different, as there are three sub-groups of amendments within the group. I will explain that procedure when we come to group 4.

A member may speak to their amendment when it is included in a group, but there will be only one debate for each group. Some groups may include several amendments, some of which are technical and some of which are more substantive. I will call the person who has lodged the first amendment in each group to speak to and move their amendment. I will then call other speakers, including all those who have lodged amendments that are in the group. Members should note that unless they are speaking to the first amendment in the group, they should not move their amendments at that stage. Members should also note that whether they are called to speak is entirely at my discretion. However, it is my intention that the debate be as productive as possible. Unless we are really struggling for time, I will ensure that members who want to contribute are able to do so. At the appropriate stage, I will

ask members who do not have amendments in a group whether they want to speak.

Following each debate, I will clarify whether the member who moved the lead amendment wishes to press it to a decision. If not, he or she may seek the agreement of the committee to withdraw the amendment. If a member wishes to withdraw an amendment but another member disagrees, I will put the question on the amendment and we will proceed to a division. Members should note that the question will be on the substance of the amendment, not on whether we are agreeing that the amendment be withdrawn. If one member of the committee objects to an amendment's being withdrawn, we will move to a substantive decision on the amendment.

The division will be conducted by a show of hands. It is important that members keep their hands raised until the clerks have recorded the vote fully. Only members of the Communities Committee may vote. Other members of Parliament may speak to and move amendments, but they may not vote.

If a member does not wish to move an amendment, he or she should say, "Not moved" when the amendment is called. Members should note that it is within the power of any member of the committee to indicate that he or she wishes an amendment to be moved if the member who has ownership of the amendment does not do so. However, I will not leave members a great deal of time to hum and haw when deciding whether to move an amendment. They must indicate fairly quickly that that is their intention.

Members should be aware that the only way in which it is permitted to oppose agreement to a section—we will deal with sections at the end of each grouping of amendments—is by lodging an amendment to leave out the section. If members want to delete an entire section, they must have lodged an amendment to do so. A section cannot be opposed if such an amendment has not been lodged. If a member wants to oppose the question that a section or schedule be agreed to, he or she has the option of lodging a manuscript amendment. If that happens, it is for me to decide whether to allow the amendment.

I want to say something about the convener's casting vote. It will be useful to the committee if at the outset of the stage 2 process I state that should there be a tie I intend to use my casting vote to maintain the status quo of the bill. That is likely to be a "no" vote. Members will be aware that—like the Presiding Officer—conveners are free to use their casting vote as they wish. I have indicated how I intend to use my casting vote before such a moment arrives, so that it will not appear that I am deciding how to vote on the basis of the substance of a debate. I intend to resist change when using my casting vote, as opposed to my vote as a member of the committee.

I hope that what I have said is helpful. If members are clear about the procedure, we will move to the first group of amendments.

Section 1—Antisocial behaviour strategies

The Convener: Amendment 34, in the name of the minister, is grouped with amendments 35, 37 to 41, 74 and 43.

The Deputy Minister for Communities (Mrs Mary Mulligan): Thank you and good morning. I would like to say at the outset that I look forward to meeting the committee regularly over the next few weeks to progress the Antisocial Behaviour etc (Scotland) Bill through stage 2.

Amendment 34 will improve the bill's drafting by making it clear that local authorities and the relevant chief constable must act jointly when preparing a strategy. Amendments 35 and 74 are consequential on amendment 34.

Amendments 37, 38 and 39 are technical amendments that seek to improve the drafting of section 1. The use of "discharge" instead of "exercise" will bring section 1 into line with the rest of the bill. Amendment 40 seeks to correct a self-explanatory drafting error in section 1(11).

Amendments 41 and 43 will ensure that, when it is considered appropriate, registered social landlords will be involved in the preparation, review or revision of antisocial behaviour strategies and that their involvement will be at an appropriate level. To ensure that we can fully integrate RSLs in the process of preparing, reviewing or revising those strategies, we want to replace the power to issue directions with a power to make regulations. The regulation-making power will give us the necessary flexibility to deal with cases in which the RSL needs to become involved once a strategy has been drawn up or in which one RSL is replaced by another.

The amendments will mean that we will have a more flexible power that will ensure that RSLs are fully meshed into the process of preparing and reviewing an antisocial behaviour strategy. The new power will ensure that RSLs can still become involved in the review or revision process once the strategy has been drawn up. The direction-making power would have meant that RSLs were in at the beginning of the process or were excluded completely. The introduction of a regulation-making power will also address the concerns that the Subordinate Legislation Committee expressed about the direction-making power during stage 1.

I move amendment 34.

Stewart Stevenson: I am perfectly content to support all the minister's amendments in this

group, but I seek clarification on subsection (2) of the new section that amendment 43 will insert, which provides for the power to modify section 1(8). It seems that there might be a slight danger in allowing you to modify section 1(8), because that subsection refers to what Scottish ministers may do. The power that amendment 43 seeks to introduce would give you the power to modify what Scottish ministers may do. I suspect that it is not your intention to use that method to change the powers of Scottish ministers, but I would welcome your assurance that that is not what you intend.

The Convener: As no other members have comments, I ask the minister to wind up.

Mrs Mulligan: I can give the reassurance that we can do only what is necessary in response to the involvement of RSLs, which I think is the reassurance that the member is seeking.

The Convener: Do you wish to add anything else?

Mrs Mulligan: There is nothing else to reply to.

Amendment 34 agreed to.

Amendment 35 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 36, in the minister's name, is grouped with amendments 36A, 128 and 144.

Mrs Mulligan: Amendment 36 seeks to provide more detail in the bill about what an antisocial behaviour strategy that is prepared by the local authority, the police and other community partners must contain.

We originally proposed that that level of detail would be dealt with in guidance on strategies that ministers will issue under section 1(8). However, the committee made clear in paragraph 55 of its stage 1 report that it believes that it would be better to set that out more explicitly in the bill. We have done so, and I hope that members will support amendment 36.

Amendment 36 requires strategies to contain an assessment of the extent and the type of antisocial behaviour in the relevant area; details of the services for under 16s and adults in the area that are designed to prevent or deal with antisocial behaviour and its consequences; details of the services for victims and witnesses of antisocial behaviour in the area; and the mediation services relating to disputes about antisocial behaviour. The list is not exhaustive, but I am confident that there is consensus within the committee and outside Parliament that any antisocial behaviour strategy that did not contain those elements would be deficient.

Donald Gorrie's amendment 36A seeks to add another leg to subsection (d) in amendment 36. It would require the local antisocial behaviour strategy to specify the range and availability of services in an area for the purpose of

"ensuring that community consultations are held in areas of significant antisocial behaviour to address the causes of that behaviour and to ensure its reduction".

I have some sympathy with the intentions behind the amendment. One of the principles that runs through our approach to tackling antisocial behaviour is the need to empower communities to take on their share of responsibility for tackling antisocial behaviour. We have already made that clear—indeed, empowering communities was one of the four themes running through "Putting our communities first"—and we will continue to do so, especially in the guidance that we will issue on antisocial behaviour strategies.

However, I ask Donald Gorrie to think again about amendment 36A. The main reason for that is the fact that determining the best means of tackling antisocial behaviour is precisely what the antisocial behaviour strategies are for. I do not think that it is useful for us, sitting here in Edinburgh, to attempt to dictate to local authorities, the police and community partners how antisocial behaviour should be tackled in their areas. Community consultations may well be a useful tool in many areas; however, there will be some areas—particularly those in which antisocial behaviour is most severe—in which it might be unrealistic to expect community consultations to reap results. Because of the antisocial behaviour that they face, such communities are likely to be traumatised, and it might be difficult for those who face antisocial behaviour daily to engage in such consultation. Those communities need long-term and sophisticated engagement and support to build confidence. Implying that they should jump straight to full-blown community consultation might not be helpful.

For those reasons, I hope that Donald Gorrie will consider not pressing amendment 36A. Empowering communities needs a flexible and tailored approach that is better promoted through guidance than through a provision in the bill. Of course, I am happy to undertake to ensure that the committee has a chance to see that guidance before it is finalised.

Amendment 128 seeks to amend section 1(3) to require explicit provision in local antisocial behaviour strategies with regard to racially motivated antisocial behaviour. It would require the strategy to include details of how the local authority and the police intend to prevent and deal with racially motivated antisocial behaviour that occurs in their area; monitor and report on the extent of that behaviour; and consult black and ethnic minority communities about how such behaviour can be prevented and dealt with. I have

considerable sympathy with the intention that lies behind Stewart Stevenson's amendment. We all know that members of ethnic minority groups are often the subject of wholly unacceptable antisocial behaviour. When that is the case, it would be a considerable omission if the antisocial behaviour strategy for an area did not contain the type of information that is set out in amendment 128.

10:30

However, for reasons that I will explain, I am not able to recommend acceptance of Stewart Stevenson's amendment 128. First, we need to take into account the interests of other equality groups. Perhaps understandably, Stewart Stevenson's amendment 128 focuses on our black and ethnic minority communities. However, individuals can also experience prejudice and antisocial behaviour on the grounds of religion, gender, age, disability or sexual orientation. Local strategies need to ensure that the antisocial behaviour that is targeted at those groups is effectively dealt with too. An amendment that highlights only racially motivated antisocial behaviour as requiring particular consideration might be damaging in that context.

I suggest that a more appropriate approach would be to ensure through guidance that local antisocial behaviour strategies tackle antisocial behaviour against any minority group effectively. As members of the committee will be aware, section 1(8) provides that local authorities and the police must have regard to any such guidance.

In that context, we should not lose sight of section 107, which provides that any person or body discharging any function under the bill is required to do so

"in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements"

as defined in the Scotland Act 1998. That definition covers all of the equality issues that I mentioned earlier.

We should also bear in mind the fact that public bodies exercising powers under the bill will be required to comply with their duties under the Race Relations Act 1976. That means that, in carrying out the functions of preparing, reviewing and revising antisocial behaviour strategies, local authorities and the police are under a duty to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good race relations.

Some technical matters also arise in relation to amendment 128. The amendment does not sit comfortably with the rest of part 1 of the bill. Section 1, as amended by Executive amendment 36, will require the strategy to specify the services that are aimed at preventing and dealing with the antisocial behaviour of young people and people generally. Amendment 128 would require something slightly different in relation to racially motivated antisocial behaviour—provision for how the relevant bodies intend to prevent and deal with such antisocial behaviour.

Another issue arises in relation to monitoring and reporting. Provision on monitoring and reporting antisocial behaviour generally is made in section 3. Local authorities will be obliged to publish reports from time to time on the implementation of the strategy. Again, to establish different monitoring and reporting arrangements for racially motivated antisocial behaviour does not sit well with the general scheme for reporting under part 1.

Similarly, there is a difficulty in relation to the requirement to consult black and ethnic minority communities. Section 1 imposes duties to consult on the strategy a range of interests including community bodies and those who are affected by antisocial behaviour. Amendment 128 contains a requirement to consult black and ethnic minority communities on one aspect of the strategy—the measures to tackle racially motivated antisocial behaviour—and not the strategy as a whole.

For all those reasons, I am convinced that the issues are best dealt with in guidance that is flexible and which can be updated in the light of changing circumstances. The guidance will supplement the statutory duties to promote equality that are contained in the bill and other legislation. On that basis, I hope that Stewart Stevenson is prepared not to move his amendment.

Amendment 144 seeks to amend section 1 so as to include in antisocial behaviour strategies provisions on how the local authority and the voluntary sector within the local authority area will provide support measures to young offenders on completion of their custodial sentence. I understand that amendment 144 might be a probing amendment. However, if it is pressed, I will have to resist it on the basis that there is already a statutory duty on local authorities to provide advice, guidance and assistance to prisoners who are subject to supervision on release and to prisoners who will not be subject to statutory supervision on their release from prison.

Section 71 of the Criminal Justice (Scotland) Act 2003 increased the powers of local authorities to work with those groups to deliver strengthened throughcare services to prisoners from the point of imprisonment and following release. Successful reintegration of offenders into the community is probably the best guarantee against reoffending, and effective preparation for release from prison is a good investment. We acknowledge the

importance of providing a throughcare service for prisoners throughout their period in custody and on their release into the community, and we have substantially increased investment in that service.

Stage 1 of the enhanced throughcare strategy, which is based on the recommendations of the tripartite group report, is currently being implemented by local authorities. It aims to strengthen the system of statutory throughcare for the highest-risk groups. The second phase, which will commence in the autumn, aims to identify priorities within the group of prisoners that are eligible for voluntary assistance, and will include work targeted specifically at young offenders, as we recognise that they show the highest rates of reoffending and that effective action to assist their return to the community will have longer-term benefits for the offenders, their communities and the victims.

To engage with young offenders is a major challenge in delivering voluntary assistance. The local authorities will work closely with the Scottish Prison Service and the link centres to offer a range of services on site to work with offenders prior to release. They will also establish strategic partnerships with voluntary and independent-sector providers to meet the social inclusion needs of the target group. The voluntary sector has an important role to play in providing support to prisoners and their families. Therefore, local authority throughcare plans should fully reflect partnership working with local voluntary sector organisations to provide community-based services to prisoners on their release from prison.

We are developing a broader agenda for throughcare services to manage the transition from prison to the community more effectively. Young offenders are already included as a priority group for those services. With those reassurances, I hope that Scott Barrie will not move amendment 144.

I move amendment 36.

The Convener: I ask Donald Gorrie to move amendment 36A and to speak to all the other amendments in the group.

Donald Gorrie: Executive amendment 36 is welcome, as it responds to points that the committee made in its report. [*Interruption.*] I am sorry; an antisocial bug has got hold of my voice. It is especially welcome that, under amendment 36 the council will have to

"specify the range and availability in the authority's area of any services … designed to deal with antisocial behaviour".

That is helpful, as is the requirement to specify the provision of mediation, which comes later in the amendment.

Amendment 36 is a big step forward, which I strongly welcome. The objective of my addition to it is to ensure that community consultation is part of the overall package for dealing with such matters. That already exists in some areas but does not in others. There is a separate issue about consultation on the power of dispersal, but the point of amendment 36A is to get hold of the problem at an earlier stage. When trouble starts in a community, the council should organise community consultations with all the relevant bodies, who should try to sort the problem out. I do not claim that that is a panacea, but it is an important part of the overall package of how communities and councils should deal with such matters.

If guidance on community consultation exists, I suppose that that is a step forward, but I am keen that endorsement of holding community consultations as part of the overall package for dealing with antisocial behaviour, especially in its earlier stages, should figure in the bill somewhere, and it would be helpful if the minister could reconsider whether appropriate wording could be inserted at stage 3 to meet my point.

I move amendment 36A.

Stewart Stevenson: I thank the minister for her comprehensive, though not entirely unexpected, restatement of the Executive's position. It will be relatively straightforward for the minister to respond to this suggestion when summing up, but if she agrees to give a categorical assurance that the planned guidance will make references in broadly the same terms as amendment 128, I will not feel bound to press the amendment. It has been useful to get on record the minister's comments on the need for other equality issues to receive equal attention. By the same token, I hope that the minister can assure us that the guidance will address all those issues.

It would be helpful if the minister could indicate when an early draft of the guidance might be available. It is always helpful to see such guidance before stage 3 so that members can consider whether the Executive's response is of a character that does not require us to lodge similar amendments at that stage. If the minister can give some reassurance on that, I am sure that that would be helpful to us all.

Let me comment on the other amendments in the group. I welcome amendment 36 and have no great concerns about it. I also support Donald Gorrie's amendment 36A, but let me make one observation on the minister's remarks. The minister said that asking a community to participate in a consultation could be difficult when individuals in that community are being subjected to antisocial behaviour because, by sticking their head above the parapet, they might make

themselves a target. Although I understand that point, amendment 36A would not require people to participate if they believed it unsafe to do so. However, if circumstances are such that people who are invited to participate in a consultation cannot do so because of fear, that arguably sends out a strong message about the character of the problems that require to be tackled in the area. In the light of that, amendment 36A has some value.

On amendment 144, given Scott Barrie's considerable knowledge of the subject, I will follow whatever he decides to do. The minister said that the law already provides for advice, guidance and assistance to be given to young offenders and, indeed, all offenders. However, "assistance" is essentially a passive word, which requires the offender to solicit such help, whereas amendment 144 uses the phrase "support measures", which indicates a more proactive approach, with which I would be more comfortable.

I will be interested to hear what Scott Barrie's intentions are on the amendment. If he presses the amendment, I will find no difficulty in supporting it.

10:45

Scott Barrie (Dunfermline West) (Lab): Like other committee members, I welcome amendment 36, which goes a long way towards reassuring the committee on issues that we raised in our stage 1 report.

Amendment 144 is based on paragraph 56 of our stage 1 report, which said that we would welcome clarification on whether post-release strategies will form part of the Executive's wider strategy to tackle antisocial behaviour. The need for such strategies was borne out by the visit to HM Young Offenders Institution Polmont that some of us undertook as part of our pre-legislative scrutiny of the bill—I think that Stewart Stevenson and the convener were involved.

The visit reinforced my feeling—and highlighted to other members—that the support that is available for youngsters who are leaving penal establishments can sometimes be patchy. We should not be surprised by the problems that young offenders face upon release and the fact that their needs are particularly complex.

Moreover, as the minister acknowledged, we must address the fact that young offenders are much more likely than older prisoners to reoffend and to end up back in penal establishments very quickly. Indeed, that is what makes young offenders such a unique feature of the criminal justice system. I am well aware of the enhanced powers for throughcare and aftercare that the Criminal Justice (Scotland) Act 2003 introduced into the system, partly because the minister, Hugh Henry, and I were very much involved in lodging the stage 3 amendments that brought in those provisions.

I am also well aware of the important tripartite discussions that were taking place at that time and that I presume are still continuing. Indeed, those arrangements must continue, because they are a key feature and demonstrate that, although we do not necessarily have to include certain provisions in bills, we should not lose sight of something that is working very well. The minister certainly mentioned the arrangements when she spoke to amendment 36 and, although I realise that the issue does not fall totally within her remit, I hope that she will confirm that the process is on-going and did not happen only during the passage of the 2003 act.

I seek reassurance that the process is still on-going and that the system is in place to ensure that youngsters in the criminal justice system, particularly those who are being released from our penal establishments, receive the help and support that they need. Stewart Stevenson is quite right: although the Social Work (Scotland) Act 1968 contained the terms that he mentioned, that did not mean that anything concrete emerged from it. My amendment is intended to beef up that wording.

The Convener: If no other member wishes to speak, I shall raise a couple of points. As far as community consultation is concerned, it is probably true to say that this bill and the debate on antisocial behaviour have come about partly because communities have demanded to be heard. Local communities feel frustrated because people are not listening to their concerns at an early stage when they are willing to speak up. Such a situation makes it more likely that they will remain silent later on. As a result, guidance or whatever should clearly mark out the importance of listening to what local communities say. We should not simply assume that that will happen through formal consultation. We have to reach people in different ways, and agencies and organisations must be tuned in early to emerging difficulties or patterns of difficulty.

On amendment 128, I feel that serious racial crime will be dealt with through hate crime legislation and so on. Again, I think that guidance should indicate that antisocial behaviour can express itself in different ways. For example, certain equality groups have a very particular experience of such behaviour; however, consistent themes such as having to move home and feeling silenced and intimidated emerge from the experience of all victims of community bullying. I hope that the bill will attempt to address such themes while taking into account the fact that antisocial behaviour can express itself in different

ways to particular equality groups. As a result, I seek some reassurance about how any guidance will address the matter.

Mrs Mulligan: I realise that my opening speech on these amendments was rather long-winded. However, the length of time that I spent on them is an acknowledgment of the fact that these amendments are valuable in highlighting concerns that the committee has previously raised.

On amendment 36A, we acknowledge the need to involve communities in the initial establishment of the strategy in order to build their confidence. I do not in any way wish to appear condescending to those communities, but we must be sensitive to the fact that, given the situation in which they might find themselves and the difficulties that they might be experiencing, we should not expect too much from them at a particular time in the process.

We would want to clarify the guidance further and I propose that we work to ensure that it is clear and satisfactory for members; obviously we will return to it at stage 3 if necessary. As I said in my opening remarks, there might be a better place for amendment 36A. I am more than happy to speak to Mr Gorrie and other members about that, should it be necessary.

On amendment 128, it is helpful to highlight equalities issues. Although they are covered in the bill and other legislation, it is important to acknowledge the added difficulties that can be caused by other circumstances. I want to ensure that sufficient guidance on that is produced to support the bill. Mr Stevenson asked at what stage the guidance will be available. It is our intention to make it available before stage 3 if possible and to discuss it with members to ensure that they are happy with it.

On amendment 144, I acknowledge Scott Barrie's involvement in the passage of the Criminal Justice (Scotland) Bill and I do not wish to tell him what he already knows; however, it is important, as he has said, to ensure that we recognise the particular difficulties for young people re-entering the community and that we support them through the process. We can give guarantees. Scott Barrie asked about the nature of the tripartite group, which is on-going and which will be important in implementing the intentions behind the Criminal Justice (Scotland) Bill and ensuring that the support and services are available. We will continue to consider that to ensure that the guidance provides what Scott Barrie is looking for.

Donald Gorrie: What the minister has said is helpful, but in the light of your strong contribution, convener, I hope that she will speak to you and me and other interested people about trying to find the right place in the bill, as opposed to the guidance, for a strong recommendation that community consultation should take place at an early stage. If we have an assurance that there will be serious consideration, with the prospect of an amendment at stage 3, I will be content not to press amendment 36A, but I reserve the right to resurrect it at stage 3 if the minister does not do something.

The Convener: We do not have a provision to let the minister respond to that. However, she can interrupt me.

Mrs Mulligan: Can I just say yes?

The Convener: Thank you. That is helpful.

Amendment 36A, by agreement, withdrawn.

Amendment 36 agreed to.

Amendments 37 and 38 moved—[Mrs Mary Mulligan]—and agreed to.

Amendments 128 and 144 not moved.

The Convener: Amendment 145, in the name of Donald Gorrie, is grouped with amendments 129 and 130.

Donald Gorrie: Before speaking to amendment 145, I express my strong support for Scott Barrie's amendments 129 and 130, which are along the same lines as mine, although they cover a different aspect of the issue. He proposes that the general consultations that the local council undertake must include children and young people.

The point that I am making through amendment 145 is a specific one. Because of press propaganda surrounding antisocial behaviour, many young people perceive the issue to be anti-young people. A lot of individual young people and their organisations feel that they are being got at. It is important to indicate to them that that is not the case.

One way in which young people and their organisations could make a good contribution is through discussing the recreational facilities in their areas with local authorities. At stage 1, the fact emerged from the representations that we received that a lack of facilities often contributed to local problems. I suggest that, as part of the preparation of the antisocial behaviour strategies, the local council should meet representatives of young people and those who work with them to discuss and analyse the facilities, activities and opportunities that exist in the area. That is often a matter of people, rather than buildings. A lot of good work can be done in the street and plans for improving facilities would be discussed.

That approach would help to involve young people and would show that the council was

interested in their views and was taking a positive attitude towards them; it would demonstrate that the young people were not just being viewed as some sort of danger. That is an important point psychologically. Moreover, amendment 145 would encourage local authorities to provide good facilities. A frequent complaint is that the facilities that are provided are not what the young people want. For all those reasons, I believe that amendment 145 is worthy of support.

I move amendment 145.

Scott Barrie: Amendment 129 and the consequential amendment 130 make it explicit that local authorities and community bodies, when carrying out consultations, should consult young people. Donald Gorrie was quite right in saying that there is a perception—which it must be said ministers have refuted at every opportunity—that the bill is somehow anti-children and young people. My two amendments are an attempt to address that by showing that the bill is not about doing things to children and young people, as we sometimes did in the past, but about working with them so as to make things better both for them and for society as a whole.

One of the difficulties that we have always faced in legislating for or deploying services for children and young people has arisen from the fact that we do not often talk to them about what it is that they want or about whether certain proposals are appropriate. We might think that we are doing things appropriately and well, but that has not always been borne out in the past. We need to consult society much more widely than we have done in the past. Government bodies—both national and local—can no longer just do things without consultation, especially as they now do much more in the way of community planning and involve people from a whole variety of areas in the communities that they serve.

We should at least consider mentioning children and young people explicitly in the bill. Section 1(6)(c) mentions "other persons", which might well include young people—indeed, I hope that they would be included. However, if children and young people are not specified at that point in the bill, there might be a problem with ensuring that local authorities are consulting as widely as possible, rather than just consulting a narrow interest group.

11:00

Ms White: I support Scott Barrie's amendments 129 and 130 as well as Donald Gorrie's amendment 145 and I would reiterate everything that they said. When we consider some of the processes that are proposed, we might well agree that the bill seems to be biased against young people, so it is important that we show that we support young people in the community.

As Scott Barrie said, section 1(6)(c) says that "other persons" should be consulted, but the bill should state specifically that young people should be consulted. Not only are young people targeted by certain sections of the media, but they are sometimes the ones who are on the receiving end of antisocial behaviour. It would be good for young people if they were involved in the consultation process.

We are not telling local authorities what to do, whatever the minister might argue in her answer. We are asking them to consult young people about what might happen and what young people want in their areas. There are lots of housing schemes and other places where there are no recreational facilities and it would be good to hear young people's thoughts on why there is antisocial behaviour and what could be done to prevent it. It is important that the three amendments in the group are supported and I look forward to hearing the minister's reply.

Elaine Smith (Coatbridge and Chryston) (Lab): I have been listening to what has been said and I have a short comment to make. Sandra White said that we would not be telling local authorities what to do. However, I worry that Donald Gorrie's amendment 145 would be seen to be prescriptive on local authorities, although I agree that facilities and initiatives for young people have to be considered, because provision is different in different areas of the country. That is my slight worry with amendment 145. Perhaps the guidance would be a better place for that proposal.

On Scott Barrie's amendments 129 and 130, of course the term "other persons" should include children and young people, but if the bill is to specify children and young people, should it not also specify other groups, such as disabled people? Those are my concerns about the amendments, although I accept that the principles behind them are sound.

The Convener: There is a perception that the bill is against young people. However, in my view, the bill creates the opportunity to protect some young people. It also acknowledges that young people will not speak with one voice on the issue. There will be youngsters who are victims of antisocial behaviour and there will be those who perpetrate it. We have to offer support, but we also have to confront people; in some ways, we are looking to support young people in their communities by empowering them to confront antisocial behaviour.

I take on board Elaine Smith's point about making assumptions about what local authorities are already doing and specifying particular groups in the bill. It is helpful to take every opportunity to challenge the view that the bill is against young people. No matter how often people say that it is

against young people, I do not accept that that is the case. It is important that we emphasise that it is in the interests of young people to be able to go out into safe communities and enjoy themselves.

Mrs Mulligan: Amendment 145 seeks to amend section 1(6), which details those whom the local authority must consult in preparation, review or revision of the local antisocial behaviour strategy. The amendment would require that

"representatives of young people and of persons working with young people"

are consulted at that stage about

"facilities, activities or opportunities … for legitimate recreation in the … area and any plans for improving them".

I have considerable sympathy with the intentions behind amendment 145. Young people need to be at the heart of the process. However, the amendment does not quite deliver what Donald Gorrie intends. As it stands, section 1(6) of the bill requires that the principal reporter, RSLs and the community bodies are consulted about the whole strategy. The effect of amendment 145 would be that young people, or their representatives, would be required to be consulted only about one specific aspect of the strategy—recreation facilities—and not the whole strategy.

Of course, recreation facilities for young people will be an important factor in any local antisocial behaviour strategy. However, they will be only one constituent part of a much wider picture, which will include assessments of the antisocial behaviour that takes place in the area, descriptions of the many and varied services that are intended to prevent it and deal with it when it occurs, and mediation services and services for the victims of antisocial behaviour. Along with the elderly and the vulnerable in every part of the population, young people should be consulted on all those issues. Singling out one specific aspect is not helpful.

Section 1 already provides some requirements concerning who is consulted. I have explained the requirements under subsection (6). Subsection (7) requires consultation of those who are representative of the victims of antisocial behaviour. It will not, therefore, be possible to ignore young people: they will be included as members of community bodies and as victims. Moreover, we will ensure their full involvement through guidance on strategies. I am confident that that will deliver what Donald Gorrie is looking for without skewing the consultation towards one aspect of the strategy to the exclusion of the others. With those assurances, I hope that Donald Gorrie will agree to withdraw amendment 145.

Amendments 129 and 130 seek to amend section 1 to ensure that children and young people are consulted when local antisocial behaviour strategies are being prepared and when statutory guidance on such strategies is being drawn up by the Scottish ministers. I have considerable sympathy with the amendments. It is vital to the success of any strategy to combat antisocial behaviour that children and young people are involved in its preparation. We know that children and young people are often predominantly the victims of antisocial behaviour, so their perspective on the strategy will be important. We also need to ensure that strategies consider antisocial behaviour in the round and that certain groups are not singled out as the perpetrators of most antisocial behaviour when that is not justified. The involvement of young people will help with that, too.

Nonetheless, amendments 129 and 130 do not have the legal effect that Scott Barrie is looking for. They would add the words

"including children and young people"

in parentheses after "persons" in subsections (6)(c) and (9) respectively. The problem is that children and young people will already be covered under the ordinary meaning of the word "persons". The end result would be that those who prepare local strategies and ministers would be under no different legal obligation than they would be without the amendments.

I hope that Scott Barrie will be content to rely on my undertaking that the statutory guidance that ministers are empowered to issue on antisocial behaviour strategies will make it clear that children and young people should be involved in the preparation, review and revision of the strategies. I also give him an undertaking that, in preparing the guidance, the Scottish Executive will consult groups that are representative of children and young people. On that basis, I invite him not to press amendments 129 and 130.

Donald Gorrie: I do not accept the argument that accepting amendments 145, 129 and 130 would mean that authorities would have to speak to young people only about existing recreation facilities and so on. That is an absurd argument, which the text of the amendments does not substantiate.

Generally, young people are not consulted: that is a fact of life. Every now and then they are, but usually, when a council discusses something or other, the last thing that it thinks about is involving young people in the discussion. We have got to change that. I do not know exactly how we can, but the point that Scott Barrie makes about general consultation of children and young people is important.

The separate point that I make is that we should have consultation not just on antisocial behaviour but on creating a community in which much less

antisocial behaviour arises in the first instance. That will involve young people helping to design plans for new recreational facilities.

If the minister indicates that the guidance will cover the point that is made in amendment 145 as well as the point that is made in Scott Barrie's amendments, I will consider pressing amendment 145 and, if necessary, return to the charge somewhere else. I am sure that it is correct that the intention of the bill is not anti-young people, but in politics perception is more important than fact and the perception of young people generally is that the bill is anti-them. We must persuade them otherwise, so it must be made clear in the bill—or there must be strong stuff in the guidance to indicate—that young people must be involved in all aspects of the proposals.

I would like the minister to give a guarantee that the guidance will cover the points that are made in amendments 145, 129 and 130. If she cares to intervene on me to say so, I would welcome that.

Mrs Mulligan: I am happy to say that we will seek to ensure that the guidance will make it quite clear that, when we speak of "persons", our intention is to include children and young people and to ensure that they are involved in every part of the process. As I have said previously, in developing that guidance I will be happy to work with the convener and members of the committee before stage 3. If members are not happy with the guidance at that stage, they will have the opportunity to return to the issue.

Donald Gorrie: If the guidance achieves pass marks, I will be satisfied, so I will not press amendment 145.

Amendment 145, by agreement, withdrawn.

Scott Barrie: I hear what the minister is saying about the involvement of children and young people, so I will not move amendment 129.

Amendment 129 not moved.

Amendment 39 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 130 not moved.

Amendment 40 moved—[Mrs Mary Mulligan]—and agreed to.

Section 1, as amended, agreed to.

Section 2—Directions: registered social landlords

Amendment 41 moved—[Mrs Mary Mulligan]—and agreed to.

Section 3—Reports and information

Amendment 74 moved—[Mrs Mary Mulligan]—and agreed to.

Section 3, as amended, agreed to.

After section 3

Amendment 43 moved—[Mrs Mary Mulligan]—and agreed to.

Section 4—Antisocial behaviour orders

The Convener: The fourth group, in which amendment 112 is the lead amendment, is slightly more complicated than the others. The group is large because of possible pre-emptions. To facilitate debate, I have broken up the group into three sub-groups. Debate on each sub-group will proceed as normal—the person who lodged the lead amendment will speak to the whole group and will wind up at the end; other members will make comments in between. However, members should not move, press or seek to withdraw their amendments unless I indicate to them that they should do so.

I will point out a number of possible pre-emptions, which members might want to note. If amendment 113 is agreed to, I shall not call amendment 147. Agreement to amendment 114 would pre-empt amendment 151 and agreement to amendment 115 would pre-empt amendments 46, 47, 155 and 48.

Amendment 112, in the name of Elaine Smith, is in a sub-group with amendments 113 to 121. I ask Elaine Smith to speak to and move amendment 112 and to speak to the other amendments in the sub-group.

Elaine Smith: First, can I seek clarification on a technical point?

The Convener: Yes.

Elaine Smith: As the convener mentioned, most of my amendments in the group are consequential on amendment 112, apart from amendment 117. I ask the clerks to clarify that amendment 117 is not consequential on amendment 112.

11:15

The Convener: We will vote on each of the amendments in turn.

Elaine Smith: Individually?

The Convener: Yes.

Elaine Smith: I do not intend to speak to amendment 117 at the moment, but I think that Scott Barrie might speak to it.

The Convener: You are under no obligation to speak to any amendment other than amendment 112.

Elaine Smith: Thank you. I start by commending the Executive on its decisions to, for

example, fast-track social workers, institute a review of the children's hearings system and—under the parenting order provisions in the bill—emphasise support for parents, which is sadly lacking at present.

It might have been preferable, however, if those measures had been instigated and assessed before part 2 of the bill in particular was brought before Parliament. Of course, some sections of the bill could have been implemented in any case as they are not influenced by those kinds of initiatives. However, had we been able to see the impact of the initiatives that I have just mentioned—along with others such as child care initiatives—it might not have been necessary to legislate on controversial provisions such as the extension of ASBOs to children, or to consider measures such as electronic tagging and compulsory parenting orders, which appear later in the bill.

Other areas of concern that should be addressed include police response times, the issue of why the police do not appear to be using their existing powers to respond to serious incidents of ASB and crime, and whether there are enough police for beat duty. I also want to return to one of the issues that Donald Gorrie raised, which is whether there are enough play and recreational facilities for the young people in our communities.

I noted earlier today that the police in Lanarkshire are tackling youth disorder with a crackdown on under-age drinking and an increase in youth activities. According to reports, the initiative has resulted in a reduction by one third in youth disorder. I wanted to make those points before turning to address amendment 112.

Amendment 112 concerns the extension of ASBOs to children, which is one of the most serious and important aspects of the bill. I do not dispute the fact that children are involved in antisocial behaviour in our communities; of course, such behaviour must be addressed. In fact, children who are younger than 12—the youngest age that the Executive has specified for the extension of ASBOs—are involved in such behaviour. I dispute the suggestion, however, that the answer is to extend ASBOs to under 16-year-olds. The provision would undermine the children's hearings system and move Scotland towards the English system, the result of which would be to bring more children into the criminal justice system with all the consequences that that would entail.

I have no doubt that the legislation for tackling antisocial behaviour in England was based on the experience of the system that deals with child offenders in England, which is clearly different to the system that we have in Scotland. The Scottish Parliament was set up to find Scottish solutions for Scottish problems. We should not therefore merely adopt English systems, which might or might not work in England. It would be a retrograde step if Scotland were to implement those systems. Indeed, to do so would in a sense undermine devolution.

I turn to the specific reasons why ASBOs should not be extended. The children's hearings system was established in recognition of the inability of the court system properly to consider welfare and justice issues as a package in cases involving children. Our present children's hearings system has the ability to take referrals on the basis of a child's antisocial behaviour. The hearings system can also order a range of measures to address and remedy not only the child's behaviour but, more important, any underlying causes.

A supervision order under section 70 of the Children (Scotland) Act 1995, for example, could be accompanied by restrictions or specifications in the same way that an antisocial behaviour order that was made by the court could be. A supervision order would have the advantage of also being able to deal with care, education and health issues at the same time as a restriction was put on the child's freedom. It would not be possible, however, for an adult court to do that in the case of an ASBO.

The use of adult court processes for children is not only inappropriate to their level of understanding and capacity, but research has shown that it also increases rather than reduces criminality and delinquency. The committee heard some evidence on that at stage 1 of the bill.

The punitive approach that has been taken in England and Wales has resulted in a high prison population of juveniles and in non-custodial punishments that are based on deterrence and containment rather than on rehabilitation. Evidence suggests that a punitive system for children is not successful: the committee heard that, over a 10-year period, there was an 800 per cent increase in the number of 12 to 14-year-olds in custody in England and Wales after those countries went down a more sanction-based route with children.

If part 2 of the bill is passed unamended, it will be rather incongruous and inconsistent and will have the inequitable consequence that, while young people who offend will continue to be referred to hearings, young people whose behaviour is alleged to be antisocial but not exactly criminal will have to participate as adults in the courts system. I want to hear the minister's comments on that. The existing system allows for children to be jointly reported to the procurator fiscal and the reporter and to be subject to court processes in very serious cases only, so if the provisions are passed unamended, the only

children who will appear in the adult courts will be those who are accused of murder or other serious offences and those who are not accused of criminal offences at all. That will mean inducting children who are as young as 12 and who have not been charged with an offence as such into criminal associations, into certain attitudes and into the world of orders, appeals, legal aid, delays and days wasted hanging about in courts and lawyers' offices.

Scotland developed a non-court based system for such children more than 30 years ago, and no good reason has been advanced for abandoning that and returning to the adult courts. I also cite the recently passed Vulnerable Witnesses (Scotland) Act 2004, which recognises that children under 16 are vulnerable and have a right to special measures when they give evidence in an adult court. It is contradictory to recognise that children and young people need special help to participate in adult judicial processes when it is necessary for them to give evidence but to add a new category of children accused of antisocial behaviour who would be subject to adult judicial processes and basically treated as adults. Moreover, to resort to the courts is expensive, time consuming and lengthens the time that is taken to deal with antisocial behaviour. As we know, the courts are already overloaded and there are delays in bringing children who are victims of crime to court to have their cases dealt with.

It is proposed in the bill that persons who intend to apply for an ASBO will have to consult the reporter prior to making an application and that the sheriff is to rely heavily on the reporter's advice before making an order. Those provisions recognise the centrality of the children's hearings system to take care of, and do justice for, children and young people. It would therefore make sense to ensure that the system remains the main decision-making forum for children and young people.

I ask the committee to consider the serious repercussions that extending ASBOs to children will have for our uniquely Scottish system for dealing with offending children. I have no doubt that the proposal will undermine the principles of the hearings system. I implore the Executive to consider the fact that it has instigated a review of the system—which will, I hope, ensure that the system has the resources to operate effectively—and to recognise that introducing ASBOs for children prior to the result of that review would be illogical.

Support for amendment 112 does not mean that we do not take antisocial behaviour among children seriously. It must be addressed, but other ways to do that include acceptable behaviour contracts, which were shown in evidence to have been effective in Edinburgh. Court-based action to try to tackle antisocial behaviour in children is likely to create more persistent offenders among children and could draw them into a future life of crime. It will also fundamentally change the principles of the Scottish children's hearings system to the detriment of our children and Scottish society.

I move amendment 112.

Stewart Stevenson: In the preparation and discussion of the committee's stage 1 report, I was unable to support the idea to delete the provisions on ASBOs for 12 to 16-year-olds. However, the simple either/or decision at that point did not reflect fully some concerns that I have about the bill, and I commend to members many of Donald Gorrie's amendments in the next sub-group, which will strengthen the role of the children's panel and decriminalise the effect of breaches of ASBOs for children.

It would be useful if the minister could, when she responds to the debate on this contentious subject, give us some idea of how many ASBOs for children might be sought each year and how we will be able to influence the action of local authorities, RSLs—whether RSLs come into the matter depends how things go with other amendments—and the courts to ensure that ASBOs do not end up becoming routine for 12 to 16-year-olds. If that was where we ended up, the balance of the committee would swing fairly dramatically. If ASBOs are for extreme cases, and the minister can show that that is the case, it would go a substantial way to reassuring several members of the committee.

Like other members, I met people who are suffering at the hands of under-16s. If we accepted Donald Gorrie's amendments, ASBOs would be a useful additional tool in the locker in respect of the small number of children for whom they are appropriate. It is also important that we strengthen the role of the children's hearings system. I will therefore not support Elaine Smith's amendments but, subject to the debate, I expect to support Donald Gorrie's amendments in the next sub-group.

Mary Scanlon: Like Stewart Stevenson, I am not minded to support Elaine Smith's amendment 112, but I commend her for the research that she has done; she raised some important points.

My party also sees the extension of ASBOs to under-16s as being another tool in the box. However, I have some concerns that I ask the minister to address, although I am not sure whether she can clarify my first point. There is a lack of evidence on the effectiveness of ASBOs for under-16s; I tried to consider that when we were at stage 1 of the bill. If the minister has an update on

whether such ASBOs work, I would be pleased to hear it.

Elaine Smith made points about supervision orders and so on. It would be interesting if the minister could clarify why she believes that such orders would not be wholly appropriate. Elaine Smith raised the point about an 800 per cent increase in custody, which causes me considerable concern.

Finally, will the minister clarify what will happen if an under-16 breaches an ASBO? I am unclear about what sanctions are available.

Scott Barrie: There seem to be two slightly separate debates in this group of amendments. I will speak specifically to amendment 117 and then come back to speak to amendment 112 and the associated consequential amendments.

Amendment 117 proposes to delete section 12 of the bill, which is about the sheriff's power to make parenting orders. Given the line of questioning that I pursued during the evidence stage, members will realise that I see tremendous merit in parenting orders for the small minority of parents whose children are referred to children's hearings when it is clear that it is not the children's actions that are causing the problem, but the inaction of the parents.

The parenting order proposal would give a worthwhile and beneficial potential disposal to the children's hearings. At the moment, in the current hearings system, nothing can be done directly to parents. A supervision requirement can be placed on a child and conditions can be attached to that supervision requirement. In certain cases, a parenting order would direct the focus to where it should be.

I am slightly concerned that, in applying for an antisocial behaviour order for an under-16, the sheriff would also have the ability to make a parenting order. I hope that the minister is able to comment on that extensively. We must be very careful about that power. Section 12 goes on to say that the sheriff has to consider the matter in connection with section 77, and the principal reporter would be involved in that process. However, we seem to be missing a vital link in that process by missing out the children's hearings system. It is that bit of the proposal under section 12 that causes me concern. I hope that the minister will comment on that, so that we can return to it.

11:30

I take a slightly different view from Elaine Smith on the issue that she has spoken about, although I understand where she is coming from. The court system is already integral to the children's hearings system. For example, if grounds are disputed at a children's hearing, the sheriff court is the venue in which the grounds will be established. Whenever a child does not have the capacity or is unable by virtue of their age to say yes or no to the grounds, the grounds will have to go to the sheriff for proof anyway. Also, in any proceedings at the sheriff court regarding proof, people are entitled to legal representation. We already have that system, so the system under the bill's proposals is not quite as innovative or dangerous as Elaine Smith suggests.

One of the difficulties that we have in dealing with adolescents and people in young adulthood is in knowing where we should draw age distinctions. I have sat on other committees discussing other bills and have argued that age limits should be increased or decreased, depending on the argument that was being advanced. It is difficult to come up with a single figure. However, removing the power to lower the age at which someone can receive an antisocial behaviour order from 16 to 12 takes away an opportunity to deal with the antisocial behaviour of a small minority of under-16-year-olds as it affects the rest of the community, which could be an extra power in addition to whatever the children's hearings system may be doing. It would be rare for the youngsters about whom we are talking not to be either involved already in the children's hearings system or approaching the children's hearings system. We are not singling out a completely different category of young person as being the problem, as Elaine Smith seems to suggest. For that reason, I do not think that the bill is quite as dangerous or problematic as Elaine suggests.

I would welcome the minister's comments on the powers that would be conferred on sheriffs under section 12.

Donald Gorrie: If we were starting from scratch, I would not have section 4 in the bill; however, it is in the bill and we have to examine it carefully. I concur strongly with what Elaine Smith and Scott Barrie have said. We want assurance from the minister that the floodgates will not open, with lots of antisocial behaviour orders being imposed on 12-year-olds all of a sudden. We do not want the ASBOs to be the first fence to which all the horses in the grand national rush: we want the ASBOs to be a much later fence that comes after society has jumped over various other fences that have not worked. If the ASBO is genuinely a matter of last resort for a small number of youngsters who are otherwise out of control, I can go along with it. At the moment, therefore, I will not support Elaine Smith's amendment 112. However, it is important that the minister assure us that ASBOs will be a last resort and that all sorts of community measures to stop antisocial behaviour will be brought into play before ASBOs are used.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I have a few points to make. Donald Gorrie said that he hopes that there will not be a rush to the first fence when the bill is enacted. The evidence from my area certainly suggests that local authorities are waiting to rush to serve ASBOs when offending young people reach the age of 16. That is a response to the suffering that communities have endured for a number of years while waiting for the serving of ASBOs. If those communities had been able earlier to get ASBOs for the young people who are involved, they would have been better places in which to live and the young people would have been guaranteed the help and support that they needed to correct their behaviour.

The facts from my local authority area show that ASBOs have worked and do work in correcting people's offending behaviour. Communities and the people who deal with the problem on the front line believe that the extension of ASBOs would be a tool that could be used to make life better for the people whose lives are blighted by antisocial behaviour.

Today, we need a clear statement from the minister on what will happen to a young person if an ASBO is breached, because it is evident that some members of the committee are uncertain about that. If the minister could provide such a statement when she responds on amendment 112, that would go a long way towards satisfying members' concerns.

The Convener: I do not think that anyone would want there to be a rush to issue ASBOs to youngsters, but there is an issue about early intervention with youngsters who are creating many difficulties. Such intervention would prevent later accumulation of problems, which accelerates youngsters' moving into another system.

The nature of some disorder and antisocial behaviour means that if, instead of stigmatising all the young people who are in an area, the community were to focus on one young person who might be pulling other young people into difficulties, that would address their behaviour and it would deal—at a very early stage—with some of the behaviour of other young people round them. That would be a significant deterrent. It is important that young people avoid going down that road at an early stage simply because there is nothing to tell them that to do so will cause problems for them later on.

I do not accept that the extension of ASBOs amounts to abandonment of the children's hearings system; the provisions in section 4 are about recognising where we are, developing ASBOs and giving them a central place in dealing with all such issues.

Elaine Smith mentioned that acceptable behaviour contracts have been effective in Edinburgh. We must use the whole range of measures that are available. It is interesting that the City of Edinburgh Council, which has been progressive in this area, supports the idea of using ASBOs for under-16s, too.

Mrs Mulligan: I share the view of Elaine Smith and other members of the committee that, ordinarily, children who offend should be dealt with through the hearings system. The hearings system is, and will remain, central to dealing with offending by young people. We are putting additional resources into the system—Elaine Smith referred to some of the things that are happening at the moment—and are reviewing how it works to improve it and to ensure that we maximise its effectiveness.

I cannot emphasise strongly enough the fact that the vast majority of under-16s who offend will continue to be dealt with wholly within the hearings system. However, it is important that there are further options available for those young people who have not paid heed to the services and support that have been offered to help them to change their behaviour. The extension of ASBOs to under-16s is one of the bill's key elements. It is in the partnership agreement and was consulted on for "Putting our communities first". At stage 1, the committee considered the proposal in some detail and a wide range of organisations gave evidence on it. Throughout the process, the proposal has had majority support. Of particular significance is the support from the children's panel chairmen's group and the Scottish Children's Reporter Administration.

We must ensure that the best interests of the children are considered and that the principal reporter and the children's hearings system are properly involved. However, we should have this additional tool to deal with persistently antisocial young people.

As we have made clear from the outset, in extending antisocial behaviour orders to 12 to 15-year-olds we are acting to deal with a very small number of antisocial young people for whom existing measures are not proving effective. Stewart Stevenson asked how many orders we expect to be issued, but it is very difficult to put a figure on that. As my colleague Margaret Curran has said on a number of occasions, we see antisocial behaviour orders as the high-tariff end of the spectrum of measures that are available to deal with behaviour problems. I do not expect many such orders to be issued, but the power needs to be available where necessary. A court-imposed order sends a strong message that persistently disorderly behaviour will not be tolerated.

As the convener has mentioned, ASBOs for under-16s can also have a strong deterrent effect. Children aged 12 and over will know that they may end up in court if they do not respond to the help that is offered to them and improve their behaviour. For the small number of young people for whom an ASBO is the best option and for the others who may engage more effectively in voluntary support because they know that they may end up in court, the provision is worth while. We are widening the use of acceptable behaviour contracts, to which Elaine Smith referred, to help to prevent antisocial behaviour, but voluntary agreements do not always work on their own. It is vital that compulsory measures can be used if voluntary approaches are not working. Indeed, it is best practice in acceptable behaviour contracts for the contract to contain a statement that the continuation of unacceptable behaviour may lead to an application for an ASBO. Where a contract has broken down, that should be used as evidence in the application for an ASBO.

Amendment 112, in the name of Elaine Smith, and the other amendments in the group, which are essentially consequential amendments arising from amendment 112, would limit the use of ASBOs to persons aged 16 or over. It would be wrong to continue to limit ASBOs in that way. We will ensure that the interests of the child and alternative approaches to dealing with their behaviour are properly considered. The principal reporter will be consulted on all applications involving children before those are made. The sheriff will have regard to the views of the principal reporter. When making an order in respect of a child, the sheriff can require the reporter to set up a children's hearing. We will debate those measures at another time—possibly later today—but for this group of amendments the point is clear. The full range of circumstances and options will be considered before an ASBO is applied for or made in respect of a child.

The police and the majority of local authorities want this change. It is interesting that those local authorities that have most experience in using ASBOs are backing the change most strongly. The City of Edinburgh Council has already been mentioned, and Fife Council is another authority that made it clear in its evidence to the committee that this provision would be a useful additional tool to help to deal with a small number of young people.

Later today we will consider some detailed points about ASBOs. I have no doubt that the extension of ASBOs to 12 to 15-year-olds is an important measure to give respite to people in communities that are blighted by young people's persistent antisocial behaviour.

Briefly, I will address a couple of points that other members have made. Mary Scanlon asked what evidence we have on the use of antisocial behaviour orders. It is still early days and the evidence is fairly patchy. However, the fact that local authorities south of the border that have had the power for some time are continuing to use ASBOs for the 12-to-15 age range suggests that those authorities see them as an effective measure and have confidence in them. We will need to keep an eye on the matter and will review the evidence once it is more substantial.

11:45

Members have discussed amendment 117 and the ability of a sheriff to seek a parenting order following an application for an ASBO. It is important that we permit the sheriff to have such a power where they identify that the behaviour of the child is affected by the behaviour of the parent—or the lack of response of the parent. Therefore, an option would be open to them and in such circumstances the same test will apply. The issue is about the behaviour of the parent and not just strictly the behaviour of the child. A parenting order will be successful only in circumstances in which the sheriff recognises that the introduction of such an order can assist the child in changing their behaviour.

A number of members have asked about what would happen if an ASBO were breached. Breach of an ASBO would be a criminal matter, but it would be for the procurator fiscal, in discussions with the children's reporter, to decide how to progress matters. It would be most likely that a new hearing would be convened and a number of options as to how to address matters would then be considered. Later today, Executive amendments will clarify that we do not seek to institute a custodial sentence for a breach of an ASBO by a young person. That is an appropriate approach, but we must also leave options open to those who are in the best position to decide how to take matters forward.

The Convener: I call Elaine Smith to wind up. I do not ask her to press or seek to withdraw amendment 112 at this stage.

Elaine Smith: I agree with what Scott Barrie said in respect of amendment 117 about whether the sheriff should make the decision. On amendment 112, he talked about referrals to court if grounds are disputed. Of course that is the right approach—people should have such a right in natural justice. If a person has a dispute, there should be somewhere they can choose to go. However, very few cases are disputed. From recent research, I understand that more than 90 per cent of cases are not disputed—those are the most recent figures that I have. Donald Gorrie's points were well made and I will listen with interest

to the arguments that he makes for his amendments if amendment 112 falls.

The minister spent some time talking about local authorities that agree with the extension of ASBOs. Some local authorities agree with that proposal, but others, in their evidence to the committee, did not agree. Such authorities included Glasgow City Council, which is pioneering a restorative justice system for children from the age of eight, and West Lothian Council, which was concerned that bringing children within the sheriff court system would be contrary to normal procedures for young people. Therefore, not all local authorities agree with the extension of ASBOs.

I am comforted by the minister's amendments that will be discussed later, and am particularly comforted by the Executive's reassurances that it does not seek to have custodial sentences imposed on children and that the principal reporter must be consulted. I am also comforted by the fact that the minister has said that if the proposals go through, they will apply only to a minority. I hope that that will be the case, as it seems that I am in a minority on the committee today.

However, I still believe that the proposals would change the principles of the hearings system—I have not heard anything that persuades me otherwise. A Pandora's box would be opened. I believe the minister when she says that her intention is that the proposals will apply only to a minority but, with such a change, once a Pandora's box is opened, what will happen in the future cannot be predicted. Therefore, I am not persuaded that I should seek to withdraw amendment 112.

The Convener: We will come to that matter later.

The second sub-group is headed up by amendment 147, in the name of Scott Barrie, which is grouped with amendments 148, 45 and 159 to 163. I invite Scott Barrie to speak to amendment 147 and to all the other amendments in the group. He should not move any amendment at this stage.

Scott Barrie: I will speak to amendments 147 and 162. Amendment 147 would amend the referral procedure for antisocial behaviour orders for under-16s. Section 4(2)(d) reads:

"in the case where the specified person is a child … the sheriff has … regard to any views expressed by the Principal Reporter."

That is a reasonable way to proceed.

However, there is a system for young people who appear in court for very serious offences, such as attempted murder or taking and driving away a vehicle, and whose cases are being heard in the sheriff court or the High Court: a children's hearing is convened in order to give the court advice on what the sheriff or judge should do. My concern is that the bill sets up a slightly different system using ASBOs, whereby we will prevent the children's hearing from giving that advice, with the bill making reference only to the principal reporter. The intention behind amendment 147 is to bring the measures into line with the existing system: the court would receive appropriate advice from a children's hearing, rather than from the principal reporter, before it came to a decision.

Amendment 162 addresses the use of interim ASBOs. It proposes that such orders would last for only 28 days before the court's final disposal, which would determine whether those should become full antisocial behaviour orders. Therefore amendment 162 is also about bringing the children's hearings system, rather than the principal reporter, into the process. In a similar way to the approach that Elaine Smith described earlier when she was speaking to her amendments, it is a matter of ensuring that we are not simply setting up a completely different system that excludes the children's hearings system and that the children's hearings system is itself involved integrally, and not just through the reporter.

Donald Gorrie: I have five amendments in the group. I will start with amendments 148 and 159, which say the same thing: that ASBOs should be used only if

"no other method of dealing with the behaviour of the child is appropriate."

The objective is to prevent some sheriff who was over-enthusiastic about ASBOs—the local authority might take a similar line—from using an ASBO when other methods of dealing with the problem might be more appropriate. The sheriff must be satisfied that the other options that were available would not work and that no other method of dealing with the behaviour would be appropriate.

This might be considered too draconian, but the objective of amendments 148 and 159 is clear: there should not be a level playing field in the mind of the sheriff in the sense that there is simply a choice between an ASBO and some sort of community involvement; his decision should be tilted towards other solutions, and an ASBO should be used only as a last resort.

My other amendments trespass a little on what Scott Barrie has said. I apologise for the fact that, having been away ill, I did not manage to consult him, so our amendments cover some of the same ground. I have referred to the interim ASBO. I fully agree with Scott Barrie when he said that it should last for only 28 days, but I make two additional

points. Paragraph (b) of the new subsection that would be introduced by amendment 161 says:

"the sheriff shall, during that period"—

the period of 28 days—

"seek advice from a children's hearing as to how the child should be treated subsequently."

That would ensure what we all wish to achieve: that the children's panels are brought into play during that period.

Amendment 163 would add a little bit:

"the sheriff shall have regard to any views expressed by the Principal Reporter before making an interim order."

The point was made to me that an interim order can be a quick reaction to a problem. I accept that, and I am not saying that there has to be a meeting of the children's panel before an interim ASBO is agreed. I am saying that before there is an interim ASBO, the sheriff should consult the principal reporter. That would not take very long so it should not hold up the proceedings. The bill should state that the sheriff has to have regard to the views of the principal reporter before making an interim order, and that during the 28 days of the interim order, the children's panel should hear the case and give some advice.

I hope that that idea will commend itself to the committee as well as my previous point that an ASBO should be used only if all other methods would not succeed.

Mrs Mulligan: I have listened carefully to Donald Gorrie and Scott Barrie introduce their amendments. I fully understand their intentions in lodging them but I am concerned that if we accept them today, they might have an unintended detrimental impact on the effectiveness of ASBOs as a means of protecting people who suffer from antisocial behaviour in our communities.

We should remember that ASBOs are preventive orders. They set out prohibitions on unacceptable behaviour to protect people and communities from further acts that cause or would be likely to cause alarm or distress. We should also remember that if an ASBO is granted, it must be necessary to protect innocent people from further antisocial behaviour by the person concerned. That is not an easy test. The amendments would require a children's hearing to be held prior to any decision to make an ASBO in respect of a child.

I have listened to the points raised about the role of children's hearings. My point probably goes back to the debate that we have already had, but let me be absolutely clear that we do not want ASBOs to displace the children's hearings system as the best means of dealing with difficult behaviour of young people under the age of 16. That is not what the introduction of ASBOs for that age range is about.

ASBOs for under-16s are intended to deal with a small number of persistently difficult young people for whom the hearings system is not working. I understand that members of the committee are concerned that although we have said that repeatedly, the provisions in the bill do not bear it out. If that is the case, I undertake to consider before stage 3 how we can ensure that they will do so. In considering that matter, I will want to consult members of the committee, the SCRA and other interested parties. I intend to ensure that ASBOs are used in respect of young people only when appropriate and that they are effective in changing damaging behaviour.

It is important that we get this right. Children's hearings will continue to be the most appropriate forum for dealing with antisocial behaviour by young people when voluntary measures are not effective. However, we do not want to create an overly complicated system that does little to support children or protect people and communities. Our starting point was that consultation with the principal reporter and the requirement for the sheriff to have regard to the view of the principal reporter take the right approach if we are to ensure that the child's wider circumstances are taken fully into account while avoiding unnecessary bureaucracy. If the bill has not gone far enough, we are prepared to think again.

I have some more detailed points about some of the amendments. The effect of amendment 148 would be to require the sheriff to be satisfied that no other method of dealing with the child's behaviour is appropriate before an antisocial behaviour order is made. Amendment 159 would have the same effect on interim orders for children. Those amendments would prevent antisocial behaviour orders and interim antisocial behaviour orders from being used to protect the public from a child's antisocial behaviour at the same time that other methods were being used to deal with the child's behaviour and wider needs. The bill as drafted requires the court to be satisfied that an order is necessary, once the view of the principal reporter and other evidence in the case—which could include an input from local authorities, the police and any representative of the child—have been considered. The provision allows the court to take into account any additional methods of dealing with the child's antisocial behaviour without restricting the discretion of the court over the making of an order.

12:00

Amendment 147 would require a children's hearing to take place for the purpose of obtaining

advice for the sheriff on any application for an antisocial behaviour order in respect of a child. That is a significant additional requirement. It is debatable how much value the provision would have over and above the existing provisions in the bill. The bill ensures that a sheriff must have regard to the views of the principal reporter before making an ASBO in respect of a child. The matter is one that we should look at in the context that I have described. We would need to take into account the fact that, under section 11, a sheriff can, on making an interim order or a full ASBO in a case involving a child, require the principal reporter to set up a children's hearing to consider the child's wider needs.

Amendments 161 and 162 would limit to 28 days the period during which an interim order could apply in the case of a child. At the end of that period, the prohibitions in the order would no longer apply unless a decision was made, following an application, to make a full antisocial behaviour order. That is an unrealistic timetable that would completely undermine the use of interim orders and ASBOs.

As the system operates at present, in cases in which an interim order is granted, the sheriff must set a date for the next hearing—normally in about six weeks' time. If a full evidential hearing is to take place, which would normally be the case when an interim order is involved, the final decision on the ASBO application would normally be made within 10 weeks. In practical terms, it would be extremely difficult to dispose of the full application for the full ASBO within 28 days.

As I am sure the committee is aware, interim orders were introduced last year. The intention was to reduce the delays in obtaining the protection that is provided by an ASBO. To limit the operation of interim orders to 28 days in cases involving children would fail people in our communities. It is important to remember that the cases that we are talking about will be those that involve seriously and persistently antisocial young people and in which there is a need to provide immediate protection. As well as limiting the duration of an interim order in cases that involve children, amendment 161 would have the effect of requiring the sheriff to seek within the 28-day period the advice of a children's hearing on how the child should be treated subsequently.

I support amendment 163 in principle. However, as we propose to return at stage 3 with a properly considered set of amendments to ensure the rightful place of the children's hearings system and to confirm that ASBOs should be used only in cases in which the children's hearings system has failed, I ask Donald Gorrie not to move amendment 163.

Amendment 45 is a tidying-up amendment. It will ensure that the requirement for sheriffs to have regard to the views of the principal reporter when making an antisocial behaviour order in respect of a child also applies when orders are being varied or revoked. That would help to ensure that the best interests of the child and the wider circumstances of the case are considered, even once an order is made and a decision has to be reached on whether to change the terms of the order or to revoke it.

Stewart Stevenson: I have a specific question for the minister and, if it is procedurally appropriate, I would be willing to take an intervention so that she can give me the answer. It is clear that the 28-day limit for an interim ASBO is causing the minister some practical difficulties. She suggests that 10 weeks is a typical period. Is that an indication that another number would be acceptable? There is concern about the open-ended nature of interim ASBOs, given the length of time that they can apply. Could an interim ASBO that had no specific time limit be open to challenge? Such an order could, of course, be granted in the absence of the person who was the subject of the order, which would cause me—and, I suspect, others—concern. Is there a principled opposition to time limits or does the minister object only to a 28-day limit?

Ms White: I support the amendments and I hope that most or all of them will be agreed to. I will not consider the question of the 28-day limit, because Stewart Stevenson has already touched on that, but I agree that there should be a definite time limit.

I will be so bold as to repeat what the minister said earlier—I am sure that she has perfect hearing and is listening—when she quoted Margaret Curran as saying that ASBOs would be at the high-tariff end of the spectrum. If that is the case, surely we should try to do everything possible, as Donald Gorrie's amendments 159, 161 and 148 would require, before taking out an ASBO.

I understand where the minister is coming from when she talks about kids under 16 who cause disruption in their neighbourhoods, but adults also cause disruption. I think that Scott Barrie pointed out that sometimes the problem behaviour is caused not by the child, but by a lack of parental control. The minister says that sheriffs would, where necessary, draw on evidence from the police and the community, but if such evidence is collected in order to grant an ASBO, could it not be presented to the children's panel? Surely we should try every possible route to reach those kids.

It is important that the measures in the bill are not just punitive; they should also help kids to see that their behaviour is unacceptable and to sort out

that behaviour. The provisions should not just be punitive; they should be restorative. Why does the minister not accept amendments that I hope might enable us to give kids every opportunity before we impose the highest tariff—an ASBO—on them?

Elaine Smith: My comments will be similar to those of Sandra White. The bottom line is that we all hope for the same outcome: we want the bill to reduce antisocial behaviour, to protect innocent people from such behaviour, as the minister says, and to improve the environment in our communities.

Like Stewart Stevenson, I have a question for the minister about time limits. I accept the minister's points about the practicalities of a 28-day limit, but could not time limits sometimes be placed on orders?

If my amendment 112 is not agreed to, I will see no reason not to support the other amendments, as they would affect only a small minority of children and therefore could not cause problems. Why does the minister think that ASBOs would be less efficient and effective if we were to go through the process that the amendments set out? By allowing welfare and justice issues to be considered together, the amendments would help to address an issue that I raised when I spoke to amendment 112. I would like to hear the minister's response to those points.

The Convener: It seems to me that, if we decide that it is appropriate to grant ASBOs in relation to under-16s, it would not make sense to change the nature of an ASBO. If it is inappropriate for somebody under 16, it is inappropriate and that is that. However, one issue that was identified about interim ASBOs was their speed and effectiveness while other things are being done. If we agree that an ASBO should apply only in serious cases, the interim ASBO should apply equally to anyone against whom an ASBO is being pursued. People might not agree with ASBOs for under-16s, but that is a separate matter. It does not make any sense to agree to an ASBO and then to create a situation in which it is difficult for the order to be effective. The test that should be applied is whether there is something about being under 16 that means that the measure is inappropriate.

The issues about justice and the indefinite period have already been tested with the establishment of interim ASBOs. If we are accepting that ASBOs are sometimes appropriate for under-16s, what we are saying is that that package is appropriate for particular young people who happen to be under 16. If we are uncomfortable with the idea of an ASBO for under-16s, that is one thing but, if we accept that an ASBO is appropriate for someone under 16, we should support measures that make it effective. The issue is immediacy. In other aspects of law, one can obtain an interim interdict against someone to stop threatening behaviour or stalking, for example, while the reason why that behaviour is happening is dealt with.

Technically, in a debate such as this, there is no space at the end for the minister to respond. In future, members might wish to consider, in their earlier contributions, what they might want the minister to say. However, it would be helpful if the minister could—if she is willing—respond to specific points, so that we are not hide-bound by the procedure.

I am concerned that our consideration of amendments that have been lodged by individual members—for example, by Scott Barrie, who will be winding up in this sub-group—ends up simply being a debate on the Executive position. That takes away from the standing of the other amendments. If the minister wishes to respond to comments, I will let her back in.

Mrs Mulligan: It would be helpful to respond to some of the specific points that have been raised. Amendment 161 proposes that an interim order should last for 28 days. It would be wrong of me to suggest an alternative number at this stage, because we should perhaps discuss the matter further. I understand the committee's concerns about what might seem to be an open-ended process, but given the way in which interim ASBOs are used at the moment there would be nothing to prevent people from applying for an extension of another 28 days. Therefore, the amendment might not deal with the committee's concerns about the delay in responding.

The Executive should listen to the committee's concerns and consider how—without my picking a number off the top of my head that I think the committee might find acceptable—it can reassure members that the behaviour of the young person involved can be addressed in a satisfactory timescale. As I said in my opening comments, the Executive intends to consider the committee's on-going concerns. We want to reassure the committee that ASBOs are, first, part of the hearings system and, secondly, an appropriate measure at a certain stage in the run of events.

I reiterate that ASBOs are about stopping behaviour that communities find unacceptable. Part of the reason why the interim ASBO is so important is that it is about getting that behaviour stopped as quickly as possible. However, ASBOs are also about concentrating the mind of the young person involved on engaging with those who can offer them support to change their behaviour.

The Executive considers that part of the process to be very important for a young person. We

believe that early intervention, before a person is 16 and could find themselves in even more serious difficulties, is sufficiently important to introduce the measure at this stage. The provision is about bringing into line a young person who is growing into maturity and should be able to recognise the consequences of their actions. It is about stating, "The antisocial behaviour order says that you must stop."

The package of measures that would be introduced alongside that, through the children's hearings system—which the Executive wants to continue being used—should be about considering how to change the person's behaviour. That is the process that the Executive considers will be effective for those in the 12 to 16 age group. It is where the Executive considers that we can make a difference—by giving communities the comfort that they need while supporting the young people to change their behaviour.

12:15

Scott Barrie: The convener was right in saying that we should avoid coming up with a system that is so bureaucratic that it drives a coach and horses through what we are trying to achieve. As I was listening to the minister, it struck me that a time delay is often built into child protection cases. The initial child protection order is granted, followed by a temporary placement of 22 days and a further temporary placement of 22 days. If a hearing needs to go beyond that, it has to apply to the sheriff court for an extra 22 days. Before we know where we are, the process effectively lasts 80 days. That is what the law allows. What the minister was perhaps getting at in response to Stewart Stevenson's point on the 28 days was that we would not want to have a replica system, in which we constantly go back to the court and end up having multiples of another number. I take that point on board.

I was interested in what the minister said about wanting to consider again the interaction between the principal reporter, the children's hearings system and the sheriff court system in the granting of ASBOs and interim ASBOs. That is perhaps the best place to leave the matter at this stage. We are considering an important issue. Rather than plucking things out of the air and doing the magical numbers bit, we should ensure that we get the framework right. I welcome the minister's commitment to consult the committee on those points before stage 3.

The Convener: I suggest that we take a break for about 10 minutes and then continue the meeting until about 1 o'clock.

12:17

Meeting suspended.

12:30

On resuming—

The Convener: We shall pick up where we left off. In the third sub-group, amendment 151, in the name of Donald Gorrie, is grouped with amendments 152, 153, 46, 47, 155, 48, 156, 157 and 171.

Donald Gorrie: Amendments 151, 152, 155 and 156, which all say the same thing, concern whom a registered social landlord has to consult. The Law Society of Scotland felt that there was some ambiguity about the matter. If members are interested, the information is in section 4 and the definitions of relevant persons are given in section 4(10).

The Executive has twice used the argument against my amendments that, if a more specific and tight section comes after a more open section, that tight section negates in some way the earlier one. However, I would like the minister to say that section 4(8) makes it clear that a registered social landlord must consult fully all the people who are listed. Many of us feel that there is a risk that registered social landlords will rush in to get an ASBO as a result of a specific local disturbance, perhaps between two neighbours, without understanding the wider picture. If the minister can assure me that the registered social landlords must consult all and sundry as listed, I will be happy.

Stewart Stevenson: I take pleasure in speaking to amendments 153, 157 and 171. The three amendments, together with others elsewhere, map out a small policy change. The objective that I pursue through the amendments is to ensure that the victim—known in the bill as the "relevant person"—is more fully included in the process. I seek specifically to ensure that, when antisocial behaviour orders are issued, the relevant person sees them—the bill does not currently provide for that—and that when consultation takes place, the relevant person or victim is allowed to choose to be part of the consultation.

By the same process, amendments 153 and 157 seek to make it explicit that a failure on the part of the relevant person, or anyone else for that matter, to respond to an opportunity to be consulted, should not provide a barrier to progressing an antisocial behaviour order or an interim antisocial behaviour order. There can be legitimate reasons, which have been discussed, for people who are subject to antisocial behaviour not wishing to raise their profile. My amendments would not force those people to take a higher profile, which would be against their interests.

Amendment 171 would extend the definition of relevant consultees to include affected persons as far as they can practically be identified. Affected persons are the people to whom section 4(6) refers and who are beyond the relevant person—the direct victim—on whose behalf I presume that an antisocial behaviour order would be sought. Affected persons might become, or may already be, targets of the person against whom an order has been issued.

The bottom line is that my three amendments would enhance the victim's position. Given the Executive's focus on victims' rights in other legislation, such as the Criminal Justice (Scotland) Act 2003, my amendments should be in line with the Executive's broad approach of taking more interest in victims' concerns. I hope that the minister will say that the amendments are in line with her thinking and that of her colleagues and that, if my amendments would create problems, another way forward can deliver the same objective.

Mrs Mulligan: Amendments 151, 152, 155 and 156 would duplicate provisions in the bill and are unnecessary. Sections 4(8)(b) and 5(2)(b) require a registered social landlord to consult the local authority in the area where the child resides, or appears to reside, about the proposed application when the specified person is a child or to notify such a local authority of the proposed application when the specified person is 16 or over. RSLs are included in the more general provisions on consultation.

The definition of a relevant authority in section 15, which has been mentioned, includes a registered social landlord, so RSLs are obliged to consult the relevant consultees under sections 4(8)(a) and 5(2)(a). I suggest that the amendments are unnecessary and I hope that Donald Gorrie accepts that.

Amendment 153 would make it explicit that any failure to respond by a person or local authority that was consulted on an application for an antisocial behaviour order should not prevent a sheriff from making an order. Amendment 157 has the same purpose in relation to applications for variation or revocation. Those amendments are unnecessary, as the bill does not prevent a sheriff from making an antisocial behaviour order or from varying or revoking an order if consultation responses are not received. I confirm that that is the case and invite Stewart Stevenson not to move amendments 153 and 157.

Amendments 46 to 48 will make minor changes to section 5. I hope that members will agree to them.

As Stewart Stevenson said, amendment 171 is intended to ensure that victims of antisocial behaviour, and perhaps those who have been affected by the problems in a case, are consulted on all antisocial behaviour orders that are relevant to them. I agree that that is not unreasonable. We want to cover in guidance the need to ensure that the views of people in the community are taken into account. However, amendment 171 would require a relevant authority that applied for an antisocial behaviour order to consult relevant persons as defined in section 4(10) and affected persons who can be practically identified. As a relevant person in relation to an application by a local authority is a person within the area of the authority, that would include any person residing in the area, or otherwise in the area. I am sure that members will accept that that is probably impractical.

People who are involved in a case will have their views and evidence taken into account as part of the investigation by the local authority or RSL. There is simply no need to introduce a statutory requirement to consult relevant persons—especially if the requirement is to encompass such a large number of people. If authorities do not obtain the input from those who are affected by the antisocial behaviour, I suggest that it is unlikely that they would have the evidence that would be required to support the application for the ASBO in the first place.

Later in the bill, there are sections that refer to notification of groups. If it were felt necessary, further amendments could be considered for those sections. However, we feel that what has been asked for in the amendments has, in fact, been covered.

Donald Gorrie: I am satisfied with the minister's reassurance that registered social landlords have to consult the various people listed and that the bill is not ambiguous.

The Convener: Having debated that group of amendments in three parts, we will deal with it as a whole. Does Elaine Smith intend to press or withdraw amendment 112?

Elaine Smith: I wish to press the amendment.

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)
Smith, Elaine (Coatbridge and Chryston) (Lab)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)

Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 112 disagreed to.

The Convener: Amendment 146, in the name of Donald Gorrie, is grouped with amendments 131 and 154.

Donald Gorrie: The objective of amendment 146 is somewhat similar to some of the objectives that we have been discussing. The amendment seeks to ensure that all local authority services—including social work, education, youth work and housing—work together to provide an effective system of personal support. I propose that, in the bill, one of the conditions of imposing an ASBO is that the sheriff be

"satisfied that the local authority has fulfilled any duty to provide an effective system of personal support to the specified person".

In that proposal, "any duty" would be as specified in the various social work and education acts that make it clear what a local authority's duties towards people are. An ASBO should not come out of the blue without the young person having been offered support.

I move amendment 146.

Elaine Smith: I will explain the reasoning behind amendment 131. Someone with a disability might not have the capacity to demonstrate for themselves that their antisocial behaviour was reasonable because of specific circumstances. In oral evidence to the committee on 3 December 2003 from the Scottish Consortium on Crime and Criminal Justice, Maggie Mellon gave an example of a woman who had been evicted from her home along with her three children under the existing legislation on antisocial behaviour. That woman suffered from a psychiatric illness at the time and was displaying antisocial behaviour that annoyed her neighbours. However, she could not prove to the sheriff that her behaviour was reasonable and no psychiatric assessment of her condition had been carried out for her court hearing.

That is why I lodged amendment 131. I would be interested in the minister's comments, as I know that she takes such issues seriously.

12:45

Stewart Stevenson: Amendment 154 is intended not to promote a policy change, but to ensure that the wording of the bill has the effect that the Executive wants it to have. At line 28 on page 4 of the bill, it appears that the wording would allow a local authority to act only on behalf of someone who resides within its area, although the antisocial behaviour to which someone is subjected could be happening in another area. For example, a shop worker who crosses a local authority boundary to go to work could be subject to antisocial behaviour in an area other than that in which they reside. Equally, there could be social reasons for people crossing boundaries. If the minister can assure me that the bill makes adequate provision in that regard, I will not see the need to press amendment 154.

Elaine Smith makes an important point in amendment 131. The requirement for the specified person to show that their conduct was reasonable in the circumstances could fall in a number of situations. For example, if someone was, and remained, psychiatrically ill it would be down to the psychiatrist, rather than the individual, to provide the evidence to the sheriff. I strongly support amendment 131 for that reason.

Mrs Mulligan: As I have stated, ASBOs are preventive orders. They set out prohibitions to protect people in the community from further acts that cause, or are likely to cause, alarm or distress. Before imposing an ASBO, a court has to be satisfied that certain conditions have been met. I am therefore concerned about the impact that amendment 146 would have on the effectiveness of ASBOs and I believe that amendments 131 and 154 are unnecessary.

Amendment 146 would require the authority that was applying for the order to provide evidence that

"any duty to provide an effective system of personal support"

had been fulfilled before an order could be made. That would be the case in respect of any application for an antisocial behaviour order, regardless of whether the person was under 16 and whether the application was being made by a local authority or an RSL.

It is not clear which duties around personal support Donald Gorrie had in mind, but the effect of the amendment would be to place an unreasonable demand on local authorities. The court has to be satisfied that the antisocial behaviour order is necessary to protect people. To introduce a requirement for the court to be satisfied of the additional conditions that are suggested in amendment 146 would be unrealistic and practically unworkable. It would be wrong to preclude the use of an ASBO to protect people in the community because there might have been a service failure by the local authority. Public safety should not be dependent on the effectiveness of a range of local authority departments.

I understand the intention behind Elaine Smith's amendment 131, but I consider it unnecessary. Section 4(3) provides that the sheriff can disregard antisocial behaviour that the person in respect of

whom the order is sought can show was reasonable. The provision requires the person who is defending the application to show that their actions were reasonable. I make it absolutely clear that the effect of that will not be to require the individual to make representations to the court; a legal representative can make representations on behalf of the specified persons, as they can in other legal proceedings. That has always been our policy intention, and it continues to be the effect of the provisions of the bill.

Concerns were raised at stage 1 about the issue that underlies amendment 131. In the case of someone who could not show that their behaviour was reasonable, perhaps because of a disability or developmental condition such as autism, we would always expect that individual to be represented. The person's legal representative can ensure that any medical condition is given proper consideration. When appropriate, a medical expert may be asked to give evidence. There is nothing in section 4(3) to prevent that.

I suggest that amendment 131 is unnecessary, and that it would create ambiguity over who has to demonstrate to the court that the behaviour was or was not reasonable. We do not want to create doubt that responsibility for demonstrating reasonableness rests with the person who is being challenged on reported acts of antisocial behaviour, not with the authority that is applying for the order.

It is important to remember that the provision is about providing protection for people who are affected by antisocial behaviour. The people who are most affected by antisocial behaviour are often the most vulnerable members of the community. It would be wrong to increase the likelihood of people not being forced to address their behaviour by introducing doubt about who is responsible for showing that the behaviour was reasonable in the circumstances. I invite Elaine Smith not to move amendment 131.

Amendment 154, in the name of Stewart Stevenson, attempts to make explicit the fact that relevant persons, in relation to applications for antisocial behaviour orders by local authorities, are persons within the authority's area

"regardless of whether that person's place of residence is within the authority's area".

The amendment is unnecessary, as its intention is fulfilled by the bill's existing provisions. In confirming that to Stewart Stevenson, I hope that he is reassured and might not press amendment 154.

Donald Gorrie: I understand what the minister said about amendment 146, but it is important that, somewhere in the bill, or possibly in the guidance, it is made absolutely clear that a local authority must fulfil its duties under the various acts to provide an effective system of personal support. Councils often do that but, through a lack of staff or prioritisation, there is not the level of support that there should be in some local authority areas for those young people who are beginning to get into trouble. That point must be registered in some way, and I wondered whether the minister might care to indicate that the point that is made in amendment 146 will be covered and made clear in guidance.

Mrs Mulligan: I recognise Donald Gorrie's concern with regard to the support that is available for people under the circumstances that he describes. We would want to consider what guidance we could provide and ensure that it was available. However, as I said, I would not want to stop the protection of those who are experiencing antisocial behaviour on the basis that there was no such support. Our intentions are that such support should be there. If we can provide guidance to that effect, we will bring it forward.

Donald Gorrie: Okay—I can live with that.

Amendment 146, by agreement, withdrawn.

The Convener: If amendment 113 is agreed to, I cannot call amendment 147, on the grounds of pre-emption.

Amendment 113 not moved.

Scott Barrie: In light of the undertakings that the minister gave about consideration before stage 3, I will not move amendment 147.

Amendment 147 not moved.

Donald Gorrie: Likewise, as the minister has agreed to lodge another amendment, I will not move amendment 148.

Amendment 148 not moved.

Elaine Smith: I spoke to amendment 131, but I did not respond after the minister spoke. I assume that I am not allowed to respond now.

The Convener: You may say something briefly to explain why you are moving or not moving the amendment.

Elaine Smith: I seek clarification from the minister on whether only a solicitor could show whether conduct was reasonable in the circumstances, or whether others, such as a psychiatrist or an autism specialist, could also be involved. It is important to find that out.

Mrs Mulligan: As I said, it would be up to the solicitor who represents the person but they would be able to take evidence from a psychiatrist or somebody with specific medical knowledge that would be appropriate to the hearing. That should cover Elaine Smith's concerns.

Amendment 131 not moved.

The Convener: With that, we conclude our consideration of the Antisocial Behaviour etc (Scotland) Bill at stage 2 for today. We will start again where we left off at our next meeting, when there will be a call for amendments to the end of section 52. I thank members for their attendance.

Meeting closed at 12:56.

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