

COMMUNITIES COMMITTEE

Wednesday 28 April 2004
(*Morning*)

Session 2

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CONTENTS

Wednesday 28 April 2004

	Col.
ITEM IN PRIVATE	839
BUDGET PROCESS 2005-06	840
ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) BILL: STAGE 2	861

COMMUNITIES COMMITTEE 16th 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:

Kay Barton (Scottish Executive Development Department)
David Doris (Scottish Executive Development Department)
Angiolina Foster (Communities Scotland)
James Hynd (Communities Scotland)
Mrs Mary Mulligan (Deputy Minister for Communities)
Mike Neilson (Scottish Executive Development Department)
Gillian Russell (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McNally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Communities Committee

Wednesday 28 April 2004

(Morning)

[THE CONVENER *opened the meeting at 10:03*]

Item in Private

The Convener (Johann Lamont): I welcome everyone to this meeting of the Communities Committee. Item 1 on our agenda is consideration of whether to discuss our draft report on the budget process 2005-06 in private at a future meeting. Do members agree that we should do that?

Members *indicated agreement.*

Budget Process 2005-06

The Convener: Item 2 on our agenda is consideration of the budget process 2005-06. I welcome Mary Mulligan MSP, who is the Deputy Minister for Communities; Mike Neilson, who is head of the housing and regeneration group in the Scottish Executive Development Department; Angiolina Foster, who is chief executive of Communities Scotland; James Hynd of Communities Scotland; and Kay Barton, who is head of the social inclusion division in the Scottish Executive Development Department. I do not know whether the minister wishes to say something before we move to questions.

The Deputy Minister for Communities (Mrs Mary Mulligan): I would like briefly to make a couple of opening comments; I know that we are pushed for time, but I am pleased to have this opportunity to discuss with the committee the "Annual Evaluation Report 2005-06". Members have been introduced to the officials who are here this morning to assist me in responding to questions.

The "Annual Evaluation Report 2005-06" represents a subtle change of name from "annual expenditure report". The purpose of that change is mainly to differentiate the report from the stage 2 draft budget document, which will be published later this year. I acknowledge that there is a plethora of documents, but I hope that that will not cause the committee any difficulties. The annual evaluation report now focuses on the key targets and progress towards those targets. It provides the baseline budgets for the forthcoming year. Stage 2 will reflect the outcome of the spending review.

At first sight, it appears in the AER that the budget provision between 2004 and 2006 is being reduced by £43 million a year, compared with the draft budget document of last September. I state that resources are, in fact, increasing. I am sure that the issue will be raised in questions, when I will be happy to address it in more detail.

Tackling poverty sits at the centre of the social justice agenda and closing the opportunity gap for Scotland's most disadvantaged people is one of the Executive's top priorities; it remains at the centre of all our efforts. I hope that we all agree that work continues to be the best way out of poverty. Major investment is being made in education and training and in assisting people back into employment. In the communities portfolio, our investment in tackling poverty and disadvantage has a number of strands, which I will be happy to address in more detail in response to questions.

I highlight the recent discussions on affordable housing. The Executive is involved in a review of affordable housing and the issue is a priority because we recognise its importance for a number of our strategies. Again, I will be happy to provide details when I respond to questions.

The Convener: We are aware that the Executive has responded to the Finance Committee's final report on the 2004-05 budget process. However, ministers have not responded to the specific recommendations that were made by the Communities Committee. Given that we published our stage 2 report to the Finance Committee last November, why have we not received a response?

Mrs Mulligan: I understand that the committee should have received a response, but only this week. We received the committee's report in February—I accept that some weeks have passed since then. I need to investigate further in the Development Department the delay since February in responding to the committee. I apologise for that; the committee should have received our response by now.

The Convener: Even if we had received it, it would have been very difficult for us to read it, take it in and reflect on it in order to formulate questions in time for the next stage of the process. It would be useful if production of the response could be shifted back a little. There will be a discussion about how the process is managed in future so that it is more satisfactory for all concerned.

You have already reflected on issues that relate to my next question. The AER appears to show that closing the opportunity gap is not a key priority in itself, as in previous years, but has been subsumed into the priority of "Stronger, safer communities". I am sure that you would contest the argument that the change could be interpreted as a downgrading of closing the opportunity gap. However, the issue is not receiving an above-average increase in real-terms budgetary growth. If it is being funded partly in other places, and the Health Department, the Education Department and so on are responsible for delivering some of the communities agenda, it would be helpful for us to know how that process works. How do the Minister for Communities and the Deputy Minister for Communities influence or shape what is happening to budgets in other areas in order to deliver the kind of services that we would support?

Mrs Mulligan: As I said in my opening statement, I refute any suggestion that the Executive is reducing its commitment to closing the opportunity gap. The inclusion of that commitment in the introductory comments in the AER shows that the Executive recognises that it is a cross-cutting issue that is not reserved to the

communities portfolio. It is not just in the communities budget headings that we see spend on closing the opportunity gap. The commitment is not just an add-on, and other departments recognise the role that they have to play. For example, I mentioned employment; the Enterprise, Transport and Lifelong Learning Department is considering ways to encourage people into training programmes and work opportunities and ways to support them in that process. It is essential to recognise that that work is a central plank in our policy rather than an add-on, which it might have seemed to be as part of the communities agenda. On that, I am supported by Andy Kerr, the Minister for Finance and Public Services. When he gave evidence on the budget process to the Finance Committee yesterday, he referred to the cross-cutting nature of closing the opportunity gap and the emphasis that the Executive places on it as a cross-cutting measure. We must recognise that closing the opportunity gap will be funded throughout the departments, but it is also important to work with, and to bring additional spend from, other partners.

To show the committee how the figures on spend on closing the opportunity gap are developed, I ask Mike Neilson to explain how one can read through the figures to produce the results that one is looking for.

Mike Neilson (Scottish Executive Development Department): I will give a brief warning about looking at the headline figures without considering what is underneath them. There are two big points. First, in making comparisons between portfolios, we should remember that health accounts for a large share and it has a large increase in real terms. The picture looks different if we take health out of the calculation of increases, and when we do so we see that the communities portfolio is a priority.

Secondly, there is a lot going on underneath the headline increases, and that makes it difficult to take the figures at face value. A particular example is the move to the prudential borrowing regime in local authority housing; in 2003-04 there was £130 million in the budget for borrowing consents to local government, but in 2004-05 and 2005-06 that has been removed. That does not reflect a reduction in borrowing; it means simply that under the prudential borrowing regime the money does not count as Scottish Executive public spending. The underlying picture is quite different. As the annual evaluation report shows, in 2004-05 and 2005-06, in exchange for losing £130 million of borrowing, we have gained about £70 million of grant. The overall picture shows that the portfolio's spending power is quite substantially increased.

Ms Sandra White (Glasgow) (SNP): I understand the point about spending on closing

the opportunity gap, but if that is targeted as a spending priority, the committee would surely expect more money to come to it. I hear what you say about the £130 million that has been removed, and about the housing grant—that was good news for local authorities, and they welcomed it.

Is there any monitoring system that would allow the Communities Committee to see where moneys are being spent to reduce poverty in other areas? You spoke about housing and the minister mentioned getting people back into employment. How could we break down those figures to see in which particular areas we are gaining money? The minister says that we are not losing money, but others say that we are. For example, if we were £10 million down in a particular area, would that money be spent in another area?

10:15

Mrs Mulligan: Each department will produce its own figures for what it spends. Within the Executive, a sub-group is looking at how to close the opportunity gap. That sub-group has recently started meeting and it is chaired by my colleague Margaret Curran. It will establish targets within each of the departments to enable us to review how they are spending that money and what they produce. We are not just concerned about how much is being invested in those programmes; it is essential that we recognise what the programmes produce. The Cabinet delivery group that will monitor the progress that is being made in achieving the targets will be crucial in identifying what investment has been made. It will also identify the achievement of the targets that have been set.

There are a number of different avenues for review of that process. The Communities Committee will have an opportunity to see how spend on some of the cross-cutting issues is progressing, but some of that work will be down to departments, which will set targets. For example, the Health Department will set targets on heart disease, which is often related to poverty, so it will be able to produce that information. The process will be combined.

Kay Barton (Scottish Executive Development Department): Following earlier discussions with the Communities Committee and the Finance Committee, the Executive is trying to improve the information that we provide to you about how some of the major spending blocks are meeting the objectives for closing the opportunity gap through their programmes, especially after discussion with both committees last October. We will try in future budget documents of various kinds to give you better information, perhaps more along the lines of the kind of detail that you have had in the past about equalities matters that cross

portfolios. The only problem with doing that is that it is sometimes difficult to analyse the very big spending blocks' contribution to objectives in closing the opportunity gap.

However, there is more that we should be able to tell you about what those big spending programmes achieve and about specific initiatives in the programmes for closing the opportunity gap. For example, the sure start programme in the education portfolio is targeted at the most disadvantaged families with the most vulnerable children. We will try to improve the information that we give to committees for their scrutiny of those matters in future.

The Convener: I would have thought that the bigger the spending block, the more important it is to get that information. If huge chunks of public spending are done without understanding of the priority of closing the opportunity gap, we have a problem. If health and education are not being driven by that priority, we would want to pursue that further.

Stewart Stevenson (Banff and Buchan) (SNP): We are hearing that moneys are being transferred to other budget headings with prudential borrowing in local government. Should that also mean that responsibility should transfer with the money and that the Executive—I recognise that this is contentious—should not set objectives for what become other people's responsibilities?

Mrs Mulligan: It is not like you, Stewart, to be contentious.

It is important that we share our responsibilities. When the Executive allocates resources, it has a responsibility to deliver on its stated targets. Closing the opportunity gap is at the forefront of what the Executive is trying to do. We know that we will not be able to do that on our own; different departments throughout the Executive will make their contributions. The convener's point about what other departments can achieve was apt. If we consider the targets and priorities that the AER sets out for other departments, we see that the Scottish Executive Education Department has set targets that relate to closing the opportunity gap, as have the Scottish Executive Health Department and others. We need to ensure that they deliver on those targets.

We must recognise that we will also work with partners outside the Executive. Partners in housing have welcomed the opportunity to take decisions locally about local spend. The prudential borrowing regime gives them that opportunity and the freeing up of set-aside moneys adds to the pot and enables our partners to respond to local circumstances.

Stewart Stevenson: You said that you share responsibility, which caused me considerable unease. Do you accept that, although the work to achieve the Executive's targets must be shared and will involve many agencies—in public services and beyond—it is vital that responsibility should lie at a single point, so that someone can be held to account for making things happen, regardless of the failures of people who are outside the direct reporting line of the person who is responsible? Do you accept that, although the work can be shared, it is important for committees—and for public life in general—that there is absolute clarity about the single point at which responsibility is exercised?

Mrs Mulligan: I note from the *Official Report* that Stewart Stevenson pursued that issue with Margaret Curran at her most recent appearance at the committee to discuss the matter—other members of the committee might have been a little uneasy at the time.

It is important that there is accountability in relation to the achievement of targets and the delivery of the real changes that will make a difference to people in Scotland. There must be a line of accountability. I am always keen to work in partnership with people and to share responsibilities. Local authorities have their own responsibilities as democratically elected bodies, but I recognise that there is accountability within the Executive in terms of ensuring that that work is carried forward; the buck stops here.

Mary Scanlon (Highlands and Islands) (Con): You have published four documents that contain social justice objectives: the "Social Justice Annual Report"; "Social Justice: A Scotland where everyone matters: Indicators of Progress"; "Closing the Opportunity Gap: Scottish Budget for 2003-2006"; and the AER that we are considering today. Are you satisfied that the performance measurement indicators are best suited to the purpose of closing the opportunity gap? I listened to your comments and it is obviously easy to measure heart disease and waiting lists, but social justice indicators are much more complex—I certainly struggle with them.

Mrs Mulligan: The measurements that we currently use will give us useful information about how we are achieving the objective of closing the opportunity gap. However, the approach is not static and we need to keep the matter under review, just as we review the targets as we achieve them or as they become more or less relevant. It is important that we continually review the way in which we gather figures that enable us to make judgments about whether we are achieving what we set out to achieve.

For example, our central heating programme aims to install central heating for a wide range

people, including older members of the community and people in socially rented housing. We have moved some way towards that and we are on target to improve 70,000 houses by 2005-06. That information will allow us to examine how many people are still living in fuel poverty and what will still have to be done to address that. It is important that we have that information. At the moment, we are looking at the right kind of indicators but we cannot sit back and imagine that that is the end of the story; we need to review them continually.

Mary Scanlon: Mike Neilson talked about looking below the figures and you have talked about recognising what they produce.

With regard to households becoming homeless, target 10 in the annual evaluation report says that

"the proportion of total applications recorded as repeats reduced from 11% to 7%."

However, that is only one small piece of information from the Development Department's statistics release of 20 January, which also says that the number of households in local authority temporary accommodation doubled between 1997 and 2003, that the number of those in temporary bed-and-breakfast accommodation trebled and that the total number of households in temporary accommodation doubled. It also shows that the number of households with dependent children in temporary accommodation rose by 500 to 1,924. Tables 7 and 8 in that statistics release are not good news in relation to the issue of families in temporary accommodation.

You have chosen to ignore those figures because they are not beneficial to your purpose and have instead concentrated on something about repeat applications. Anyone reading the annual evaluation report would think that everything has been a great success but the honest figures in the statistics release show that you have left out the bad news and put in the good news.

According to the AER, everything is hunky-dory. Would you like to comment on the matter that I have raised? How can parliamentarians measure the figures properly if you do not put the full figures into the AER?

Mrs Mulligan: We have 17 targets in the report. However, we recognise that we work in many more areas and that, therefore, not every area of work is recognised in the targets.

We decided to make target 10 a target because we recognise the substantial difficulties that are caused by repeat homelessness. Becoming homeless is traumatic for anyone, but we recognise that repeat homelessness brings even more difficulties. Once someone is established in that homelessness-housing-rehousing circle, it is

difficult to break out of it. We felt that it was important to recognise that repeat homelessness is a major issue that we need to tackle. We have to recognise that any of us can become homeless at any stage and that support mechanisms need to be in place to ensure that it does not happen again. Our efforts have been built around ensuring that families and individual people do not get caught in that pattern.

I accept your point about the rise in the figures that you mentioned. We recognised that that rise would occur once we introduced the Homelessness etc (Scotland) Act 2003 because it allowed people who previously had not been accepted as being homeless for the purpose of the figures that we were producing to register themselves as being homeless in order to get support to resolve the situation. We put in place mechanisms to deal with that. Local authorities were given £127 million to fund our homelessness provision. That was to be used to offer support services and temporary accommodation and to fund other measures for dealing with housing issues.

10:30

Temporary bed-and-breakfast accommodation was mentioned. We have already said that we are very concerned about the use of bed-and-breakfast accommodation for families. We will continue to work with local authorities on providing alternatives to such accommodation. The situation is not acceptable and I will not try to justify it. As part of the affordable housing review that I mentioned in my introductory remarks, we will consider options for meeting the demand for permanent accommodation, so that local authorities are more able to cope with the emergency homelessness situations that arise. We have set one target on homelessness—to reduce the number of households that present for homelessness more than once in a year—but it is essential that we recognise that there are many associated issues that need to be dealt with. We are not running away from the figures but are working hard to tackle each and every one of them.

Mary Scanlon: I continue to contend that you are economic with the bad news and profligate with the good news. Although repeat applications are a factor, there is no doubt that tackling homelessness has been a central plank of the Executive's strategy. As a new member of the committee, if I had not taken the time to examine the underlying figures, I doubt that I would be asking any questions today. In my opinion, you do not support good relations or impart information honestly when you choose to highlight one part of the press release that contains good news, rather

than the exceptionally bad news that it also contains.

The majority of households—64 per cent—that applied were single-person households, mainly consisting of men. When we think of homelessness, we often think of single women and single parents. I would like to be provided with more information. I accept the point that you make, but we should expect more honest data. I do not think that the AER fully reflects the situation. I would have had more respect for target 10 if it had covered the points that you have made about homelessness. I ask for the good news and the bad news to be included in future in the information for targets that the Executive is on course to meet.

Mrs Mulligan: Obviously, when we set the target, we intended to respond to and meet it. In some ways, that is no different from what happens when we set any other target. The important point is that we are providing the information—which Mary Scanlon has—that shows that there are difficulties in other places. We will continue to respond to those. I have tried to outline to the committee the many different ways in which we are dealing with issues that relate to homelessness. The Executive has been praised for the homelessness legislation that the Parliament passed in the previous session, which recognises issues that were previously ignored and which we are now making progress on. The issue that we are discussing is just one of the issues that relate to homelessness and has been included in the targets.

Elaine Smith (Coatbridge and Chryston) (Lab): I would like the minister to clarify this matter. In my opinion, the Homelessness etc (Scotland) Act 2003 is one of the better pieces of legislation that the Parliament has passed. It is among the most progressive pieces of homelessness legislation not just in Britain but in Europe as a whole.

Before the Homelessness etc (Scotland) Act 2003 was passed, were only those in priority need—categories such as people with dependent children and pensioners—entitled to temporary accommodation while their homelessness application was assessed to determine whether they were entitled to permanent housing?

In all the years before the homelessness legislation was passed, we had a wheen of what might be called the hidden homeless. Are you saying that most of the figures that Mary Scanlon quoted represent those who were the hidden homeless?

Mrs Mulligan: Absolutely. The legislation to which Elaine Smith referred was intended to open up the problem and to allow us to recognise rather

than hide from the issues that needed to be addressed. The figures that Mary Scanlon produced show that we are being honest about the issues and about the people who find themselves homeless for whatever reason and who look for temporary accommodation, advice, support and alternative arrangements.

The Executive has worked hard with stakeholders and with local authorities, which have been given not only legislation to deal with, but financial support from the Executive to ensure that they can offer the additional services for which people who were homeless before would not even have been considered.

Mike Neilson: The evidence is that the increase in applications relates to widening the scope of the legislation. The evidence is good, because it shows that the groups with the big increases—especially single people—will benefit most from extending the legislation. Some circumstantial evidence shows quite a close link between the two matters.

Donald Gorrie (Central Scotland) (LD): I have a few questions that will follow up other questions. I remain unclear about whether a genuine increase is being made in the communities budget to reflect priorities such as closing the opportunity gap. The figures suggest that the increase in the communities budget will be less than that in some other budgets. Will the minister reassure us that the verbal priority is matched by a financial priority?

Mrs Mulligan: In real terms, spending has increased, but as a proportion of the overall Executive budget, it has probably stayed level. However, the impact of our spend has increased, because of initiatives such as those that Mike Neilson described, under which moneys that were previously under our headings and our budget have been transferred to others for spending. The impact is that we have produced more for the money that is spent. The real-terms figure has increased.

Donald Gorrie: I was pleased to see that the Minister for Communities chairs the delivery group on closing the opportunity gap. What mechanism ensures that the money that is provided achieves what it is meant to achieve? MSPs always hear anecdotal evidence that lumps of money are sitting around and not being used because nobody knows what to do with them and that money is being spent on programmes that are ineffective in achieving their objectives. How do you check that the money that you spend achieves what you want?

Mrs Mulligan: As I said, Margaret Curran chairs the Cabinet delivery group on closing the opportunity gap, which has met twice. Targets and

methods of doing what Donald Gorrie mentioned—examining the spend and its outcomes—are being established. The group's intention is to establish and announce those targets soon, so that we can judge how we work towards those targets and what the outcomes of the spend will be.

Ministers from all the main spending departments are members of the group. Each will bring knowledge of their department's spend and of how it is being concentrated on meeting the targets on closing the opportunity gap. By working together, we are more productive than if the departments tried to produce those results on their own. The aim is to make the additional spend more effective at closing the opportunity gap.

Donald Gorrie: If everyone co-operates splendidly, that is great. However, I am sure that that does not always happen in all countries in either national or local government. People are focused on their own priorities. There will be a health board, an enterprise board, an enterprise company and a local authority with quite legitimate priorities of their own and they might not reflect the priorities that are set from above. Who is in charge of ensuring that the various people involved at national and local levels deliver the priorities rather than quietly chugging along pursuing their private priorities?

Mrs Mulligan: You will be pleased to hear that we are not trying to replicate the Westminster system in which the people who are in charge of ensuring that priorities are delivered are in the Treasury. We are trying to develop a system in which ministers work together to achieve cross-cutting aims such as closing the opportunity gap. That policy is stated in the document for all to see and we recognise that it has to be one of our priorities. Through the Cabinet sub-group on delivery, we can identify the targets that are aimed at closing the opportunity gap and ensure that they are within the spending plans of the departments. The targets that are set will be based on ensuring that the departments are travelling in that direction. By working together in that way, we can achieve the results that we want. Because everyone is channelling their efforts towards the targets that the sub-group sets, we will be able to see where problems in departments arise. As a member of the sub-group, I am assured that ministers are totally committed to taking on the overarching theme and addressing it in their portfolios.

Donald Gorrie: That is helpful. In England—from whom we can sometimes learn—there is evidence that targets can have a downside. If your target is to produce lots of fizzy water, you can end up producing less still water, which some people want to drink. Do you continually review

your targets to ensure that they are not distorting the overall policy?

Mrs Mulligan: Absolutely. The targets will be public and we will be aiming towards them, but it is extremely important that we keep them under review. Some might be achieved earlier than others—in which case, we would want to set other targets—while it might become obvious that some targets are not achieving our aim. We need to keep the targets under review to ensure that we are making the difference that we set out to make in relation to the overarching aim of closing the opportunity gap.

Stewart Stevenson: For 2005-06, you have £861.05 million to spend. Only two of the 17 targets that you have in the annual evaluation report refer to money: target 13, which refers to £5 million; and target 14, which refers to £11 million. How does the other 98 per cent of your £861.05 million relate to the targets? How much of that £861.05 million do the 17 targets cover and what are the targets for the rest of the money?

Mrs Mulligan: That is such a nice question that I am going to ask Mike Neilson to refer to a chart that we can produce for the committee.

Mike Neilson: Taking a step back from the detailed figures, I will say that there is no doubt that the spending review discussions relate the money to the targets. Unless you can develop targets that are seen to be delivering important priorities, you do not get the money, which is meant to be spent on the targets.

It is difficult to answer the question in terms of how exactly the rest of the £861.05 million relates to the targets, but if you take target 1 as an illustration—18,000 new and improved homes—the first line of the communities spending plan essentially shows that the Communities Scotland development programme will have £254.4 million in 2005-06.

10:45

Stewart Stevenson: You used the qualifier “essentially”. Does that imply that there is money from other sources in target 1, or does it conversely or additionally imply that the £254.4 million does not apply only to target 1? In other words, is there a one-to-one relationship? How can I tell that from the AER?

Mike Neilson: The top line in table 8.01 shows that the development programme is key to delivery of the 18,000 homes. Some of those homes will also be delivered through the new housing partnerships spend, which comes under the community ownership line in the table. Some other aspects of the development programme are relatively small scale and do not contribute directly

to new build. If the committee wants to consider the development programme in more detail, it would be more appropriate to ask James Hynd.

James Hynd (Communities Scotland): I will pick up on what Mike Neilson was saying. The figure of 18,000 homes that is in target 1 is the development programme, but contributory units are also coming from the new housing partnership programme. That money was announced in the past so we are not announcing it now and we did not announce it when the development programme was announced earlier this month.

We tend to avoid putting amounts of money into targets because the target is not to spend money; it is to get the desirable output or outcomes and to deliver ministers’ priorities. The cross-cutting nature of many of the targets makes it difficult to identify and isolate individual sums of money and attach them to targets. I am afraid that the position is complex, but table 8.01 in the AER helps to tie the two together. It is difficult to get a complete correlation.

The Convener: If, in pursuing the target, it became evident that more resources were needed, would there be an easy way of doing that? The process works in both directions: the Executive sets the target and the money tracks it, but alternatively, you could be set a certain amount of money and that amount would define the targets.

James Hynd: Resources are allocated by ministers, but if it appeared that target 1 was not on course to be delivered, we would bring that to ministers’ attention and they would decide whether to add to the available resources to deliver the target.

Stewart Stevenson: I can see that that line implies that for each of the houses that you plan to build in 2005-06 you are spending something in the order of £38,000, which sounds credible.

There are 17 targets in the AER and communities expenditure is listed under a series of headings. Are you saying that if we were to take the contribution that the funding for communities makes to those 17 targets—acknowledging that there might be contributions from elsewhere—we would allocate all of the £861.05 million? If not, what approximate amount is being spent on things other than those 17 targets?

Mike Neilson: I do not want to pick a particular number because we would have to go through the reconciliation very carefully. The basic point is that all the spending relates to the priority objectives. A small proportion of it might not fit neatly under one particular heading. For example, the funding for the Scottish Building Standards Agency does not obviously fit a specific target, but the spending is

necessary. We could send you a table that makes that link and identifies such examples.

The Convener: What it boils down to is the bottom line. I am simply trying to illustrate the difficulties that we have in seeing what you are doing. We are not yet convinced that you can demonstrate that you are managing every penny of the £861.05 million. Equally, I have no specific evidence that you are not doing so. All I am saying is that the report does not lead one to a specific conclusion, which is an issue that you should consider for future reports. I shall draw a line under that at this point, unless you want to say any more. Perhaps I should move on to other areas that I want to explore.

Mrs Mulligan: I would like to make two brief comments on that for the benefit of the committee. We recognise the fact that, in producing the figures, targets and various pieces of information, there is some difficulty in reading across. We are trying to make that simpler so that we can all understand it, because it is not as straightforward as it might be. However, as James Hynd said, we also need to ensure that there is some flexibility in the figures so that we can address issues as they arise if things start to slip. It is difficult to say exactly what proportion of the budget will be spent on what, but I appreciate that that kind of information is useful for the committee in reviewing the situation, so we shall attempt to provide it.

Stewart Stevenson: Nonetheless, at the specific point in time when the budget document is put together, there is no flexibility, and the document reflects what happens that day. What happens that day will have to respond to circumstances that change—both financially and in terms of requirements. Also, the targets are not necessarily aligned with a financial cycle and do not relate to spending from 6 April to 5 April the following year. Of course there are difficulties, but I am glad that ministers and officials recognise the difficulties that we have in seeing what they are trying to do.

I turn to some of the specific points, and particularly to target 4, to which we referred previously. As other targets do, target 4 illustrates a difficulty in relation to measurement. In a sense, you set the target and then set about measuring to find out whether you can achieve the target or what the right target is. Is it really sensible under those circumstances to say that you are on course? You might be on course—I do not know whether you are or are not—but is that an appropriate way of expressing targets? My general discomfort is caused in part by the fact that, because of my background, I feel that there are not enough numbers in the targets. I cannot really see how the targets fit with the numbers, which is a real difficulty for me.

Mrs Mulligan: When we describe our position in relation to the target, and to providing the kind of figures that might give Stewart Stevenson some comfort, as being on course, we are referring to our ability to collect the data that will indicate to us whether we are on course in reducing inequalities in education, health, justice and other elements. We are not claiming that we have made that difference already, but we are saying that we are on course to provide the information that will tell us whether we are making the difference and, if we are not, to respond to the issue.

Stewart Stevenson: Would it be fair to say that, rather than being on course, you are in course? In other words, you are making the effort that will get you there.

Mrs Mulligan: We are on that journey.

Stewart Stevenson: The phrase “on course” as presented in the report creates a different impression.

Elaine Smith: I will return to homelessness and housing issues. As you might know, the Chartered Institute of Housing in Scotland submitted a paper to the committee that outlined its concern about

“unmet housing need in Scotland as a result of housing supply and affordability issues.”

We discussed that and it is clear that we have realistic figures about homeless people, whereas those figures were hidden under previous Administrations. I think that, like me, the institute would welcome the review that you talked about. Can I take up your kind offer to give us more detail about it?

I also have some specific questions. Will the review consider not just social housing, but planning matters such as the mix of housing and affordability in the owner-occupied sector? You will be aware of Shelter’s recent report about children who live in unsuitable housing in Scotland and throughout Britain. I commend the Executive for its fuel poverty initiatives, but they have tended to concentrate on pensioners. How will you relate them to children? Under the review, do you intend to reconsider the right to buy, which was a social policy tool when it was introduced and could be seen as reducing further the availability of social housing?

Mrs Mulligan: There was a lot in that.

Elaine Smith: Do you have an hour?

Mrs Mulligan: If I miss something, I am sure that you will let me know.

We recognise the concern about the availability of affordable housing throughout Scotland, whether it be homes for rent or for low-cost ownership. That is why Margaret Curran instructed a review of the situation. I am aware that the

report of the Barker review, which is a UK document, was published recently. We might be able to learn from Barker's treatment of some issues, but the report is not a specifically Scottish document, so we felt that a Scottish review would be appropriate. That is in process.

We have spoken to various stakeholders, including Shelter, the CIHS, the Scottish Federation of Housing Associations, local authorities and other registered social landlords. We have spoken to tenants groups, builders, developers and banks about dealing with affordable housing. We have considered planning issues, which Elaine Smith mentioned, as we recognise that the supply of land is important to ensuring that housing is affordable. The review has been under way for some months and we hope to conclude it shortly. At that stage, the minister may make a statement about how we want the housing review to proceed.

We acknowledge that the matter is not just a question of numbers. We have made a commitment to provide 18,000 new or refurbished properties in the next three years. We are aware that the CIHS has said that we will need 10,000 such properties a year in that period. I do not want to go into the numbers game, because that is not the only issue. We want to provide quality housing in the right places. As members know, some areas have a housing surplus while other areas have huge shortages that we must deal with. We need to take into account the differences between our rural and urban areas. We also need to consider what type of housing is being provided. We are told in the housing survey that house sizes are getting smaller and that therefore we should be providing smaller, one or two-bedroom properties. However, councillors in Edinburgh tell us that the pressure is on the council to provide family-sized housing, which is often not available. To address the problem properly, we must consider the specifics within the different areas, rather than just go by the headline figure of 6,000 or 10,000 houses a year.

11:00

I acknowledge what Elaine Smith said about central heating. We should welcome the fact that the central heating programme has been a great success. Elaine Smith said that it had been targeted towards older people, but the programme in local authority housing, which is just finishing, and the programme in properties of other registered social landlords, which will finish next year, should address the issue for families, particularly those with children, with which we acknowledge that there is an issue. Discussions about where we go with the central heating programme when it is completed in 2006 still need

to be had. I would appreciate members' comments about what they think would be appropriate.

Elaine Smith's final question was on the right to buy, which the Executive is not considering changing. Under the housing legislation that was passed in the previous session, changes were made to the levels at which people were entitled to purchase property. Many people who buy their property will stay in it and therefore it will still be used; it is not as if the property suddenly becomes vacant and is removed from the property that is being provided. However, we acknowledge that we need to respond as households get smaller and as demand increases.

I return to the issue of the number of houses that need to be provided. People have mistakenly used the information from the Barker review, which said that not enough houses are being built; that refers to the situation in England, particularly the south-east, rather than the situation in Scotland. In Scotland, something like 18,000 housing units per year are being built, whereas we are acquiring only something like 12,000 households a year, so we should have a surplus. However, the need is different in different areas, which is why we are arriving at a situation in which demand is outstripping supply. That is why we need to tailor the response; it is not just a matter of the number of houses that are being provided.

Elaine Smith: Thank you. That was a thorough response.

Donald Gorrie: The minister mentioned planning. A specific point on which rapid action could be taken is that the Executive could make the necessary regulations to empower councils to require developers to produce, in an overall development, a certain number of houses with affordable rent; I think that that happens on occasion, but it does not happen regularly. That would help considerably. We do not need to argue about numbers, but I am sure that the more houses of that sort we can provide the better.

Mrs Mulligan: I agree absolutely and that is one of the issues that we are considering in the housing review. Donald Gorrie is right to say that some local authorities already work with developers in their area to achieve a proportion of affordable housing in developments. In my constituency in West Lothian, the local authority has been quite successful in working with developers to provide affordable housing within the area. Other local authorities may not have been quite as successful, possibly because of issues around the availability of land. We are serious about ensuring that land is made available where possible.

Just two weeks ago, my colleague Allan Wilson announced details of land in the north of Scotland

that was made surplus to requirements by the Forestry Commission Scotland and which would now be available for housing; the commission will not have to realise the best possible return on selling the land, which it used to have to do. We acknowledged that there was unmet demand for housing and that by providing the land at an affordable rate we could provide affordable housing. That is an example of the Executive working together and looking at the supply of land. We need to ensure that our planning resources are focused on that. They have been part of the housing review and will continue as such. Planning resources have an important part to play, and I agree with what Donald Gorrie says.

Ms White: We all agree that more affordable rented accommodation is needed in certain areas. I am speaking specifically about housing stock transfer. Where stock has been transferred, millions—or even billions—of pounds-worth of our moneys have been spent via the Executive. Should a report be made on the stringent checks that are made on those housing associations that do not follow through with their plans to build new houses, do not refurbish to the extent that they promised they would and have an underspend sitting in the bank while people are still living in substandard housing?

I would also like to ask about affordable accommodation for purchase by young people who are starting off on the property ladder, including those in rural areas. People who buy houses in regeneration areas do not have to pay stamp duty, and that is a big incentive for young people who are starting out. Would you consider introducing something along those lines for rural areas to make it more attractive for people to get on to the property ladder?

John Prescott made an announcement in Westminster about interest-free loans for key workers in certain areas down south. Might the Scottish Executive and the Scottish Parliament think along the lines of introducing interest-free loans to enable people to stay in towns and cities instead of having to move out because they cannot afford property?

Mrs Mulligan: I shall ask Angiolina Foster to comment specifically on registered social landlords, because Communities Scotland has the role of regulating them and ensuring that they respond. However, I would like to say a couple of things first.

We will be implementing our policy on stock transfer, and other local authorities are currently considering that. The intention behind the policy is to ensure that we free up for the areas in question additional resources that are currently being used to repay debt, so that we can produce the housing that we need. It will be for each local authority to

consider whether that is one of the ways in which they can resolve the supply problem and the issue of the Scottish housing quality standard, which was announced recently. Community ownership will continue to be part of our policy on addressing housing need.

Stamp duty is a reserved matter, so we will not be taking a view on that. However, I recognise that we need to consider what incentives can be given to people to allow them to access housing in certain areas. You referred specifically to John Prescott's announcement on interest-free loans. I have already had comments from a lot of people who are not sure that that initiative will achieve what is hoped, as it may put additional inflationary pressures on certain areas. It depends on the circumstances from which buyers start, so it will not be a panacea for all problems. However, it is an option in resolving some of the difficulties that our colleagues in the south-east of England have.

Members will be aware that Margaret Curran, in her recent announcement of housing funding, referred to the retention of £20 million to support the housing review that we have been carrying out. One of the things that we might consider is some kind of land banking provision to provide housing at affordable rates. There could also be support options for those who are sometimes referred to as essential workers, although we may be talking about workers who need to be within a given area but who are priced out of the local market at present. That is one of the reasons why we have been talking to banks and mortgage lenders to consider what financial packages might be available to us in responding to that need.

There are a lot of issues that we still need to consider. I assure the committee that we are taking the issue of affordable housing very seriously, that we continue to listen to other people and that we are working up proposals that we hope will make a difference.

Angiolina Foster (Communities Scotland):

When a local authority sells its houses under a stock transfer, the stock enters the registered social landlord sector. Scottish ministers have regulatory powers over that sector, which have been delegated to Communities Scotland. The regulator will take a very close interest in a number of matters immediately following the stock transfer. Any ballot promises that are made by the new landlord will be monitored closely to ensure that they are fulfilled.

More widely, the regulatory regime for the sector has a number of performance standards, which all registered social landlords must meet. Those standards cover a mixture of service delivery quality issues, as well as the robustness of the management of the organisation, governance standards and so on. Every landlord is inspected

against those standards with some regularity. In the case of stock transfer associations, the regulator will make a point of conducting a full inspection around two years after the transfer, precisely in order to check, in an in-depth fashion, issues of quality, delivery and so on.

Elaine Smith: I take the minister back to what she said in her opening statement about work on tackling poverty being at the centre of the agenda and one of her top priorities. The committee learned from a briefing by Professor Arthur Midwinter that spending on identifiable poverty-related programmes will grow by 15 per cent over the period 2002-03 to 2005-06. Although that increase is substantial, the overall Scottish budget will grow by 23 per cent. Should a higher increase not have been expected for such a priority area?

My next question also relates to tackling poverty. The recent report on households below average income shows that there is evidence of a reduction in relative poverty for pensioner households and for low-income households with children between 1996-97—the baseline year for the “Indicators of Progress 2003” report for social justice—and 2002-03. However, the same report provides evidence that there has been an increase in relative poverty among people of working age in low-income households. That raises issues around the working poor. You have said that the Executive feels that the best route out of poverty is through work, so there are issues there. What particular areas of the budget are targeted to assist that group?

Mrs Mulligan: I do not have in front of me a copy of the figures that were provided by Professor Midwinter, but my understanding is that we are not comparing like with like. It is therefore difficult to arrive at the conclusion that we are not giving the issue of poverty the priority that it should be given. Once we acquire those figures, I might return to that question. I could write to Elaine Smith to clarify where we are with that.

The Convener: If you could write to the committee, that would be helpful. We would like that information to inform our report.

Mrs Mulligan: Okay.

On Elaine Smith's second point, about working people and issues of poverty, I think—

Elaine Smith: My question was not specifically about working people; I was referring to people of working age in low-income households, not necessarily people who are working.

11:15

Mrs Mulligan: As I have said, I think that we all accept that employment is the major route out of

poverty. It opens up opportunities for people, and we therefore want to promote it.

Elaine Smith asked what we are doing to address those issues. The working for families line in the AER, for which we have funding of £10 million per annum for 2004-05, will address child care and employment issues. You will be aware that some of the social inclusion partnerships also have child-care remits and they are working on ensuring that there is adequate child-care provision so as not to prevent people from accessing employment or training.

We have provided moneys to improve debt advice and for financial packages for people with debt problems. It can be difficult for those who find themselves in difficulties with debt to take on employment, because of the other responsibilities that it brings. Debt advice can be one contributor to ensuring that people do not have to cross that hurdle.

I turn to elements of the promoting social inclusion budget. We are considering mentoring programmes, such as work that is going on with One Plus: One Parent Families to provide assistance to people who are seeking support in making the move into employment. Mentoring programmes can be simple but effective in ensuring that people can access employment opportunities.

Another example is the operation of SIPs. Last summer I visited a SIP in Dundee, which works specifically with people who need support to access training or work, whether they need something simple such as help with preparing a curriculum vitae or help with gaining the confidence to make an application, go through the interview process and so obtain employment. All that support has been brought together in the Dundee SIP, which has seen more than 4,000 people enter employment in the period in which it has been operating.

We acknowledge that employment is a central plank of tackling poverty and there are areas of it in which the Executive has a remit.

The Convener: As there are no other pressing questions, we will finish this agenda item. I thank the minister and her officials for attending a session that lasted slightly longer than we had expected, but which will be useful for our report. I suspend the meeting for 10 minutes.

11:17

Meeting suspended.

11:28

On resuming—

Antisocial Behaviour etc (Scotland) Bill: Stage 2

The Convener: This is day 2 of our consideration at stage 2 of the Antisocial Behaviour etc (Scotland) Bill. I remind members that they should have with them a copy of the groupings of amendments and the marshalled list; a copy of the bill would probably help, too. I reinforce the point that was made last week: when we are taking votes, members should indicate clearly which way they are voting so that the result can be recorded accurately for the *Official Report*.

Section 4—Antisocial behaviour orders

The Convener: Amendment 149, in the name of Donald Gorrie, is grouped with amendments 149A and 132 to 143.

Donald Gorrie: The objective of my amendment 149 and, I think, of Stewart Stevenson's amendment 149A is to try to take account of the strongly and sincerely held views of a number of people in organisations that try to help people with medical problems or disabilities. People in those organisations are afraid that the behaviour of a young person with, for example, autistic behaviour problems might appear disruptive to the neighbours. Those people are very worried that some councils, registered social landlords and sheriffs might pursue an antisocial behaviour order against someone with such a problem in ignorance of the real causes of the problem. There has to be something in the bill or in guidance that reassures those people that although such behaviour might be difficult for neighbours, it will not be dealt with through an antisocial behaviour order but in a different way.

I have had some helpful discussions and I accept the argument that my amendment 149 might be drawn too widely, so I will not live or die by the wording of the amendment. However, it is important that the bill contain reassurances. If it does not, such reassurances should be in the guidance, which would give comfort to those people who are genuinely concerned.

I move amendment 149.

11:30

Stewart Stevenson: Donald Gorrie spotted at once that I was seeking simply to ensure that we include autism in his amendment, as it is a condition that is worthy of such protection.

Turning to Elaine Smith's amendments in the group, I am conscious that under section 4(3), sheriffs are able to

"disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances."

Donald Gorrie's and Elaine Smith's amendments touch on that area. Amendment 149 would prevent people from entering into a process that would lead to the sheriff having to judge whether behaviour was reasonable. If the Executive is to rebuff amendment 149, I want to hear a vigorous and well-stated defence of that rejection. It is important that people with medical and developmental conditions do not enter the legal system.

Similarly, Elaine Smith's amendments focus on the definitions—I use the plural because there are several—of antisocial behaviour in the bill. In amendments 132 and 135, Elaine Smith uses the term "wilfully or recklessly". That test might be too high, but I want to hear what Elaine Smith has to say.

Elaine Smith also seeks to include in the main interpretation section the expression—I paraphrase because the amendments are worded differently—that "the person knows" that they are committing an act of antisocial behaviour. I have considerable sympathy with that idea. This group of amendments is key to the way in which antisocial behaviour orders will work and how they will control the way in which people enter the system.

Along with other members of the committee, I am quite anxious to ensure that people who are not aware of the antisocial impact of their behaviour do not enter the legal system through an antisocial behaviour order but are helped in a way that will ensure that the person who is affected by their antisocial behaviour is relieved of the burden of that behaviour.

The Convener: You should now move the amendment to the amendment.

Stewart Stevenson: You are quite correct, convener. I move amendment 149A.

Elaine Smith: I have a technical question. What happens if, after I have moved an amendment, I am comforted by what the minister has to say?

The Convener: If the amendment was the first in the group, or if it was an amendment to an amendment, you would be asked to move it. Once moved, the amendment would become the property of the committee as a whole. I would then ask whether you wished to press or withdraw the amendment. If you wished to withdraw it because you were comforted by what the minister had said, you would seek leave to withdraw and the committee would have to give its consent before

you could withdraw it. However, if one member indicated, simply by saying no, that they did not wish the amendment to be withdrawn, we would move not to a discussion on whether you should be allowed to withdraw, but simply to a vote on the substance of the amendment.

If you were promoting one of the other amendments in the group that was not first in the group or an amendment to an amendment, you would be asked simply to speak to the amendment. Then you would be asked either to move it or not to move it. In those circumstances, you would not seek leave from anybody but would simply indicate whether you wanted to move the amendment or not to move it. If you did not want to move the amendment, it would be within the power of any other member of the committee to indicate that they wanted the amendment to be moved. Again, we would then move to a vote on the substance of the amendment and would vote for or against it. Is that helpful?

Elaine Smith: Very helpful. Thank you.

The Convener: That is the bit that I enjoy, sad person that I am.

I now ask Elaine Smith to speak to amendment 132 and to the other amendments in the group.

Elaine Smith: I lodged the amendments to address specific concerns raised by the National Autistic Society Scotland. The term “wilfully or recklessly” refers to the intention to do the act, and the phrase “the person knows” refers to awareness of the act’s consequences. Someone with an autistic spectrum disorder may do or say something that might be perceived as antisocial but they might not have the necessary knowledge or understanding of the effects of their actions on other people, as Donald Gorrie said.

At present, research is somewhat lacking on the number of adults with autistic spectrum disorder in our prisons, although there continue to be concerns about that. We discussed the issue at stage 1 and the minister took our concerns seriously. As I recall, she gave a commitment to provide guidance to help to address those concerns. I have no doubt that the Executive is committed to equal opportunities; however, there remain concerns that the definition of antisocial behaviour in the bill might inadvertently result in discrimination against people such as those with an autistic spectrum disorder.

I shall listen carefully to the minister’s comments. I hope that she will comment specifically on how guidance might be used to help to allay those fears. I would also be interested in her thoughts on the arrangements for post-legislative monitoring to ensure that the bill does not inadvertently discriminate when it is put into practice.

Finally, touching on what Stewart Stevenson said, I recognise that there might be some problems with the bill with regard to definitions. Given the nature of the reasons behind the amendments, those problems might not have been anticipated. I would like to hear the minister’s comments on that matter, too.

Mrs Mulligan: I am sure that members will agree that this group of amendments has major significance for the bill as a whole. Elaine Smith’s amendments, in particular, could change fundamentally the interpretation of “antisocial behaviour” throughout the bill.

I would like to deal first of all with Donald Gorrie’s amendment 149, which is the subject of an amendment lodged by Stewart Stevenson. I know that amendment 149 has arisen largely as a consequence of concerns raised at stage 1 by the National Autistic Society Scotland. Quite simply, I suggest that inserting such a condition into the bill is not needed. Sheriffs take account of the full facts and circumstances of the cases before them in determining whether an antisocial behaviour order is necessary. Where such factors are significant, they will be considered and balanced with the need to protect the community. Therefore, it would be inappropriate to put an explicit condition in the statute to require sheriffs, in assessing whether conduct amounts to antisocial behaviour, to take account of any medical or developmental condition that may have caused or contributed significantly to that behaviour.

Of course, steps should be taken to raise awareness and understanding of the implications of medical and developmental conditions that might relate to antisocial behaviour. I can confirm that statutory guidance will address those issues. In doing so, I give the committee the reassurance that it was seeking at paragraph 48 of its stage 1 report. For those reasons, I invite Donald Gorrie to withdraw amendment 149.

I turn to amendments on the interpretation of the term “antisocial behaviour”. Section 110 provides the interpretation of antisocial behaviour for the bill as a whole. We have provided that a person engages in antisocial behaviour if he or she

“(a) acts in a manner that causes or is likely to cause alarm or distress; or

(b) pursues a course of conduct that causes or is likely to cause alarm or distress,

to at least one person who is not of the same household”.

Amendment 141 would amend section 110 by adding “wilfully or recklessly” to the requirements that need to be satisfied in interpreting what constitutes antisocial behaviour. Amendments 142 and 143 would also amend the interpretation of antisocial behaviour in section 100. The remaining amendments in the group would have the same

effect with respect to interpretation in other parts of the bill.

The amendments would undermine the operational effectiveness of the bill's measures. In doing so, they could seriously prejudice our ability to protect those who suffer from antisocial behaviour. The proposed changes might initially appear to be an additional check to protect vulnerable people who might not understand the implications of their conduct. I am sure that that was members' intention. However, the fundamental point is that the amendments would lessen protection for people whose quality of life is undermined by antisocial behaviour.

We are taking action to deal with behaviour from which people are not always adequately protected through existing measures. The introduction of a requirement to prove that an individual behaved "wilfully or recklessly" and that they did not know that their behaviour was likely to cause alarm or distress would greatly undermine the effectiveness of the bill. The amendments would greatly increase the evidential requirement placed on local authorities, the police and other agencies that work to deal with antisocial behaviour. That would make the measures in the bill unworkable, and people whose behaviour is persistently antisocial would have the means to obstruct action being taken.

I know that the committee expended a great deal of energy on this issue at stage 1. You will know that the definition of antisocial behaviour is the same as the existing definition in the Crime and Disorder Act 1998. That definition, as the police and local authorities confirmed to you in evidence at stage 1, works well. They also confirmed that the introduction of a concept of intent would cause difficulties and that vulnerable groups would not suffer if the definition remained as it was. It is important to remember that, even when antisocial behaviour has taken place, an antisocial behaviour order will be made only if it is necessary to protect people against future antisocial behaviour.

In saying that, I do not underestimate in any way Elaine Smith's genuine concerns on the issue. We carefully considered the evidence given at stage 1 by organisations such as the National Autistic Society Scotland, which argued for the need to include an explicit concept of intent in the interpretation section so as to ensure that powers were not used inappropriately against people with autism. I met representatives of the society twice to discuss those issues, and I recognise the genuine concerns that people have. We made a commitment at stage 1 to ensure that guidance on the implementation of the bill's provisions would address concerns about the potential for inappropriate use of powers against children and

young people with autism and other special needs. I can reiterate our commitment to doing that.

I agree with the conclusions in the stage 1 report on the definition of antisocial behaviour. The definition used in the bill is the right one. It is wide enough to encompass what all the witnesses regard as antisocial behaviour. It already works in practice through the use of ASBO powers under the 1998 act, and it is not used indiscriminately. I therefore invite Elaine Smith not to move amendments 132 to 143.

Donald Gorrie: Could the minister confirm that the guidance will be available for us to look at before we have to vote at stage 3?

Mrs Mulligan: We will try our best to make it available. That is our intention.

Donald Gorrie: On that basis and as the minister has responded reasonably to the point that I was trying to make, with the leave of the committee, I will withdraw—

11:45

The Convener: I will ask you to do that slightly later because first we have to deal with amendment 149A. You may comment on the debate and then I will come back to you.

Stewart Stevenson can now wind up the debate on amendment 149A and indicate whether he intends to press or withdraw the amendment.

Stewart Stevenson: I will be brief. I wish to press amendment 149A on the basis that I do not know whether amendment 149 will be moved and, if it is to be moved, I want it to reflect my amendment. I suspect that amendment 149 will be withdrawn, but procedurally it would be appropriate to amend amendment 149 with my amendment 149A.

The Convener: The question is, that amendment 149A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Gorrie, Donald (Central Scotland) (LD)

The Convener: The result of the division is: For 3, Against 4, Abstentions 1.

Amendment 149A disagreed to.

Amendment 149, by agreement, withdrawn.

The Convener: Amendment 150 is grouped with amendment 169.

Donald Gorrie: These two amendments make the same point. I am not a lawyer but it does not seem to be good law to say, as the bill does at the top of page 4, that

“an antisocial behaviour order is an order which prohibits, indefinitely or for such period as may be specified”.

I query including in the bill a provision that deals with something “indefinitely”. I would like the minister to clarify whether that is common in legislation of this sort. Is it not reasonable that the duration of an antisocial behaviour order should be specified? The order could always be extended, rather than being left open. To impose indefinitely what can be a quite draconian set of conditions on a person through an antisocial behaviour order seems unreasonable to me. I will listen with interest to what the minister has to say.

I move amendment 150.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): It would be reasonable for a sheriff to state that a person was indefinitely to stop behaving in a manner that was severely annoying the people who live in their area. I am confident that under the bill the decision would be taken by the sheriff, who would consider the type of behaviour and set the period of time for which the ASBO would be in force. When she responds perhaps the minister will confirm that or correct me if I am wrong.

Stewart Stevenson: I share Donald Gorrie’s concerns about the inclusion of the word “indefinitely”. Let us consider a scenario. An indefinite prohibition is issued by the sheriff and, 10 years later, that person, who has not breached in any sense the terms of the antisocial behaviour order, applies for a sensitive position, perhaps in the public services. At that point the existence of that antisocial behaviour order, which was successful in its objectives, could become a barrier to employment. Amendment 150 would remove the word “indefinitely” and would not replace it with any specific limitation on the duration of an order. That is an important point to bear in mind, along with the fact that the orders can be renewed upon expiry. A provision that the order would apply indefinitely—which, on the face of it, means for the rest of one’s life—could be an affront to civil liberties. The removal of “indefinitely” would not damage the policy intention of the bill.

The Convener: I assume that the word “indefinitely” would not apply to a condition in an order that prevented someone from walking down a particular street, because I can see the point that

Stewart Stevenson makes in that regard. However, if the condition covered a specific act of harassing elderly people in sheltered housing, it would seem reasonable to say that someone ought not to do that—full stop. It would be useful to have clarification of what the word “indefinitely” is attached to, as that might provide reassurance.

Mrs Mulligan: It might be helpful if we consider the context of the provision. An antisocial behaviour order is intended to protect the public from further antisocial behaviour, as Cathie Craigie and others have said. An order will be granted only when necessary; it is not a punishment. It is for the sheriff to decide the proportionality of the terms of an order, including, if appropriate, the length of time for which a condition should apply. It is appropriate that the sheriff has the option of making an indefinite order if the facts and circumstances of an individual case are such that that is necessary to protect others from the antisocial behaviour that has been exhibited. Of course, we should also remember that it is open to an individual to appeal against an order or apply for the order to be varied or revoked, which should provide sufficient safeguards.

I will not support amendment 150 and I ask Donald Gorrie not to move amendment 169, which is consequential on amendment 150 and which relates to section 14(2)(c), on how the duration of an antisocial behaviour order is included in the register of orders. Donald Gorrie asked whether the term “indefinite” was usual in legislation. It has been used in legislation since the introduction of antisocial behaviour orders in 1998, so there is a precedent. I should say in response to a point that Stewart Stevenson made that an antisocial behaviour order is not generally a declarable resolution and therefore should not prohibit employment.

Stewart Stevenson: Given that one of the people who may draw information from the register of antisocial behaviour orders is the chief constable, could disclosure to a chief constable of an antisocial behaviour order that is in force affect the employment prospects of someone who might have led an entirely blameless life for a considerable period of time in the police force?

The Convener: If the minister wishes to invite an official to respond on her behalf, I am happy to allow that.

David Doris (Scottish Executive Development Department): The example given by Stewart Stevenson is relevant only in relation to enhanced disclosures. An ASBO is not a conviction in itself, so it would be for the chief constable to decide whether it was relevant to include such information in the enhanced certificate. As far as I know, the same would apply

to police recruitment. A previous ASBO could be included as relevant in that way—it would depend on whether the information was relevant to the position. As the minister has said, an ASBO order should not continue on an on-going basis if it is no longer relevant. If so much time had elapsed that it was clearly not relevant, individuals should appeal to ensure that it is revoked.

The Convener: Do you wish to say anything, minister?

Mrs Mulligan: I have completed my comments. Are there any other questions?

The Convener: Do not encourage them.

I ask Donald Gorrie to wind up.

Donald Gorrie: I am not totally reassured. I am indebted to Stewart Stevenson for explaining the angle from which he is coming at the amendment, which I think is a constructive one. I am not sure whether the minister will have an opportunity to respond further. Her argument that the person concerned may apply to have the ASBO terminated at some future stage helps a bit, but there should be an automatic sweeping away of ASBOs that have served their purpose, that are no longer relevant and that could be put in the bin. I would have thought that such a provision would be helpful, in that most people are not bureaucratic animals: the thought of applying to have some ASBO from two or three years ago revoked might not occur to a lot of people in that situation.

If there was an opportunity to consider some sort of sunset clause—if that is the right term—on ASBOs that have become irrelevant, that would be helpful. If the minister shows me that the word “indefinitely” occurs in the 1998 act, I will have to accept that, but I think that Stewart Stevenson and I have a point. I wonder whether the minister might wish to interrupt me and say that the Executive might consider including such a sunset provision. I would find that helpful before I decide what to do with my amendments.

Mrs Mulligan: I recognise Donald Gorrie’s concern about provisions being everlasting but, given that we would want the action in question to stop, that might not be a bad thing. I would be more than happy to review how many of the antisocial behaviour orders that have already been made have been indefinite, which would show whether that is an issue. As the information is not required to be disclosed, I should be able to reassure Stewart Stevenson that there would not be a difficulty with accessing employment. We would be prepared to write to the committee to explain the issues around disclosure and to clarify that an antisocial behaviour order should not be an impediment to people getting on with their lives, as long as they refrain from involving themselves in

the actions on the grounds of which the order was sought in the first place.

The Convener: Following that very long interruption, I ask Donald Gorrie whether he intends to press amendment 150.

Donald Gorrie: In the light of those very helpful remarks from the minister, it is clear that there may be further discussion on the issue so as to address our concerns. On that basis, and with the consent of the committee, I am willing to withdraw amendment 150.

The Convener: Donald Gorrie wishes to withdraw amendment 150. Is that agreed?

Members: No.

The Convener: Therefore, the question is, that amendment 150 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTION

Gorrie, Donald (Central Scotland) (LD)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1. As convener, I have the casting vote, and I cast it for the status quo, which means resisting the amendment. Therefore, the amendment falls.

Amendment 150 disagreed to.

12:00

The Convener: Amendment 44 is grouped with amendments 50 and 71.

Mrs Mulligan: This grouping introduces amendments to improve clarity and consistency in the provisions on ASBOs, interim ASBOs and ASBOs on conviction. In the interests of fairness and to make the orders consistent with what we have already provided for parenting orders, we are introducing a requirement to explain in plain language the effect of the order and the consequences of failing to comply.

Amendment 44 provides that requirement for full ASBOs in the civil court and amendment 50 makes the same requirement for interim orders, while amendment 71 introduces the requirement

to explain the order in plain language when ASBOs are made in the criminal court.

I move amendment 44.

Amendment 44 agreed to.

Amendment 114 not moved.

Amendments 151 to 154 not moved.

The Convener: Amendment 262 is grouped with amendments 170 and 263.

Stewart Stevenson: Amendments 262 and 263 concern issues that the Scottish Retail Consortium asked me to bring to the stage 2 deliberations, and I am happy to do so. In essence, the consortium's argument is that adding the chief constable to the list of people who may seek antisocial behaviour orders will increase their effectiveness and directly engage the police in the process, and that that might lead to a more rapid response to an antisocial behaviour situation.

The Scottish Retail Consortium clearly has a particular interest in the disorder that occurs outside shops from time to time. However, the amendment would be more generally applicable and my probing amendment gives the Executive the opportunity to put on record its resistance to the idea, which I understand that it has expressed during meetings with the Scottish Retail Consortium, or it could tell the committee that it is now minded to consider the measure further now or at stage 3.

I move amendment 262.

Donald Gorrie: The Law Society of Scotland, or some other organisation, raised with me the point about the difference between the local authority and a landlord pursuing an issue. Amendment 170 seeks to protect a child and the family concerned from unreasonable action against them. The argument is clearly set out if members read the amendment with the appropriate section in the bill.

The Convener: I am also aware that the Scottish Retail Consortium was keen to explore how the police can be positively engaged in the promotion of ASBOs. I am aware of the police view, however, that they do not wish to be involved in civil actions. The police regard their role in the criminal courts and in criminal actions as sufficient for them in terms of the pursuit of an ASBO.

It strikes me that the police might be the first people to detect a pattern of behaviour. The first contact that a member of the public makes could be with the police and a picture could be built up over a period of time that would show the clear problems at a particular area, address or location. If we are not to give the police the direct responsibility of initiating an ASBO, how do we encourage the police to assist in the process? Is

there a way in which, through dialogue, the police can be proactive in pursuing with other agencies the serving of an ASBO?

What seems to be happening at the moment is that the information is being gathered in lots of different places. The police have as clear a picture as anyone of the situation. I would have thought that it would be entirely reasonable for them to say, "Because of what has happened on X number of occasions, this will trigger a dialogue with another agency in a local community about what we can do to take forward an ASBO." If the police are not to be given direct responsibility for pursuing the application for an ASBO, what can be done for that proactive reading of a situation to be translated into a discussion with those who might apply for an ASBO?

Mrs Mulligan: In relation to Stewart Stevenson's amendment 263, he will be aware that it is local authorities and registered social landlords, in consultation with the police, who can apply for antisocial behaviour orders in Scotland. In England and Wales, the police have the power to apply for an ASBO and we know that that power has been used.

We have given consideration to whether the police in Scotland should be able to apply directly to the civil court for an ASBO, both in the context of the bill and in our discussions on earlier legislation. The issue was raised last year during the consultation on the Criminal Justice (Scotland) Bill. I know that it was also considered when ASBOs were being introduced under the Crime and Disorder Act 1998.

However, we maintain our view that the police should not have the power to apply for an ASBO. We are by no means alone in taking that view. We consulted on our recommendation that the power to apply for an ASBO should not be widened beyond local authorities and registered social landlords and the overwhelming majority of respondents agreed with that approach.

Neither the Association of Chief Police Officers in Scotland, the Scottish Police Federation nor the Association of Scottish Police Superintendents are looking for the power to apply for ASBOs. They consider that it is more appropriate for the police to be consulted on ASBO applications rather than for them to apply directly for an order to be made.

Only six responses to the consultation on "Putting our communities first: A Strategy for tackling Anti-social Behaviour" believed that the power to apply for ASBOs should be given to the police. I recognise that one of those responses was from the Scottish Retail Consortium. Joint working between the police and local authorities is vital in tackling antisocial behaviour effectively. This should include consideration of requests for

ASBOs. The police will be consulted on all applications and local authorities are expected to consider requests in a strategic capacity. Extending to the police the power to apply for an ASBO could make the process more complex than is intended and lead to less protection for those who are affected by antisocial behaviour. It is important to avoid confusion over who should take the lead in making applications.

As far as possible, the Executive wants to maintain the distinction between civil and criminal proceedings. The police have a wide range of duties, and their focus has to be on enforcing the criminal law, which includes dealing with breaches of ASBOs. ASBOs are applied for, however, through the civil courts.

As members will be aware, section 88 of the bill introduces ASBOs on conviction, which will prove useful in preventing further antisocial behaviour in situations where the police have referred matters to the procurator fiscal. The sheriff will have power to make an ASBO as part of the sentence when an offence involves antisocial behaviour and when an order is necessary to protect the public from further antisocial acts.

It is essential—especially given the examples that we have heard of antisocial behaviour in the vicinity of retail premises—that the police, in recognising the problem as having become a persistent one, work with the local authority, consider alternatives and, if necessary, consider making an antisocial behaviour order. We can provide guidance on recognising where there might be an issue and on ensuring that that is addressed, either directly by the police or as part of the delivery of the antisocial behaviour order.

Amendment 262 is effectively a consequential amendment arising from amendment 263, as it provides the interpretation of “relevant person” in respect of an application from a chief constable. I hope that Stewart Stevenson feels able to withdraw amendment 262 and not to move amendment 263.

I turn to Donald Gorrie’s amendment 170, which seeks to limit the power of registered social landlords to apply for ASBOs to cases involving persons aged 16 or over. RSLs obtained the power to apply for ASBOs just last year, through the Criminal Justice (Scotland) Act 2003. There are further issues to consider with respect to applications involving under-16s, and it is appropriate that we consider whether RSLs should have that power in relation to under-16s before the age threshold is lowered.

We consulted on that last summer, and we have taken steps to ensure that the wider circumstances of the child are considered, while allowing RSLs to apply. The RSL would have to

consult the local authority and the principal reporter before any application for an order was made. We would not expect an application to be granted if it was not supported by those bodies. We will issue guidance on applications involving registered social landlords, and we will make it clear that an ASBO should not be the first option to be considered. The majority of children would continue to be dealt with through the children’s hearings system.

It is important and reasonable that registered social landlords, who increasingly have a strategic role to play in dealing with antisocial behaviour, should have the power to apply for ASBOs in cases involving 12 to 15-year-olds. It is important to note that the power for RSLs to apply for ASBOs is limited to cases in and around their premises. Bearing that in mind, and reassuring him that we are taking steps to ensure that powers are not used inappropriately, I hope that Donald Gorrie feels able to not move amendment 170.

To return to Stewart Stevenson’s amendments, I am aware of examples, particularly in South Lanarkshire, of the police, retail establishments and the local authority working closely together to establish a relationship that responds to antisocial behaviour issues, particularly around retail establishments. There are good examples there of the sort of partnership working that would produce the results that we want without extending the power to the police.

12:15

Stewart Stevenson: I have listened with considerable interest to the minister’s remarks, as ever. The minister advised against involving the chief constable and the police in taking civil action, which is what applying for an ASBO is, and spoke about the potential of that being at the expense of the police’s responsibilities towards the criminal justice system. We should listen to that view carefully.

The minister referred to the situation in England and the fact that orders had been taken out by the police there, but it is slightly disappointing that she failed to explain to us why that situation is different. The minister will know that I am not by any means necessarily against our taking different viewpoints in Scotland, but it might have been useful if she had explained.

I note what she said about South Lanarkshire, which is interesting. However, I counsel the minister not to rely on the numerical weight of evidence on the matter unless she intends to make similar statements when we come to the dispersal powers, as the respondents in favour of the proposals on that subject in the Executive’s bill are rather sparse in number. From memory, there

were fewer than six of them—the number that appears to be being dismissed on this occasion. We will see when we reach that part of the bill.

Although I retain the right to consult further with the Scottish Retail Consortium and perhaps take action at stage 3, at this stage, in light of all that the minister has said, I seek the committee's permission to withdraw amendment 262.

Amendment 262, by agreement, withdrawn.

Section 4, as amended, agreed to.

Section 5—Antisocial behaviour orders: variation and revocation

Amendment 45 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 115 not moved.

Amendments 46 and 47 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 155 not moved.

Amendment 48 moved—[Mrs Mary Mulligan]—and agreed to.

Amendments 156 and 157 not moved.

Section 5, as amended, agreed to.

Section 6 agreed to.

Section 7—Interim antisocial behaviour orders

The Convener: Amendment 158, in the name of Donald Gorrie, is grouped with amendment 49.

Donald Gorrie: Amendment 158, which responds to a point that was made by the Law Society of Scotland, relates to interim ASBOs. The bill says that the sheriff must be satisfied about various things. Amendment 158 suggests that, before making a decision on an interim ASBO, the sheriff should first hear the parties who wish to say anything about it.

I know that the interim ASBO is meant to be a rapid system, but it seems reasonable that the people affected should have a chance to have a day in court to make their point to the sheriff before he or she decides to check whether the conditions that are mentioned in the bill have been satisfied. It is natural justice that people should be heard.

I move amendment 158.

The Convener: I invite the minister to speak to amendment 49 and to the other amendment in the group.

Mrs Mulligan: I will speak to Donald Gorrie's amendment 158 first. The issue was considered, although not on exactly the same terms, in some detail during the course of the Criminal Justice

(Scotland) Bill last year, which introduced interim ASBOs. That bill originally had a requirement to consider representations that were made by or on behalf of the person defending the application. It was concluded that an explicit statement of that right in the bill was unhelpful and could undermine the effectiveness of interim orders. Donald Gorrie is right to remind us that interim orders were introduced to reduce delays in providing protection from antisocial behaviour, which is much needed in our communities.

Individuals have a right to challenge the granting of an interim order and intimation is received before a decision is made. An explicit requirement in the bill that parties had to be heard before an interim order could be granted would lead to regular delays and could be damaging. It would allow someone who is subject to an application to frustrate the process if they wanted to do so by simply not turning up for the hearing, which would seriously frustrate the protection that interim ASBOs can afford to those who suffer from antisocial behaviour. Therefore, I ask Donald Gorrie to seek to withdraw amendment 158.

Amendment 49 makes it explicit that an interim order may contain only the same prohibitions as may be contained in a full order. The amendment aims to tighten up the drafting and does not involve a change in policy. I hope that the committee will agree to amendment 49.

Stewart Stevenson: I share the minister's concerns about the impact of introducing the words "after hearing parties". After all, the differentiation between an interim ASBO and a full hearing for an ASBO is that it enables urgent situations to be addressed free from impediments. Similarly, in the civil law, an interim interdict can be granted in the absence of the person who is being interdicted for precisely that reason where there is a balance of advantage, and, of course, there is a process by which interim ASBOs, like interim interdicts, can be overturned quite rapidly. If we were to require for an interim ASBO the introduction of the full panoply of opportunities and a requirement for everybody to be present that is quite rightly associated with a full hearing, I do not know what an interim ASBO would end up being in respect of process. Therefore, I do not support Donald Gorrie's amendment 158.

Donald Gorrie: The combined arguments of the minister and Stewart Stevenson are irresistible. The fact that the matter was discussed during the previous bill, which was dealt with by another committee, is also persuasive—I was not aware of all the details. Therefore, with the committee's leave, I seek to withdraw amendment 158.

Amendment 158, by agreement, withdrawn.

Amendments 159 and 160 not moved.

Amendments 49 and 50 moved—[Mrs Mary Mulligan]—and agreed to.

Amendments 161 to 163 not moved.

Section 7, as amended, agreed to.

Section 8—Notification of making etc of orders and interim orders

The Convener: Amendment 164, in the name of Stewart Stevenson, is grouped with amendments 51, 165, 52, 53, 60, 61, 62, 63, 64, 66, 72 and 73. I ask Stewart Stevenson to move amendment 164 and to speak to all the amendments in the group.

Stewart Stevenson: As we discussed in relation to some of my amendments in this area at last week's meeting, I seek through amendments 164 and 165 to bring the victim more closely into the system. The minister sought last week to highlight some of the difficulties with my use of the phrase "relevant person". She said:

"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."—[*Official Report, Communities Committee*, 21 April 2004; c 833.]

The minister is clearly correct in that regard; however, that opens up another issue that we cannot readily deal with through the amendments that have been lodged. To determine that antisocial behaviour is occurring, there has under the bill to be an identifiable person at the outset—leaving aside the legal definition of a person as a human being—who is being subjected to the antisocial behaviour. I seek to ensure that that person is properly involved in the process.

Elsewhere, the minister has made the point that that person will inevitably be involved in the consultation that must take place before an application for an antisocial behaviour order can be submitted and before such an order can be made. However, the bill does not provide that that person, who has been part of the process, will subsequently see, be aware of or have a copy of the antisocial behaviour order.

After I have moved amendment 164—as I will, to facilitate debate—I am likely to seek the permission of the committee to withdraw it in the light of the remarks that the minister made last week and of what I am sure that the minister is going to say now. Nevertheless, it would be useful if the minister were able to indicate that, because an antisocial behaviour order will be issued in open court—that is my understanding, but I seek confirmation of that—it would be proper that a copy of it be, by some means, given to the person who has been subjected to the antisocial behaviour that the order is supposed to suppress so that that person knows the terms of the order

and can, therefore, take part in the process of alerting the necessary authorities to its being breached.

The committee took evidence from people in the real world out there, who stated that that shortcoming in the 1998 act led to people not knowing whether antisocial behaviour orders were being breached, although those orders had supposedly been made on their behalf. I seek the minister's indulgence and assistance in navigating me and other members of the committee to a position in which we are quite clear that the initial victim—the bill provides for the protection of others who are not initially victims but who might become so later—is part of the process and is aware of orders' being made. If the minister is able to do that, I will feel able to seek the committee's permission to withdraw amendment 164. However, to allow the debate to proceed, I move amendment 164.

The Convener: Just as well for you.

12:30

Mrs Mulligan: I will comment first on amendments 51 to 53, 60 to 64, 66, 72 and 73, which are in my name.

Amendment 51 seeks to introduce a requirement to notify the person who is subject to the antisocial behaviour order if the order is revoked or if an interim order is recalled. There was no requirement to notify revocation in the Crime and Disorder Act 1998, but it is in our view only fair that a person is made aware if a court order no longer applies to them. Amendments 52 and 53 will provide the means of delivery and the test of sufficient evidence to satisfy the requirement to notify of revocation or recall.

Amendment 72 will require the court to serve a copy of an antisocial behaviour order that is made or varied by the criminal court on the offender and the local authority that it considers most relevant. The court will have discretion over which local authority to copy the order to in order to take account of where the antisocial behaviour occurred and the residence of the offender. The court shall also notify the local authority if the order is revoked. Amendment 72 also provides the means by which a copy of the order is served, and the test of sufficient evidence that the order was served.

Stewart Stevenson's comments on amendments 164 and 165 were helpful. I acknowledge the concern that he is trying to address by establishing that the victims of antisocial behaviour should be kept fully informed and aware of the process, but I commented last week on how many people could be involved. He implied that it would be a single person, but it might not be—perhaps he did not

imply it, but there was a suspicion that it was one person.

Stewart Stevenson: For clarification, I seek simply to inform the identifiable people who were part of the initial taking out of an order. I recognise that I have not addressed that in amendments 164 and 165, but that is the relatively limited number of people that I am talking about.

The Convener: I am a bit concerned that I am being accused of losing control of this meeting. This had better be a productive response, or it will not happen again.

Mrs Mulligan: I will not let him in again.

I acknowledge that there is an issue. My one concern is about who we make aware when the antisocial behaviour order relates to a person under 16. We need to be careful how we make the notice available. However, we can under statutory guidance provide for that to be taken forward, to ensure that the people concerned—I do not want to use the word “relevant”, because it has other connotations, as the committee will understand—should be given the information where necessary. We share Stewart Stevenson’s objective, but his amendments will not achieve it. However, I hope that he is reassured by the fact that we share that objective, and feels that we will achieve the result through statutory guidance.

Executive amendments 60 to 64, 66 and 73 will ensure that records of antisocial behaviour orders and interim orders that are kept by local authorities are complete and comprehensive. Amendment 60 clarifies the requirement on registered social landlords to copy to relevant local authorities antisocial behaviour orders and interim orders that they obtain. The registered social landlord must also notify the authorities of any revocation or recall of an order.

Amendment 61 is a minor drafting amendment. Amendment 62 will make it clear that the record of orders will include interim orders as well as full ASBOs. Amendment 63 is a minor drafting amendment. Amendment 64 will improve the drafting of section 14(2). Amendment 66 will add the principal reporter to the list of persons to whom a local authority shall disclose information in the record keeping.

Amendment 73 will ensure that local authorities maintain records of antisocial behaviour orders that are made on conviction. Although section 14 makes separate provision for orders that are granted in the civil court, local authorities will in practice be able to keep one set of records to cover both civil and criminal orders. The requirements that are placed on local authorities are equivalent to those in section 14. A separate requirement to have regard to guidance on the record of ASBOs on conviction is included in the

statutory guidance on ASBOs, which we will introduce via amendment 67 and which will include guidance on records of ASBOs that are granted in the civil courts. That relates only to part 2 of the bill.

I invite the committee to approve the Executive’s amendments.

Cathie Craigie: I have a comment about Stewart Stevenson’s amendment 164. The committee has concerns that while a local authority is dealing with a problem, victims are often left out and do not know what final arrangements have been made. We heard good evidence on that from people who are involved in successful projects in the Edinburgh area. One failing that they mentioned was that it is often some time until victims find out what has happened. We look forward to the minister providing more detail on the matter, although we recognise that it is a sensitive one, particularly when under-16s are involved. However, we must ensure that victims see what action has been taken.

Patrick Harvie (Glasgow) (Green): I support the principle of giving information to victims or people who feel that they have been affected by a case. However, as well as talk about who should get access to information, we need to think about how people will get access. The idea of providing physical copies of orders gives me the horrible image of photocopies being distributed round neighbourhoods or published in local newspapers. Such naming and shaming would not help to change the behaviour of the person who is subject to the order. If I am not assured on that point, I will not support Stewart Stevenson’s amendment 164 if he decides to press it. If he does not press it, I hope that the minister will be aware of the issue when she considers the guidance.

Stewart Stevenson: The debate has been useful, although the committee has some unresolved issues. The minister rightly pointed to the issue of young people and Patrick Harvie made a perfectly reasonable point. The minister is on notice to produce something that will address the concerns of the people from Edinburgh and elsewhere to whom we spoke. I am not minded to press amendment 164 and therefore seek the committee’s leave to withdraw it.

Amendment 164, by agreement, withdrawn.

Amendment 51 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 165 not moved.

Amendments 52 and 53 moved—[Mrs Mary Mulligan]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Breach of orders

The Convener: Amendment 166, in the name of Donald Gorrie, is grouped with amendments 54, 167 and 55. If amendment 54 is agreed to, amendment 167 will be pre-empted.

Donald Gorrie: The issue in this group is what penalties it is reasonable for a young person to face if he or she breaches an antisocial behaviour order. Amendment 54 will remove the possibility of the young person's going to prison, which is welcome. Under unamended section 9, there exists the possibility of prison or a fine for a breach. My amendments 166 and 167 try to deal with the matter differently by removing both possibilities and spelling out the sort of penalties that would be possible, such as

"a community reparation order or supervision requirement and ... any additional non-custodial sentence imposed by the court".

If we agree to amendment 54, which I think most people would agree to, the issue is whether fining is a reasonable proposition in dealing with a young person. As I understand the matter, technically the young person would pay the fine, but obviously it might be the parents who actually do so. It is possible to argue that it is reasonable for the parent of a young tearaway from a reasonably well-off household to cough up a fine on the child's behalf and that that might be a useful deterrent. On the other hand, there is evidence from elsewhere that the use of inappropriate fines can lead to people going to prison. We discovered on visits to Cornton Vale prison that many women are in there as a result of their having not paid fines for not having television licences or for prostitution. It would be bad if not paying fines for the breach of ASBOs led to prison.

It is important that the minister clarify for us what the procedure would be if a fine were to be imposed. Her conversion to the cause of not sending young people who breach ASBOs to prison is welcome, so I support amendment 54, but the bill must address what sentences are suitable for the breach of ASBOs. Perhaps there should be a two-tier approach: reasonable or early offenders could be dealt with in the way that is specified in amendment 166, but there could be fines as a deterrent for more habitual offenders. It is important that we be clear about what the outcome of fining might be.

I move amendment 166 and await the minister's response with interest.

Mrs Mulligan: In the partnership agreement, the Executive made a commitment to ensuring that there would be no imprisonment of children for breach of ASBOs. That was the policy intention underlying section 9(7), but upon reflection we are of the view that that provision does not fully

implement the policy and that amendments 54 and 55 are needed to make clear the relationship between the provisions in section 9 of the bill and sections 44 and 208 of the Criminal Procedure (Scotland) Act 1995, which relate to detention of children.

Amendments 54 and 55 are technical amendments that will ensure that a child cannot be detained or imprisoned for breach of an ASBO. I invite the committee to agree to the amendments.

Donald Gorrie's amendment 166 would amend section 9(2) to the effect that the penalty for breach of an ASBO by any person, young or old, would be limited to a community reparation order, a supervision requirement or any other non-custodial disposal. I cannot support that. We have confirmed, through amendments 54 and 55, that a child who breaches an ASBO cannot be detained for that breach, whether the child is prosecuted through summary procedure or on indictment. However, amendment 166's effect would be that, no matter how serious the situation, an adult could not be imprisoned for breach of an ASBO. I am not sure whether that is Donald Gorrie's intention, but it is not acceptable and should be resisted.

12:45

Amendment 167 seeks to amend section 9(7) to the effect that, in respect of a breach of an ASBO by a child, the only sentence that would be available to the courts would be the imposition of a community reparation order. There is a problem, however, in that amendment 54 seeks to delete subsection (7) and replace it with the new section in amendment 55. For that reason alone the amendment cannot be accepted.

On the issue of substance, although I can see where Donald Gorrie is coming from, I ask him to think again. We all agree that a child should not be detained for breach of an ASBO; I think that my amendments will achieve that. However, that being the case, I believe strongly that a court dealing with such a breach should have all options apart from detention open to it.

Breach of an ASBO by an under-16 will be referred to the procurator fiscal, who will determine, in consultation with the children's reporter, what action is most appropriate. The case could be referred at that point to the children's hearings system. In situations in which the decision is to taken to prosecute, all options other than detention should be available. That would include the use of a community reparation order. Alternatively, it might be decided that probation, deferral for good behaviour or, perhaps, admonishment is appropriate for a child. The court could refer the case to the hearings system for

disposal on conviction. Donald Gorrie's amendment 166 would rule those options out—even though his opening comments seemed to suggest that the amendment related only to the issue of fines—and for that reason I must resist it.

Stewart Stevenson: I know where the minister is coming from and I see the difficulties with Donald Gorrie's amendments—I, too, felt uncomfortable about the fact that they would stop us jailing adults.

I am concerned about the drafting approach that is being taken, however, particularly with regard to changing section 44(2) of the Criminal Procedure (Scotland) Act 1995, which currently reads:

"This section applies to any offence in respect of which it is competent to impose imprisonment on a person of the age of 21 years or more."

The minister wants to stick in some words to say that that is the case except in one specific instance. By deleting section 9(7) from the bill—incidentally, I point out that section 9(2) contains a reference to subsection (7) that would remain—amendment 54 would give us a bill that says absolutely nothing in its main part except for amending other legislation to the effect that we are not imprisoning children. I find that slightly odd. I am not quite clear about why we are seeking to transfer that provision from the Antisocial Behaviour etc (Scotland) Bill into the Criminal Procedure (Scotland) Act 1995. That seems to do nothing but make the drafting more complicated. Of course, it might be that I am making something out of nothing, in which case, feel free to tell me so.

Cathie Craigie: Stewart Stevenson has raised a point to which we will all want to hear the answer.

I support the minister's amendment and, unlike Donald Gorrie, who thinks that the minister has undergone a conversion, I know that it was never the intention to send young people to prison for breach of an ASBO. I am pleased that the Executive has lodged amendment 54.

Patrick Harvie: It is worth saying a few words in favour of amendment 166, particularly when the Executive is coming under fire over slopping out and some of the other consequences of overcrowding and a rising prison population. Politicians of various parties say that we send too many people to prison. We have an opportunity to reverse that and to make it clear that a non-custodial sentence, such as a community reparation order, would be more appropriate in this case.

Elaine Smith: I support amendment 54, which would have been consequential on amendment 112, in my name, had it been carried. I am happy to support amendment 54 in any case given that it

clarifies that children should not be liable to imprisonment.

Will the minister comment on what happens when ASBOs are breached? Could a restriction of liberty order be used? The minister also mentioned other measures, so will she clarify that point?

Mrs Mulligan: Yes, an RLO could be used for breach of an ASBO. It would be more appropriate for me to ask one of the drafters to respond to Stewart Stevenson's point.

Gillian Russell (Scottish Executive Legal and Parliamentary Services): When the court is considering the sentencing options it has for a child who is before it, it will look to the options that are open to it under the Criminal Procedure (Scotland) Act 1995. That is why amendments are to be made to that act rather than having a stand-alone provision in the bill.

Stewart Stevenson: I take it that we are saying that section 44(2) of the 1995 act would prevail, notwithstanding the fact that, if we do not change it, section 9(7) of the bill says that imprisonment does not apply. Is that the essence of the point?

Gillian Russell: The essence is that we do not think that section 9(7) of the bill on its own would be enough when it was considered alongside the provision in the 1995 act, so we have amended the 1995 act instead.

Stewart Stevenson: I am content.

Donald Gorrie: I accept the point that amendment 166 would affect people aged over 16 as well as those under 16. I am still concerned that although young people who breach an ASBO will not be sent to prison, they could still end up in prison for the non-payment of a fine.

Mrs Mulligan: Generally, fines are imposed only when a person has the means to pay. Given that we are talking about young people who it could reasonably be said would not have the means to pay, regardless of what their families could afford, it would be unlikely that a sheriff would impose a fine for a breach of an ASBO.

Donald Gorrie: That is certainly helpful. I hope that sheriffs will use community reparation orders and so on. On the basis of the discussion, I seek the approval of the committee to withdraw amendment 166.

Amendment 166, by agreement, withdrawn.

Amendment 54 moved—[Mrs Mary Mulligan]—and agreed to.

Section 9, as amended, agreed to.

After section 9

Amendment 55 moved—[Mrs Mary Mulligan]—and agreed to.

Section 10 agreed to.

Section 11—Sheriff's power to refer case to children's hearing

The Convener: Amendment 56, in the name of the minister, is in a group on its own.

Mrs Mulligan: Amendment 56 amends the Children (Scotland) Act 1995 to make explicit that the principal reporter must set up a children's hearing when a sheriff makes an ASBO or interim ASBO in respect of a child and refers the case to a children's hearing under section 11(1). If the child is not already subject to a supervision requirement, the children's panel must consider whether to impose such a requirement and if the child is already subject to a supervision requirement, the panel must review that arrangement.

I move amendment 56.

Scott Barrie (Dunfermline West) (Lab): Members will be aware from my comments on other amendments at last week's meeting that I am concerned that we might end up with parallel systems in the courts and the children's hearings system. Amendment 56 makes explicit the role of the principal reporter and the action that must be taken if a young person is subject to a supervision requirement or, indeed, not subject to such a requirement. That clarification is welcome and allays some of the fears that I expressed last week.

Amendment 56 agreed to.

Amendment 116 not moved.

Section 11, as amended, agreed to.

Section 12—Sheriff's power to make parenting order

The Convener: Amendment 57, in the name of the minister, is grouped with amendments 58, 58A, 59 and 176.

Mrs Mulligan: Amendments 57, 58 and 59 ensure that the tests for parenting orders that are in part 9 are made explicit in section 12. Section 12(1) gives the sheriff the power to make a parenting order in respect of a parent of a child when making an antisocial behaviour order in respect of the child. The sheriff must be

"satisfied that the making of the order is desirable in the interests of preventing the child from engaging in further antisocial behaviour".

In addition, the sheriff can make the parenting order only if

"the Scottish Ministers have notified the court that the local authority for the area in which the parent ordinarily resides has made arrangements that would enable the order to be complied with."

Amendment 57 is a consequential amendment and amendment 58 fulfils the Executive's intention on the matter.

Amendment 58A, in the name of Elaine Smith, would introduce a requirement for a sheriff to take into account relevant factors, such as a child's disability. However, the sheriff would have taken all the circumstances of a case into account before deciding to make the ASBO and any factors relevant to the decision to make a parenting order linked to the ASBO would be considered. Clearly, the sheriff would take into account any disability of the child, so there is no need to make that requirement explicit. If the bill were explicitly to specify one factor, we would open up the possibility that it should specify others, which is not necessary. I therefore invite Elaine Smith not to move amendment 58A.

Amendment 59 ensures that the interpretation of "parent" is the one that is in section 87, which sets out the general interpretation of part 9. I invite the committee to agree to amendments 57, 58 and 59.

Amendment 176, in the name of Elaine Smith, would insert a further condition with which the sheriff would have to comply before making a parenting order. The amendment would apply to any application for a parenting order, but we are debating it now because it relates to the provisions in section 12 for linking parenting orders to ASBOs. Amendment 176 would require a sheriff to have regard to any disability of the relevant child before granting a parenting order. As I said, there is no need to make such a requirement explicit in the bill. A sheriff will have regard to the full circumstances of a case and he must be satisfied that all the existing conditions are satisfied, while having regard to the equal opportunities provision in section 107.

Members should be aware that a parenting order is about the behaviour of a parent rather than that of a child. The child's circumstances should not determine whether a parent is being irresponsible in their approach to parenting and how they look after their children and keep them out of trouble. There is no need for concern about parenting orders being used inappropriately for parents of children with disabilities. Therefore, I invite Elaine Smith not to move amendment 176.

I move amendment 57.

13:00

Elaine Smith: As the minister will know, amendment 58A relates to concerns that the National Autistic Society Scotland raised. The

society feels that using parenting orders to prevent a child from engaging in further antisocial behaviour when such behaviour is directly caused by a disability or autism is unlikely to work. The society feels that, to prevent the occurrence of certain behaviours, it would be more appropriate to give particular social skills training to a child with ASD. NASS surveyed its members about which service was important for the person with autism whom they cared for and social skills training came out top of the list. However, when NASS asked which services were being delivered to people with ASD, social skills training came fifth in the list.

NASS believes that sheriffs should take disability into account when deciding whether a parenting order should be made as part of a decision on an ASBO. I believe that the minister gave a reassurance on that issue earlier and perhaps she can reiterate it when she winds up. Scott Barrie raised concerns at last week's meeting about parenting orders being attached to ASBOs. If amendment 117 were to be moved and agreed to, that provision would be removed from the bill. I believe that that issue needs further discussion and I throw it into the pot at this stage.

On amendment 176, it is possible for parenting orders to be regarded as blaming parents for a child's behaviour that is caused by disability. In the education system, for example, NASS believes that parenting orders could assume that truancy and behavioural problems are the sole responsibility of a pupil and their parent. NASS points out that that would not take into account the responsibility of schools and education authorities to ensure that they have a coherent behaviour policy, good class management and the required strategies. Children with ASD have a social and communication disorder. Therefore, it would be unfair to expect their behaviour always to be socially appropriate, especially if staff training was lacking and not enough support was provided. It would also be unfair to take action against parents for the behaviour of their child when such behaviour is caused by a disability.

I was comforted at the report stage by the minister's commitment to include support for parents in the bill and the acknowledgement that parenting orders could not be made unless and until such support is available. That seems a much more positive step, which will help to tackle the underlying causes of ASD.

The minister also seemed clear at the report stage that parenting orders are not about children's behaviour but about parents' willingness or otherwise to seek or accept assistance for their own behaviour. I believe that the minister has just reiterated that position. However, can she comment on the specialist support that would

need to be in place for parents of children with ASD?

Scott Barrie: I have a brief comment on a matter that Elaine Smith touched on and to which the minister referred in her introductory remarks. We must remember that parenting orders are about parents' behaviour—or, rather, their lack of appropriate behaviour. Parenting orders are not about children's behaviour, which is dealt with in another place in the bill. We should not get those two aspects mixed up because it is clear that parenting orders are about influencing the behaviour of a parent. Members will know my views on that from my evidence at stage 1.

Mrs Mulligan: I will try to be brief. I reiterate that parenting orders are about the behaviour of the parent and that they would be used to respond to the needs of the parent. I acknowledge the points that Elaine Smith has made about the availability of social skills training for those with ASD who may need support, and there is nothing in amendment 58 that would prevent that from happening. It is an important part of looking at the individual as a person and of considering their specific support requirements. Parenting orders should not be used, and will not be used, to chastise parents of disabled children for their behaviour. That would be unacceptable and is not the intention of the introduction of the parenting orders.

I acknowledge the point that Scott Barrie made about support for parents who are experiencing difficulties. The parenting orders are for those who are refusing the support to enable them to carry out their parenting duties. The orders are not for parents, in whatever circumstances, who find themselves having difficulty managing their teenagers, and I am sure that many people would have sympathy with them. The orders are for those who refuse to respond to the needs of their children and who therefore need additional compulsion to ensure that their children's welfare is put to the fore.

Amendment 57 agreed to.

Amendment 58 moved—[Mrs Mary Mulligan.]

Amendment 58A not moved.

Amendment 58 agreed to.

Amendment 59 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 117 not moved.

Section 12, as amended, agreed to.

The Convener: That finishes day 2 of our consideration of the Antisocial Behaviour etc (Scotland) Bill. There will be a call for amendments up to the end of section 75—the end of part 8—for our next meeting.

I thank members for attending what has been a long session today. In particular, I thank the minister, who has had to deal with the budget process and with stage 2 consideration of the bill. I also thank the official reporters, who are here along with the rest of us, sometimes in difficult circumstances. Thank you very much.

Meeting closed at 13:08.

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