JUSTICE 1 COMMITTEE

Wednesday 2 May 2001
(*Morning*)

Session 1

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JUSTICE 1 COMMITTEE
†12th Meeting 2001, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Phil Gallie (South of Scotland) (Con)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Mr Jamie Stone (Caithness, Sutherland and Easter Ross (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)
Iain Gray (Deputy Minister for Justice)

WITNESS

Kirsty Macleod

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 3

† 11th Meeting 2001, Session 1—joint meeting with Justice 2 Committee.

Scottish Parliament

Justice 1 Committee

Wednesday 2 May 2001

(*Morning*)

[THE CONVENER *opened the meeting at 09:31*]

Items in Private

The Convener (Alasdair Morgan): Good morning. I ask members to switch off mobile phones and pagers, please.

The first item on the agenda is consideration of whether to take items 4 and 5 in private. I propose to take item 4—discussion of the process for handling future business—in public, as I see no reason why we cannot do so. However, we should take item 5—consideration of the appointment of an adviser—in private. Are members agreed?

Members *indicated agreement*.

Convention Rights (Compliance) (Scotland) Bill: Stage 2

The Convener: Item 2 is our second day of considering the Convention Rights (Compliance) (Scotland) Bill at stage 2. Do we have a minister?

Gordon Jackson (Glasgow Govan) (Lab): Yes. He is outside.

You look well in this photograph in *The Scotsman*, convener.

The Convener: I am scowling—I noticed that.

Gordon Jackson: You look like an unhappy headmaster.

The Convener: Or a hanging judge.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): The best picture is of Michael Matheson.

Gordon Jackson: I looked at that photograph of Michael and wondered why he was not at school.

The Convener: I should point out to members that this discussion is all on the record.

Michael Matheson (Central Scotland) (SNP): It is an old photograph of me.

Mr Stone: We saw Gallie talking to the lobby journalists earlier.

Gordon Jackson: I am shocked that Gallie did that. We will get him.

The Convener: Order. Remember, colleagues, that I have not adjourned the meeting and that we are in public session.

Section 1—Release of life prisoners

The Convener: Before I call amendment 103, I welcome the Deputy Minister for Justice and thank him for the explanatory notes on the ministerial amendments. It would have been even better if we could have had a further week in which to read them, but I am sure that members made a valiant attempt to do so.

Amendment 103 is grouped with amendments 104, 106 and 107.

Phil Gallie (South of Scotland) (Con): If we were to repeal subsections (4) to (7) of section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, we would remove from ministers responsibility for the release of life prisoners. It is not necessary to remove that ministerial responsibility in order to comply with the European convention on human rights, and ECHR compliance is what the bill is about.

The effect of amendment 103 is to leave out

reference to the repeal of subsections (4) to (7) of section 1 of the 1993 act. The status quo is maintained in relation to a senior minister—the Minister for Justice, the Secretary of State for Scotland or the First Minister—taking full responsibility for the final determination of whether someone who has committed a pretty horrendous crime goes free. There should be an element of accountability to wider society in that responsibility, and I believe that leaving responsibility in such situations with ministers is a fully vindicated position.

Last week, the Deputy Minister for Justice made the point to the committee that the objective of the bill is not to remove the responsibilities or involvement of ministers. On that basis, I believe that he should reconsider repealing subsections (4) to (7) of section 1 of the 1993 act. I recognise that that would have a major impact on the bill, but we are making a grave mistake by removing that responsibility from ministers, who have direct accountability to the electorate and to society as a whole.

The second effect of amendment 103 is to replace the repeal of subsections (4) to (7) of section 1 of the 1993 act with the repeal of subsections (2) and (3) of section 1 of that act and to make sentencing accountable. All members of the committee are fully aware that anyone who is given a custodial sentence of up to four years by our courts is eligible for an automatic 50 per cent remission of that sentence. Those who are given longer custodial sentences, with the exception of life prisoners, usually get remission after two thirds of their sentence has been served. There is a lack of clarity, particularly for victims, when the courts pass those sentences.

It could be argued that there is also a lack of clarity for the offender when he is told that he is to serve four years but later finds out that that really means that he is to serve only two years. I have no doubt that offenders take some delight in that, but our purpose is not to benefit people who have offended against society. We should ensure that victims of crime are given the greatest possible consideration. By repealing subsections (2) and (3) of section 1 of the 1993 act, we would look after the interests of the ECHR as it relates to victims. That would be the wise and proper step to take.

Last week, Jim Wallace replied to a question that I put to him during question time by acknowledging the need for action. I described to him a case in which someone who had been sentenced to three and a half years ultimately served only nine months and was then let loose on the streets to meet their victims, who were quite surprised by that individual's presence among them. I welcomed Jim Wallace's comments last week and I would welcome it if the Deputy Minister for Justice considered agreeing to amendment 103 as a reasonable step to take. The bill presents the opportunity. I would welcome it if the minister decided to grasp that opportunity with both hands.

It could be argued that if we changed the law in that way, we could overburden our prisons, but I do not believe that. In recent weeks, the Scottish Executive has released figures on the recycling of criminals. They show that individuals who are sentenced and released halfway through their sentences are almost certainly liable to reoffend. That results in a recycling effect that causes problems not only for our prisons in the number of entries and readmissions, but for our courts, which are clogged up with people who have been sentenced and have reoffended. The issue is serious and has widespread effects.

I recognise that individuals who are in prison will always have the ability to shorten their sentences, but that ability should be based on commitment and recognition of the seriousness of the crimes that they have committed. On that basis, I feel that the minister might want to amend the law to permit no more than a sixth of a sentence to be remitted. I emphasise again that such a move must involve an earned aspect.

Amendment 104 relates to provisions on young offenders and children. Agreement to my amendment would leave the Scottish Executive with responsibility and accountability for those who had been detained without time limit and had been released. I recommend amendment 104 to the ministers.

Amendment 106 relates to aspects of implementation of the bill. Ministers are again stepping aside from responsibility. By agreeing to the amendment and not allowing the words "section 1(4)" to be removed from the Prisoners and Criminal Proceedings (Scotland) Act 1993, we would continue to allow Scottish ministerial discretion over release after a recommendation of the Parole Board for Scotland, for example. Amendment 106 also covers a reference to section 2(9) of the 1993 act, which concerns individuals who have committed two or more crimes for which they are serving life sentences. I am uncertain about the implications of section 2(9) and I seek the minister's clarification about how it assists in making the change that he proposes.

I move amendment 103.

Gordon Jackson: I disagree with almost every word that Phil Gallie uttered. I am in favour of taking politicians out of deciding whether people should remain in jail. Apart from needing to comply with the ECHR, I feel quite strongly that it has not been edifying to see decisions being made about how long people are kept in custody as part of the

political process.

I understand the buzz words of responsibility and accountability, but we do not generally have such accountability about how long people spend in custody. One could take the idea to an absurd level and say that there is no accountability for every sentence that the courts pass and that therefore politicians should have a veto on release. When such issues become matters for political debate, political point scoring and newspaper pressure, justice is not helped. We are doing good in taking so-called political accountability out of the process.

09:45

Phil Gallie says that sentences should mean what they say and that, for clarity's sake, four years should not mean two years. The situation has absolute clarity for everyone passing sentence and everyone being sentenced. The public know full well that we have—and always have had, under Governments of every complexion—a system that provides a proper period of reduction of a sentence for people who behave when in custody. That is important for prisoner management and for the Scottish Prison Service.

It is untrue that taking that reduction of a sentence away and leaving the same tariff in place would not hugely increase the prison population. Phil Gallie bases his argument on the statement that everyone who is released is almost certainly liable to reoffend and go back inside. If the individual is going to return to prison anyway, what difference does it make? Too many people who are released reoffend, but the phrase "almost certainly liable" suggests that almost every person who is released reoffends and that therefore they are all in jail for the full term of their sentences anyway. That idea is not based on any reliable factual situation.

When Michael Howard suggested that the proposed approach should be taken in England, he privately approached judges there to make it clear that he would expect them to reduce sentences. Therefore, when politicians have for political soundbite purposes said that four years should mean four years, they have privately made it clear to judges that they expect sentences to be reduced accordingly. No one could cope with the increase in prisoners that that change would bring. It would not be good prison management or help clarity. The suggestion is not good. I feel quite strongly that the amendments are contrary to the spirit of our intentions and should be strongly resisted.

The Deputy Minister for Justice (Iain Gray): As Mr Gallie says, the group of amendments would ensure that Scottish ministers could continue to exercise discretion in deciding to release children who had been given an indeterminate sentence under section 208 of the Criminal Procedure (Scotland) Act 1995 and adult mandatory life prisoners. It would also remove ministerial discretion over the early release on licence of long-term determinate sentence prisoners—prisoners who have been sentenced to four years or more.

When I said last week in committee that the bill's purpose was not to remove powers from ministers, I knew that Mr Gallie would quote me back to myself. That is the position, but that is not the bill's core purpose. We believe that removing the discretion is important for complying with the ECHR. I will talk a little more about that later. In the circumstances, the changes are right and proper, for the reasons that Mr Jackson mentioned.

We do not support amendment 103, which would abolish parole for long-term prisoners. That would have highly undesirable consequences, including serious implications for the Prison Service's management of long-term prisoners. It would also allow prisoners to be released without a period of supervision and support, which would be likely to increase recidivism among that group rather than reduce it, as Mr Gallie asserts that it would.

On Mr Jackson's point about other non-life sentences, we are indeed considering whether any legislative action should be taken to remove ministers' discretion to decide on the release on licence of long-term prisoners sentenced to 10 years or more. That would become a matter for the Parole Board, although any proposed changes would, of course, be subject to much consultation with interested parties, and particularly the Parole Board.

Amendment 103 would also stop the repeal of subsections (4) to (7) of section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The effect of that amendment, along with amendments 106 and 107, would be to retain the current system for the release of adult mandatory life prisoners, under which Scottish ministers take the decision regarding the release of those prisoners. The Executive does not support those amendments, because we consider that there is a risk of the present procedures for the release of adult mandatory life prisoners being found to be incompatible with the ECHR.

It could be said that the adult mandatory life sentence is effectively split into a punishment period and a risk period. We therefore consider that there is a risk that a domestic court could take the view that, in practice, the arrangements for the release of such prisoners are no different from those that apply to others sentenced to

indeterminate terms of imprisonment. In those circumstances, a domestic court would find a breach of article 5.4 of the ECHR, because, after the expiry of the punishment period, the question of risk must be considered by a court-like body. A domestic court could also find a breach of article 6 of the ECHR, as the punishment part would have to be set by a court.

In order to comply with the convention, the repeal of subsections (4) to (7) of the 1993 act is required. However, we have always made it clear in the Scottish Parliament that we consider it right in any case to remove ministers from that process.

Amendment 104 would remove section 1(4) of the bill, which amends section 6 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in relation to children detained without limit of time. The Executive does not support that amendment, as it suggests that Scottish ministers should continue to exercise discretion over the release of children sentenced to detention without limit of time for a crime other than murder. Such prisoners already receive designated parts by virtue of section 2 of the 1993 act.

We seek to repeal subsections (2) and (3) of section 6 of the 1993 act because they are redundant. Since 1993, ministers have not retained discretion over the release of such prisoners, as their continued detention is reviewed following the expiry of the punishment part of their sentences, and the Parole Board directs ministers on release.

I invite Mr Gallie to withdraw amendment 103 and not to move amendments 104, 106 and 107.

Phil Gallie: I am disappointed that the minister did not pick up effectively on amendment 106. Perhaps he could clarify the reason for the removal of section 2(9), as a question arises about that: if a prisoner has been double-sentenced, will both punishment periods count? Are they consecutive or are they in parallel? Perhaps the minister could clarify that.

I am not surprised that Gordon Jackson disagrees with me. It is not unique for Gordon and me to disagree—we disagree on many things and there is nothing wrong with that. My stance on this issue is very different from Gordon's. He said that my amendments would lead to every sentence being determined by politicians. However, in effect, every sentence is already determined by politicians to some degree. Politicians have set the current rules, which say that individuals who are serving a sentence of less than four years will come out after serving 50 per cent of their sentence.

Gordon Jackson talks about having some kind of carrot to ensure that people behave, but, quite honestly, it does not matter what a prisoner on such a sentence does. He will be released at the 50 per cent mark unless he has had an offence recorded for which days have been added. If he just behaves badly or shows no remorse, he will come out halfway through his sentence. I do not believe that the present situation is serving the aims that Gordon Jackson outlined.

I referred to all those—I should perhaps have said the vast majority of those—who are circulating round the prison and courts system and who, having been sentenced for first or second offences, offend again and are imprisoned again. I took that information from the statistics released by the Scottish Executive a week or two ago, which showed that to be the case. I therefore believe that there is some substantiation for the comments that I made—certainly in a large majority of cases but not, I accept, in all cases.

Rehabilitation is an important element. Individuals do not go into prison only for punishment; part of the reason is so that others can work with them and try to get them to change their ways so that they will come out and lead a better life. However, what is happening with short-term sentences is that somebody gets 18 months and—

The Convener: Could you address the amendments, please? Rehabilitation is not mentioned in this group of amendments.

Phil Gallie: It is part of section 1(2) and (3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. I am justifying why I feel strongly that the minister should take this opportunity to repeal those subsections of the 1993 act. That is precisely the reason behind my amendments.

The Convener: Have you finished?

Phil Gallie: No. I was waiting for you to contradict me, but I do not think that anyone could contradict me on that point, as it is relevant.

The Convener: Be careful to stick to the amendments that we are debating just now.

Phil Gallie: I am very careful. I am talking now about amendment 103, which would repeal subsections (2) and (3) rather than subsections (4) to (7) of section 1 of the 1993 act.

The minister openly admitted that there is no requirement to remove ministers from that procedure under the ECHR. I fully appreciate his argument that perhaps he and others in the Scottish Executive wish to remove ministerial responsibility; I can well see the benefit for a minister. If somebody who had been released along those lines were to commit another horrendous offence while on licence, the ministers could then lift up their hands and say, "Nothing to do with me, guv'nor." I can see the merits of the minister's argument and perhaps why he wants to

go down that route, but the bill is about convention rights compliance.

The minister is saying that what I am proposing is not necessary, but I ask him to think again. If he wants to go down that line, let us be more honest about it and introduce another bill that will address the issues covered by section 1(2) and (3) of the 1993 act and the issues of remission.

In my opening remarks on amendment 103, I said that I recognised the need for a carrot, but that carrot should certainly not be 50 per cent of the sentence. It should perhaps be a sixth of the sentence, and it should be earned. The points that I have made answer Gordon Jackson's objections to some degree, and I ask the minister to accept my amendments.

The Convener: The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 103 disagreed to.

Iain Gray: Amendment 58 further amends the definition of "life prisoner" in the Prisoners and Criminal Proceedings (Scotland) Act 1993 to include prisoners sentenced for offences other than murder that carry a mandatory life sentence. Such offences include treason, piracy and certain offences under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. The amendment means that all prisoners who are sentenced in Scotland to a mandatory life sentence for murder, or for any other crime that carries a mandatory life sentence, will be subject to the same sentencing and release procedures.

I move amendment 58.

Phil Gallie: On the basis of my previous arguments, logic demands that I should protest. Although I do protest, I reserve the right to return to this matter at stage 3.

Amendment 58 agreed to.

10:00

Iain Gray: Amendment 91 requires the court, when setting a punishment part, to set a part that reflects the seriousness of the crime or crimes for which the life sentence has been imposed and of all other crimes libelled on the indictment of which the offender has been convicted. The amendment seeks to ensure that the punishment part reflects the appropriate period for punishment and deterrence for the crime or crimes for which a life sentence is imposed, taking into account all the crimes of which the offender is convicted on the indictment.

I move amendment 91.

Amendment 91 agreed to.

The Convener: Amendment 92, in the name of the minister, is grouped with amendments 105, 93 and 94. If amendment 105 is agreed to, it will pre-empt amendments 93 and 94.

Iain Gray: Amendment 92 changes the manner in which the period between reviews by the Parole Board for Scotland is determined, and follows the decision of the European Court of Human Rights in the case of Oldham v UK. At the moment, subject to certain restrictions, a designated life prisoner has the right to have his case referred to the Parole Board for review, provided that two years have passed since the previous review. If the Parole Board directs such a prisoner's release, the prisoner can require the Scottish ministers to refer his case to the board after a further two years.

Amendment 92 provides that, if the board does not direct release, it will be required to fix the date of the next review of the prisoner's case and will also be under a duty to give reasons for its decision. The board will have discretion about the date of the next review as long as the period between reviews is no more than two years. The Scottish ministers will be under a duty to refer the case to the board to enable it to consider the case on the date that has been fixed. Furthermore, the prisoner will have the right at any time to ask the board to bring forward the date of his review.

Amendments 93 and 94 provide that recalls made under section 17(1) of the Prisoners and Criminal Proceedings Act 1993 will in future be referred to the Parole Board. As a result, there will be no need for a prisoner recalled on a recommendation of the board to exercise the right to require his or her case to be referred under section 17(3) of the 1993 act.

Amendment 105, in the name of Phil Gallie, would leave section 17 of the 1993 act unamended and would mean that, on recall to prison, prisoners would have to make representations to the Parole Board for their recall to be reviewed. Given the changes made by amendment 92, such a position would be untenable in policy and ECHR terms, as there

would be no mechanism to review the continued detention of a prisoner who failed to make representations after his or her recall.

I ask Mr Gallie to consider not moving amendment 105.

I move amendment 92.

Phil Gallie: Once again, as the minister has suggested, this matter centres on the revocation of licence. Basically, amendment 92 removes any ministerial obligation and passes the responsibility to the Parole Board. I have already stated my reservations about such an approach.

The minister suggested that, under amendment 91, prisoners would be given the discretion to bring forward their assessments. Has the minister considered the impact that any such measure could well have on a very tight time scale of events immediately following the enactment of the bill? Although I will address this issue when I speak to my other amendments on the marshalled list, I would appreciate an early comment from the minister.

Iain Gray: This is clearly an instance where ECHR case law applies. As I tried to explain in my opening remarks, to comply with ECHR as it has been interpreted particularly in the Oldham v UK case, there is a requirement to give a prisoner in such circumstances the right to ask for any review to be brought forward. It is indeed open to the Parole Board to decide whether to bring the date of review forward. As the amendment affects prisoners only in particular circumstances, any practical effect can be dealt with and will not cause a problem.

Amendment 92 agreed to.

Amendment 104 moved—[Phil Gallie].

The Convener: The question is, that amendment 104 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 104 disagreed to.

Amendment 105 moved—[Phil Gallie].

The Convener: The question is, that amendment 105 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 105 disagreed to.

Amendments 93 and 94 moved—[Iain Gray]—and agreed to.

Amendment 106 moved—[Phil Gallie].

The Convener: The question is, that amendment 106 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 106 disagreed to.

Amendment 107 not moved.

Phil Gallie: I have not given up.

Section 1, as amended, agreed to.

Section 2—Amendment of Criminal Procedure (Scotland) Act 1995

The Convener: Amendment 36, in the name of the minister, is grouped with amendments 37, 108, 80 and 102.

Iain Gray: Amendments 36 and 37 provide that where a person is convicted of more than one crime libelled on the same indictment for which the court would be required to, or would have decided to, impose life sentences, the court shall impose only a single life sentence. Such a measure should ensure that the punishment part reflects

the appropriate period for punishment and deterrence, taking into account the crimes of which the offender is convicted and for which a life sentence is imposed, and any other crimes of which the offender is convicted on the same indictment.

Amendment 80 brings existing life prisoners convicted of more than one crime on a single indictment for which life sentences have been imposed into line with persons who are sentenced to life imprisonment after the bill is enacted and comes into force. Where such a prisoner was convicted of two such offences libelled on the same indictment, they will be treated as if only one life sentence had been imposed and, as a result, only one punishment part will be set. However, that punishment part will reflect the seriousness of all crimes libelled on the indictment for which a life sentence was imposed, as well as any other offences of which the offender was convicted on the same indictment.

Amendment 102 makes similar provision in relation to existing transferred life prisoners. Amendment 108, lodged by Mr Gallie, would have the effect of leaving the courts the power to make a minimum recommendation of the period to be served by an adult mandatory life prisoner. However, we cannot accept that amendment since our assessment of the ECHR position is that all adult mandatory life prisoners require to have a punishment part set by the court in order that the relevant powers in section 205 of the Criminal Procedure (Scotland) Act 1995 (c.46) become redundant. The punishment part is a minimum recommendation. I invite Mr Gallie not to move amendment 108.

I move amendment 36.

Phil Gallie: I am surprised by the minister's interpretation of amendment 108. Subsections (4) to (6) of chapter 46 of the 1995 act refer to youthful—even child—offenders who have committed the most serious of crimes. The removal of those subsections removes a statement that youthful age is not a defence. The defence of youth cannot be accepted by the courts in considering a particular case. In effect, it is an excuse for children above the age of criminal responsibility and young offenders to have their age taken into account when the courts determine their case.

Section 2 inserts yet another technicality into law that could be said to deprive society of just outcome. As I read it, if we remove subsections (4) to (6) and if the age of a person in court is not determined exactly, that is cause for future appeal—perhaps that could be covered elsewhere in the bill. If so, we are creating a rod for our own back.

The third element of section 2 to which I take exception is the fact that 17-year-olds, who are currently not considered as children, will be considered as children in future. If an individual is old enough to marry or have sex he or she is old enough to be responsible for his or her actions, for example with respect to committing a crime of murder.

It is for those reasons that I ask the minister to consider the situation. I ask other members to read carefully the terms of subsections (4) to (6) of chapter 46 of the 1995 act. I suspect that few members of the committee will have taken much time to consider those details.

The Convener: Certainly, none of them wishes to say anything.

Gordon Jackson: Amendment 37 is one of those quirky wee amendments that are actually quite thoughtful. It would cause real problems in applications to judges who are sentencing under the new provisions if they were not able to lump it all as one. I would not have thought of that until it was too late and judges were sitting there with the problem. It is a good amendment. I will say nothing about Phil Gallie—I will not even tell him whether I have read the act.

Iain Gray: I thank Mr Jackson for his comments. The amendment is there because a very small number of existing prisoners would be affected by the transitional arrangements.

Mr Gallie's point was fairly technical and detailed. My reason for resisting amendment 108 remains the same. This is not an issue about the age of criminal responsibility but an issue about the setting of a minimum period. A punishment part will be set, which in essence amounts to a minimum period to be served. That broadly meets the requirement about facing responsibility to which Mr Gallie refers. His amendment is not necessary to produce the effect that he is looking for.

Phil Gallie: I would like to come back on this, because that was a totally unsatisfactory response.

The Convener: You will get your chance to move your amendment when we get to it.

Phil Gallie: Surely the committee is entitled to a debate. If the minister makes an unsatisfactory and less than full response, surely committee members have the right to question him. If not, we are wasting our time here.

10:15

The Convener: If you wish to make a point, I do not want to stifle debate.

Phil Gallie: With respect to the minister's

requirement for a swift approach, I will pick up one element of chapter 46 of the 1995 act. Subsection (5) of chapter 46 says:

"An order or judgement of the court shall not be invalidated by any subsequent proof that—

(a) the age of a person mentioned in subsection (1) above has not been correctly stated to the court".

Will the minister tell me how that is affected by ECHR? Surely that is a quite reasonable statement of fact.

Iain Gray: As I understand it, Mr Gallie's amendment would remove section 2, which amends the Criminal Procedure (Scotland) Act 1995 (c.46). Section 2(1) of the bill says:

"In section 205 (punishment for murder) of the Criminal Procedure (Scotland) Act 1995 (c.46) … subsections (4) to (6) are repealed."

Section 205(4) of the 1995 act says:

"On sentencing any person convicted of murder a judge may make a recommendation as to the minimum period which should elapse before, under section 1(4) of the … Prisoners and Criminal Proceedings (Scotland) Act 1993, the Secretary of State releases that person on licence."

Those are the measures that we look to repeal and to which my remarks are addressed.

The Convener: That was my interpretation of it as well. I do not know whether Phil Gallie is looking at the wrong section of the 1995 act.

Gordon Jackson: I genuinely do not understand the point that Phil Gallie is making. We are taking out of the 1995 act only the recommendation system. The punishment part—the new system—automatically makes that defunct. If judges are fixing a punishment period—in other words, they are fixing what is the equivalent of the recommendation period in every case—the recommendation requirements will disappear. I hesitate to say it, but I think that Phil is reading the wrong part of the act.

Phil Gallie: Can I clarify that I am looking at the Criminal Procedure (Scotland) Act 1995, chapter 46—

The Convener: No—chapter 46 refers to the act. It is the 46th act passed that year. It does not refer to a part of the act.

Phil Gallie: I may have picked this up wrong—if so, I apologise for wasting the committee's time.

Amendment 36 agreed to.

Amendment 37 moved—[Iain Gray]—and agreed to.

Amendment 108 not moved.

Section 2, as amended, agreed to.

Section 3—Amendment of provisions relating to transferred life prisoners

The Convener: Amendment 38 is grouped with amendments 39 to 41, 2, 3 and 44.

Iain Gray: Section 3 of the bill amends section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Section 10 of that act makes provision for prisoners transferred to Scotland on an unrestricted basis from another UK jurisdiction, or from outside the UK, such that under section 10(1) prisoners transferred from England and Wales to Scotland who have a tariff set under section 28(2) of the Crime (Sentences) Act 1997 or proposed section 82A(2) of the Powers of Criminal Courts Sentencing Act 2000 will have that tariff treated as if it were a punishment part fixed by the High Court in Scotland. Other prisoners transferred to Scotland will have a punishment set by the High Court under section 10(2) of the 1993 act.

We have considered the position of prisoners transferred on a restricted basis within UK jurisdictions. We are satisfied that the bill need make no provision for such prisoners, who will remain subject to the law of the sending jurisdiction.

The group of amendments provides that only discretionary life prisoners and murderers who are under 18 transferring to Scotland from England and Wales on an unrestricted basis, who have a tariff set by the judiciary following a hearing in open court, will have that tariff treated as if it were a punishment part. Any other life prisoner transferred to Scotland will fall under the provisions of section 10(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, as amended by this bill, and will therefore have a punishment part set by the High Court.

The application of part 3 of the schedule to the bill has the same effect for life prisoners who do not have a judicial tariff set in open court and who are transferred before the bill comes into force. Prisoners to whom the provisions of section 10(2) of the 1993 act will apply include any murderer under the age of 18 transferring from England and Wales who received a tariff under transitional arrangements, which will be operated by the Home Secretary when proposed section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 comes into force.

The provisions of section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 that relate to prisoners transferring from Northern Ireland and the Isle of Man also need amending. Those amendments will be lodged at stage 3.

Amendment 44 amends the bill so as further to amend section 10(5)(b) of the 1993 act and is consequential to the amendments to section 10(1)

of that act. The amendment provides that a life prisoner transferred to Scotland who is serving more than one life sentence in respect of which a relevant part has been set in open court will not be considered by the Parole Board for release until he has served both the relevant parts.

I move amendment 38.

Gordon Jackson: If I have understood this right—I think the minister will accept that this is not the easiest section of the bill to get one's mind round—the amendments mean that people who have committed, for example, murder in England and are being transferred to Scotland will have their case dealt with by the High Court here, which will in effect fix the time that they will spend in jail for the crime. Is my understanding right?

Iain Gray: That would be the case if the transfer was on an unrestricted basis and the prisoner was coming into the jurisdiction of Scots law and had not had a tariff set judicially in open court in England or Wales. The amendments mean that, if the prisoner had had a tariff set in open court, that would be regarded as the punishment part, so they would not require to be referred to the High Court.

Gordon Jackson: There will still be some cases when people who are transferred will be sentenced by a Scottish judge for a crime committed outside this jurisdiction. I am not knocking that—it may be essential—but I suspect that it is a pretty unusual, if not unique, thing for Scottish courts to do. I do not know how often they do it. Have we consulted with the court system about whether it believes that there will be any difficulties?

The Convener: Other points may be made on the amendments, so I would rather bring the minister in at the end of the discussion.

Gordon Jackson: Okay.

Do the courts see difficulties? I instinctively see difficulties, but I cannot work out what they are. Where will the information for the court come from? Is there a provision whereby the original judge in England will supply a report? What are the mechanics of the court in Scotland getting the information and dealing with it? I am trying to find out how the proposals work and whether we have consulted the courts.

I have another genuine question—I do not know the answer to it. Does a person in an English jail who is getting transferred have the right not to be transferred? Can they say, "I don't want the transfer." They might not want the period to be fixed; if they get transferred, they might get a tariff that they do not want. Some prisoners might think that being transferred was a good thing, as they would get a tariff, but some would not think so.

I am curious to know how the arrangements would work in practice. I find it a strange and novel process, although it may not be. I do not object to it; I am merely trying to get my mind round it.

The Convener: A similar point occurred to me. Transfer could happen some time after the trial had taken place. We are in the slightly unusual position of asking judges to pass sentence when they have not necessarily heard the evidence, although some written evidence may be available to them. What right, in those circumstances, does the prisoner have to lead evidence in respect of the potential sentence? Is there an ECHR problem with a sentence being passed without a trial taking place?

Phil Gallie: I have lodged several amendments that refer to the point that Gordon Jackson made—we will come to them in due course. I take on board his concerns.

Gordon Jackson: They are not concerns; they are only questions. I am just probing.

Phil Gallie: Gordon Jackson should not be so defensive; he made some reasonable comments, which were well worth listening to. My concerns perhaps go a little further.

Gordon Jackson used the easy example of what happens in relation to the courts in England but, as far as I understand it, transfer prisoners could come—as they have done in the past—from Thailand, Saudi Arabia or Malaysia, where the sentencing systems are totally different from ours. Several members of the committee will have been involved with the Foreign and Commonwealth Office and others in trying to get prisoners who have offended abroad brought back to this country to serve a sentence. That is in line with the spirit of Scottish law, which believes that it is best for prisoners to serve their sentences closest to home.

There are complications for the transferred life prisoner—for people in some jurisdictions, the thought that someone else will revisit the issue and set punishment levels different from those that were set in that jurisdiction could affect whether individuals are returned to this country. Agreements that are made with such jurisdictions could be built into the bill. I refer to that issue in later amendments, which touch on the points that Gordon Jackson has raised.

10:30

Iain Gray: I will deal first with the points that Mr Jackson raised. We are not changing the situation as much as he implied, as prisoners already transfer on an unrestricted basis. That brings them into Scottish jurisdiction, so decisions about their release are taken in Scotland, under the Scottish

system, despite the fact that the crime was committed in England.

The obligation is on the Scottish Executive to ensure that the proper documentation has been provided in the case of a transfer. The bill covers that issue and amendments that we will come to later also deal with the matter. There has been consultation with the judiciary on what those documents would have to be in order to be sufficient.

Mr Jackson asked whether a prisoner has the right to refuse a transfer on the ground that they might have to face a punishment part that is disadvantageous to them. The answer is yes: a transfer can take place only with the agreement of the prisoner.

The convener talked about the length of time between the sentence and the review of the punishment part. To some extent, that mirrors the current system in relation to indeterminate sentences. When a prisoner is being considered for release, which may be 17 or 20 years after the crime has taken place, the judiciary is asked to take a view on whether the requirements of criminal justice have been served. In such a case, the judge or the Lord Justice General would review the circumstances of the case and the crime. I was asked whether that would lead to a problem with the ECHR. Clearly, we do not believe that it would, or we would not have lodged the amendment. The key to ECHR compliance in this circumstance is that prisoners have a judicially set tariff in open court. In essence, the amendments allow that to be the case in all circumstances.

Mr Gallie raised the issue of transfer from jurisdictions outwith the UK. It might be helpful to explain that the regime that is operated under the Crime (Sentences) Act 1997, which is the act under which prisoners can be transferred on an unrestricted or restricted basis, applies only within the British islands. The provisions of the act do not apply to prisoners who were sentenced abroad. Under the Council of Europe convention on the transfer of sentenced prisoners, if the state in which the person was sentenced and the state to which the transfer is requested agree to the transfer, the sentence is enforced in accordance with the laws and regulations that apply in the receiving jurisdiction and the sending country must accept that. In other words, all prisoners transferring from outside the UK do so on an unrestricted basis. Mr Gallie pointed out that the people in the country in which the sentence has been passed might feel that that would make it difficult for them to agree to the transfer. That point is well made but the situation will not be affected by the bill.

Amendment 38 agreed to.

Amendments 39 to 41, 2 and 3 moved—[Iain Gray]—and agreed to.

The Convener: Amendment 42 is grouped with amendments 45 and 113. If amendment 45 is agreed to, amendment 113 is pre-empted and cannot be moved.

Iain Gray: Amendments 42 and 45 amend section 3(2) of the bill to provide for the repeal of paragraph 7 of schedule 6 to the Prisoners and Criminal Proceedings (Scotland) Act 1993.

Section 3 of the bill amends section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Section 3(2) substitutes new paragraphs 7 to 7D for paragraph 7 of schedule 6 to the 1993 act, which would apply to transferred life prisoners after the bill comes into force.

Paragraph 7 of schedule 6 to the act applies to discretionary life prisoners sentenced in or transferred to England and Wales before 1993 who were given a tariff by the Home Secretary as a result of a paper-based exercise and to discretionary lifers and murderers under the age of 18 who were transferred to England and Wales after October 1997, given a tariff by the Home Secretary and subsequently transferred to Scotland. As amended by the bill, paragraph 7 of schedule 6 would enable prisoners to waive their right to a hearing to have a punishment part set and instead to have their tariffs recognised in Scotland. However, we do not consider tariffs imposed by the executive to be ECHR-compliant. Therefore, we consider it inappropriate to treat such tariffs as if they were a punishment part set by a court in Scotland. Instead, a punishment part requires to be set for such prisoners who are transferring to Scotland. That will be done under section 10 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and paragraph 7 of section 6 will no longer be required. Amendments 42 and 45 therefore repeal paragraph 7 in its entirety.

Amendment 113, which was lodged by Mr Gallie, seeks to remove the right of that category of prisoner to waive the entitlement to a hearing. As that will be achieved by the Executive amendments, perhaps Mr Gallie will consider not moving his amendment.

I move amendment 42.

Amendment 42 agreed to.

Amendment 113 not moved.

The Convener: Amendment 109 is grouped with amendment 110.

Phil Gallie: Amendment 110 is consequential to amendment 109. The amendments relate to a comment that the convener made about whether a transferred prisoner can opt out of having the

punishment part set. I believe that the prisoner can insist that his case be considered with immediate implementation, which means that he might jump ahead in the queue of others who are waiting. Under the bill, the minister is obliged to refer such cases as soon as possible and I cannot see why the transferred prisoner should be allowed to jump ahead in the queue.

I move amendment 109.

Iain Gray: The answer is straightforward. We consider the provision necessary to meet the requirements of article 6 of the ECHR. As Mr Gallie says, the obligation is that ministers will refer cases as soon as is practical. The prisoner is also given the right to refer his case to ensure that the requirements of article 6 are met. In practice, it is unlikely that the prisoner would need to exercise that right, as the expectation is that the case would be referred by ministers. However, the provision is designed to meet a requirement of the ECHR, so we are unable to support Mr Gallie's amendments.

Phil Gallie: I recognise the minister's difficulty. I think that the situation that we are talking about might cause considerable problems in the future if individuals want to play the system. There could be difficulties with obtaining all the details necessary for full consideration to be given to the cases of those who transfer from other jurisdictions. I suspect that the minister is saying that, although the prisoner has the right to refer his case, practical issues would determine the outcome. If that is what he is saying, I can go along with it.

Gordon Jackson: I do not know whether the minister has told us this before, but how many people get transferred? Is it common? Is this a big issue?

Iain Gray: There are 28 transferred prisoners at the moment.

Gordon Jackson: Obviously, they have been transferred over a period. That means that it is not common.

Phil Gallie: Would those 28 all fall into the category of prisoners whose cases would be reconsidered in relation to the punishment part of the sentence?

Iain Gray: I would have to look at which category the 28 fall into, because it depends whether they transferred on a restricted or unrestricted basis. Mr Jackson asked for an indication of the numbers that we are talking about. They are manageable.

Amendment 109, by agreement, withdrawn.

Amendment 110 not moved.

The Convener: Amendment 22 is grouped with amendments 34 and 35.

Michael Matheson: Amendment 22 seeks to extend the category of person to whom the documents and information referred to in the proposed subsection (2D) will be provided. That documentation is a copy of the indictment or any other corresponding document, a copy of the trial judge's report, subject to the provisions in the proposed subsection (2E), and any other documentation or information which a Scottish minister considers to be relevant.

The three amendments in this group, which seek to amend section 3 and parts 1 and 3 of the schedule, would ensure that the solicitors of transferred and existing life prisoners receive documentation to enable them to represent their clients efficiently and effectively. As it stands, the information will be provided to the High Court of Justiciary, the Lord Advocate and transferred prisoners themselves. It strikes me that the person missing from that loop is the prisoner's solicitor, so the intention of amendment 22 is to ensure that they are provided with the relevant documentation.

I move amendment 22.

Gordon Jackson: I am thinking about this. I do not want to cause trouble. There is a slight practical difficulty, in that sometimes people who are in jail—and I mean them no disrespect—are not too bright, so they may not understand fully what is going on. They will be taken to court and the whole thing will go round in circles for a while. That will not affect the interests of justice, because if they go to court but do not understand what is going on and do not have properly instructed legal representation, the court will not deal with the case.

I am not suggesting that prisoners will suffer without the measures in the amendments but, by and large, sending information to people's legal representatives is a good idea. Indictments are always sent to solicitors because it makes the process go more smoothly. I am not suggesting that it makes any difference to justice, or that it is a legal requirement, but the process goes more smoothly if lawyers get copies of things. I would not make an issue of this, but sending information to solicitors just makes the situation easier to deal with.

Iain Gray: We understand the import of the amendments but feel that there are practical difficulties in extending the right to receive copies of documents to prisoners' solicitors. In principle, it ought to be for the prisoner to decide whether to forward any or all of the documents that have been mentioned to a solicitor, but in any case there are practical difficulties. For example, the prisoner may not have instructed a solicitor. When they have, we would be unlikely to hold up-to-date details of the prisoner's solicitor in every case. The prisoner may wish to change, or may be in the

process of changing, their solicitor, as is their prerogative. It seems better to us that the documents be sent to the prisoner, who can then exercise their right to instruct the solicitor of their choice, notwithstanding Mr Jackson's comments.

I advise members that we intend to send two copies of the documents to the prisoner so that, if they wish to do so, they have a copy to send to their solicitor and a copy for themselves. For practical reasons, we cannot support the amendments in this group and we hope that Michael Matheson will consider withdrawing them.

Michael Matheson: I am conscious that there are potential administrative problems with the measures in amendments 22, 34 and 35. I take on board the fact that two copies of the papers will be given to the prisoner, but as Gordon Jackson said, there will be prisoners who, when they receive the papers, will not be sure what is happening—and the clock will be ticking. There will be times when a prisoner is in the process of changing their solicitor, or has not instructed a solicitor, but it is reasonable to expect that when it is known that a prisoner has instructed a solicitor and who that solicitor is, the papers should be forwarded to that solicitor. Will the minister consider addressing the issue at stage 3, so that when the information on a prisoner's solicitor is available, a copy of the documentation will be forward to them?

10:45

Iain Gray: Mr Matheson makes an important point. His amendments would impose an obligation. My fear is that if, for practical reasons, it was impossible to meet that obligation, there would be implications for the legal process. If a way can be found, not necessarily in the bill, to take account of that, it may meet the reasonable concern that prisoners get legal advice as soon and as effectively as possible. I will think about the issue and try to come back with a proposal that reassures Michael Matheson.

Amendment 22, by agreement, withdrawn.

The Convener: Amendment 111 is grouped with amendment 112.

Phil Gallie: Discussion of amendment 111 builds on previous debate on transferred prisoners. The amendment seeks to overcome the difficulties, which the minister said are built in to ECHR legislation, with the transfer of prisoners from overseas. The documentation that is provided by Scottish ministers should contain a copy of the agreement signed between the two jurisdictions. The Scottish jurisdiction should undertake to accept and respect any decisions taken or conditions laid down by the jurisdiction from which the transferred prisoner comes.

I suspect that the minister will say that that would undercut the ECHR, but if the agreement could be referred to in some way, we could assist some people who are desperate to come home to Scotland but are trapped in prisons overseas under regimes that take a hard line.

I move amendment 111.

Iain Gray: In considering these amendments, I was not clear that Mr Gallie had in mind transfers from jurisdictions outside the UK. As I said, in essence, UK transfers are on an unrestricted basis. That is the current situation. My concern is that amendments 111 and 112 would not only require Scottish ministers to provide the courts with any agreements governing the transfer of prisoners, they would require the courts to take them into account when setting the punishment part for transferred life prisoners.

We have little difficulty with providing the information and its being taken into account; the problem is with the requirement for it to be taken into account. For us, it is not an ECHR problem. Rather, it is a problem for Scottish justice. The measure would not undercut the ECHR, but it would fetter Scottish judicial decisions. For that reason, the amendments are undesirable. The agreement will be available to the High Court in setting the punishment part and we would expect the court to have regard to it, but we would not want the court to be fettered by an obligation to take account of it.

Phil Gallie: The minister has in effect said that amendment 111 will be implemented with respect to transferred documents and opinions. Perhaps my wording of amendment 112 was weaker than it could have been, given that it left the courts "taking into account". Perhaps I should have said that courts should have to take into account the agreement and accept its terms.

I remain concerned that people could be left to spend their lives overseas when they could be back here in Scottish prisons and having contact with their families. I would like to think about the matter between now and stage 3 and perhaps come back to it. I welcome the minister's relatively favourable words on the amendment.

Amendment 111, by agreement, withdrawn.

Amendment 112 not moved.

The Convener: Amendment 43 is grouped with amendment 55.

Iain Gray: Life prisoners who are transferred to Scotland from England, Wales or Northern Ireland under the Mental Health (Scotland) Act 1984 and the Mental Health Act 1983 are treated as if their sentences had been imposed in Scotland. Provision therefore needs to be made in relation to the release of existing and future transferred life

prisoners in that category.

Amendment 43 extends the definition of "transferred life prisoner" in section 10(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to include prisoners such as I have described, thereby applying section 10 to those who transfer to Scotland in future and applying that section to prisoners who have already had an ECHR-compliant tariff imposed who transfer to Scotland before the bill comes into force.

Amendment 55 applies part 3 of the schedule to the bill to existing life prisoners who are transferred to Scotland from England, Wales or Northern Ireland under the Mental Health (Scotland) Act 1984 and Mental Health Act 1983 who do not have a tariff that we recognise as ECHR compliant, so as to provide for a punishment part to be set for such prisoners.

The result is that a prisoner with an ECHR-compliant tariff—whether that prisoner is transferred pre- or post-bill—will have their tariff recognised as if it were a punishment part. A prisoner without an ECHR-compliant tariff will have a punishment part set on transfer to Scotland under section 10(2) of the 1993 act.

I move amendment 43.

Gordon Jackson: I would like to ask about something that I am trying to understand. It is my fault that I am not up to speed today.

Do the amendments apply to someone who may have committed murder in England and who is in a mental hospital under the Mental Health Act 1983? Do they apply to people who were sentenced to life imprisonment but have ended up in a mental hospital, or to those who have gone to mental hospitals under a hospital order?

I would like to take my questions in stages. I need the answer to those questions before I can ask the next one.

Iain Gray: It applies to those with a life sentence and not to those under a hospital order.

Gordon Jackson: If someone has a life sentence, becomes mentally ill and is then transferred to a hospital in Scotland, for example, our courts would give that person a punishment part as if looking at the matter at the original date—in other words, as if that person was not mentally ill.

Iain Gray: I think that the category that Mr Jackson describes would be included, but probably a more likely case would involve someone who had received a life sentence but had then been transferred to a mental hospital. That person would have a punishment part set.

Gordon Jackson: That means that a punishment part would then be fixed and that the date for fixing the punishment part would apply to people who are by that stage mentally ill.

How are instructions given and how is the situation dealt with? How can there be ECHR compliance in terms of a proper hearing? Those people will be told, "You will be released in 10 years. We are treating you as at the date that you committed the crime." However, that person might become well again. How do we deal with the hearing's fixing a determinate period of punishment for somebody who at the time of the hearing is totally psychotic?

That is a genuine problem to me, not a niggardly question.

Iain Gray: It is a genuine problem to me too.

Gordon Jackson: Yes, I think that some—

The Convener: Order. We cannot have members continually conversing across the committee.

Iain Gray: We should consider Gordon Jackson's point. There is only one person in the category that we are discussing. A very small number of people are affected.

Amendment 43 agreed to.

Amendment 44 moved—[Iain Gray]—and agreed to.

The Convener: I call the minister to speak to and move amendment 59.

Iain Gray: Amendment 59 integrates into the new Scottish system prisoners whose supervision is transferred on an unrestricted basis from any other part of the UK to Scotland at any time after the Crime (Sentences) Act 1997 came into force. Schedule 1 to that act provides that prisoners may be transferred to Scotland after their release, so it is their supervision that is transferred, as they are no longer being detained in prison.

Amendment 59 would deem life prisoners who have been released on compassionate grounds in another UK jurisdiction and are subsequently transferred to Scotland to have been released under section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. They would therefore not be treated as having served their punishment part; a punishment part would be set if the prisoner were recalled to prison and the Parole Board did not direct immediate re-release.

The amendment deals with a prisoner who is transferred to Scotland after being released either on licence or on compassionate grounds to ensure that, unless they are recalled, they need not go to the High Court to receive a punishment part.

I move amendment 59.

Amendment 59 agreed to.

Amendment 45 moved—[Iain Gray]—and agreed to.

Amendment 113 not moved.

Section 3, as amended, agreed to.

Section 4 agreed to.

Schedule

TRANSITIONAL PROVISIONS`

The Convener: Amendment 12 is grouped with amendment 13. I ask the minister to speak to both amendments and to move amendment 12.

Iain Gray: Either I am suffering from déjà vu or I have already explained amendment 12. Amendments 12 and 13 provide that existing life prisoners who have been released on compassionate grounds will not require to have a punishment part set unless they are recalled to prison and the Parole Board does not direct their immediate re-release.

I move amendment 12.

Amendment 12 agreed to.

The Convener: Amendment 18 is grouped with amendments 78, 19, 79, 53 and 54.

Iain Gray: Amendments 18 and 19 amend part 1 of the schedule to allow existing adult mandatory life prisoners with a provisional release date, or a recommended provisional release date, to waive their entitlement to a hearing to have a punishment part set. Amendments 53 and 54 perform the same function for transferred life prisoners with a provisional release date or a recommended provisional release date. Those are transitional arrangements.

Amendment 78 would amend paragraph 4 of part 1 of the schedule. Its effect would be that, although a prisoner could waive the right to a hearing, ministers would still be obliged, under paragraph 5 of part 1 of the schedule, to refer such prisoners for a hearing. Despite the waiver, the prisoner would still receive a hearing. The amendment seems unworkable, but even if the drafting could be adjusted, we do not believe that it is appropriate to remove the right to a waiver or to deny the effects of a waiver that has been exercised by a prisoner. The provisions result from the development of ECHR jurisdiction. Parts that have been set by virtue of a paper-based exercise are no longer recognised as being compatible with article 6 of the convention.

Amendment 79 would remove paragraph 6 of part 1 of the schedule, which gives the prisoner the right to send their case to the High Court to have a punishment part set. As we previously discussed, we consider such a provision to be necessary to meet the requirements of the convention. Although the intention is that ministers will refer cases automatically, the prisoner is also entitled to have the right to refer their case. In practice, it is unlikely that they would be required to exercise that right.

I invite Mr Gallie not to move amendments 78 and 79.

I move amendment 18.

Phil Gallie: Having listened to the minister and having heard his comment on previous changes that I have sought, I see no point in pressing amendments 78 and 79. The reason for the bill is to ensure compliance with the European convention on human rights. I accept the minister's comments that amendments 18 and 19 cut across compliance issues. On that basis, I will not move amendments 78 and 79.

Amendment 18 agreed to.

Amendment 13 moved—[Iain Gray]—and agreed to.

Amendment 78 not moved.

Amendment 19 moved—[Iain Gray]—and agreed to.

Amendments 79 and 34 not moved.

Amendment 80 moved—[Iain Gray]—and agreed to.

11:00

The Convener: We now come to amendment 81.

Phil Gallie: On a point of order, convener. I cannot recall it being put to the committee that part 1 of the bill be accepted. Should that have been done?

The Convener: We agree sections; we do not agree parts.

Phil Gallie: I stand corrected.

Amendment 81 refers to existing life prisoners who are released prior to a punishment part being fixed. I am talking about the current situation in which some people may have been released without punishment elements having been determined. The amendment calls for such a prisoner, if recalled under licence, not to be considered for release again until a punishment part for the original offence has been determined by the court. Thereafter, before such an individual would be considered again for release, any punishment element or sentence passed for a further offence should be considered and added to the original punishment element.

I move amendment 81.

Iain Gray: We do not support amendment 81. It

would be erroneous to require such prisoners to have a punishment part set. They will already have served the period that the judiciary considered appropriate for punishment and deterrence and that will have been considered at the time of their release on licence. Having served that period of detention, they will have been released. If they are then recalled to prison because they have been convicted of an offence, the court will impose the appropriate penalty for that offence quite separately from their liability to be recalled to prison. That will happen without the need for separate provision in the bill. I invite Phil Gallie to withdraw his amendment.

Phil Gallie: I am a bit surprised by the minister's first comments. The judiciary would not have made a judgment at the time of the individual's initial release: they would have been consulted and they would have passed comment. The minister and the Parole Board would have taken account of the judiciary's submission, but, in effect, the punishment element would not have been set for that individual, as amendment 81 would require.

Iain Gray: Mr Gallie's comments are technically correct. When consideration is given to a release on licence, the judiciary will be asked whether, in its view, the requirements of the criminal justice system for punishment and deterrence have been met by the time already served. The judiciary's recommendation will be considered by Scottish ministers and accepted or rejected. However, it appears that such a recommendation has never been overturned by Scottish ministers in recent times. In effect, the position is that the requirement of justice will already have been served as set by the judiciary.

Phil Gallie: We are changing the situation. Scottish ministers might not have overturned judges' decisions in the past, but we are removing Scottish ministers from the equation and suggesting that the Parole Board will make the decisions. The minister cannot put thoughts into the minds of the Parole Board. It may decide to ignore a judicial recommendation. I do not feel that it would do the bill an injustice if there was a requirement for the resetting of the punishment part. That would be fully in the spirit of the bill.

I am therefore not minded to abandon amendment 81. At best, perhaps the minister could suggest that he could reconsider the amendment.

Iain Gray: I do not see the need to do so. The arrangement is transitional and applies to existing life prisoners, so it is not a fundamental part of the new procedures that the bill will introduce.

In response to Mr Gallie's remarks on the Parole Board, I remind him that, in the new procedures, the Parole Board will make a recommendation only after the punishment part has been set. We are discussing whether the requirements of criminal justice have been met as the system stands and in the new system. The answer is that they will be met in both cases.

Phil Gallie: The minister ignores my opening remarks. I acknowledged that I am talking about individuals who might be released before the bill is enacted. We are talking about a situation that exists with life parolees. That is different from the situation the minister has just described.

Iain Gray: I simply repeat my point that we therefore know that the circumstance will be anything other than that the parolees will have served the period that the judiciary has said is required to meet the requirements of criminal justice.

The Convener: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 81 disagreed to.

The Convener: Amendment 95 is grouped with amendment 101.

Iain Gray: Amendments 95 and 101 are purely technical. They add text to clarify that the terms used in parts 2 and 3 of the schedule are as defined in part 1 of the schedule.

I move amendment 95.

Amendment 95 agreed to.

The Convener: Amendment 57 is grouped with amendments 82, 46, 96, 97, 83, 47, 84, 98, 99, 100, 85, 86, 48, 87 and 88. Various amendments will be pre-empted if others are agreed to, but I will not bore the committee by saying what they are. You will find out if the situation arises.

Iain Gray: This group of amendments also deals with transitional arrangements only. Part 2 of the schedule provides for the release of existing adult mandatory life prisoners in respect of whom, at the time the bill comes into force, ministers have set a provisional release date or the Parole Board has

recommended a date for release with which the judiciary is content.

Other amendments that are being debated today allow those prisoners to waive their rights to a hearing to have a punishment part set. If they waive their rights, they will be released on the provisional release date or the date that has been recommended by the Parole Board, as the case may be, and will be deemed to have been released under section 2(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, having served their punishment part.

Paragraph 21 of part 2 of the schedule provides that ministers may refer such a prisoner back to the Parole Board to have their provisional release date reviewed if they consider that the prisoner's conduct suggests that they would be a risk to the public if they were released as planned. However, those provisions relate only to prisoners' conduct. Amendments 96, 97, 99 and 100 extend the circumstances under which ministers can refer cases to the board, to include as a ground for referral a "material change of circumstances" which gives rise to concern about risk to the public.

Amendments 57 and 46 allow ministers to refer a case back to the Parole Board as soon as the relevant conduct or change of circumstances occurs. Amendment 98 makes similar provision in relation to referral under paragraph 24 of part 2 of the schedule.

Amendments 84 and 87 ensure that when an adverse development arises that requires referral back to the Parole Board, Scottish ministers will have the authority to continue to detain the prisoner until the Parole Board has carried out the review. That might mean detaining the prisoner beyond the recommended release date.

Amendments 47 and 48 ensure that the prisoner's release is not delayed indefinitely by such referral, by imposing a duty on the Parole Board to consider the case as soon as reasonably practicable.

Mr Gallie's amendments—amendments 82 and 83—would mean that despite the judiciary being content that the prisoner had served the period to satisfy the requirements of retribution and deterrence, their case would require to be referred to the High Court for a punishment part to be set. I suggest that that would be neither fair nor sensible. Apart from the fact that the judiciary will have signalled that it is content that the criminal justice requirements have been satisfied, such a prisoner will also have been considered by the board not to present an unacceptable risk to the safety of the public. I invite Mr Gallie not to move amendments 82 and 83.

I move amendment 57.

Phil Gallie: I regret to say that I will not accept the minister's invitation. As I said, I am concerned about including yet another element that removes some ministerial responsibility. When a minister considers that the safety of the public is at risk and that there is a need for protection, the minister should have the right to refuse a prisoner early release. Consistent with all my earlier arguments, I will stick to that principle.

I am not happy with many of the Executive amendments in the group. However, rather than vote on each one simply to cause delay without success, I will accept the fact that they will be agreed to, but I reserve the right to pick up on the amendments when we consider the new form of the bill at stage 3.

Iain Gray: I have nothing to add to my previous comments.

Amendment 57 agreed to.

Amendment 82 moved—[Phil Gallie].

The Convener: The question is, that amendment 82, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Jackson, Gordon (Glasgow Govan) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

The Convener: The result of the division is: For 1, Against 4, Abstentions 0.

Amendment 82 disagreed to.

Amendment 46, 96 and 97 moved—[Iain Gray]—and agreed to.

Amendment 83 not moved.

Amendments 47, 84, 98, 99, 100, 85, 86 and 48 moved—[Iain Gray]—and agreed to.

The Convener: Amendment 49 is grouped with amendments 50 and 51.

Iain Gray: These technical amendments clarify what is meant by the term "provisional release date" in paragraphs 26 to 31 in part 3 of the schedule.

I move amendment 49.

Amendment 49 agreed to.

Amendments 87, 50, 51 and 88 moved—[Iain Gray]—and agreed to.

11:15

The Convener: Amendment 14 is in the name of Jim Wallace, and is grouped with amendments 15, 16, 21, 17 and 52.

Iain Gray: Amendments 16, 17 and 52 are technical drafting amendments to clarify the classes of life prisoner to which part 3 of the schedule applies. Amendments 14, 15 and 21 are drafting changes to improve the schedule's readability. I hope that they are all agreed to.

I move amendment 14.

Amendment 14 agreed to.

Amendments 15, 16, 21, 17, 52, 101, 53 and 54 moved—[Iain Gray]—and agreed to.

Amendment 35 not moved.

Amendment 89 not moved.

Amendments 102 and 55 moved—[Iain Gray]—and agreed to.

Schedule, as amended, agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the Convention Rights (Compliance) (Scotland) Bill. I thank the minister and members for their forbearance.

I suggest that we adjourn now and recommence promptly at 11:30.

11:17

Meeting adjourned.

11:30

On resuming—

Petition

The Convener: The next item is consideration of petition PE227 by Alistair MacDonald, which calls for the Scottish Parliament to approve an investigation into the actions of the public agencies and the National Trust for Scotland as architects of the current proposals and policies for Glencoe, and in particular to look at public consultation and the future role of the National Trust for Scotland as a landowner. The committee is considering the petition in relation to the proposed land reform bill.

Michael Matheson: Given that Fergus Ewing, the local MSP, and the petitioners are here, will we have an opportunity to hear from them before we consider the matter?

The Convener: I will ask one of the petitioners, Kirsty Macleod, to address the committee briefly.

Kirsty Macleod: Thank you. Please bear with me—I have scribbled some notes on the back of an envelope because I was not quite sure what to expect. Members have received some background notes, which explain the basis of Alistair MacDonald's petition. We were not sure what angle the Justice 1 Committee would take, but I understand that the committee's interest is that the petition would form part of its consideration of the proposed land reform bill.

Additional information has come to light and we are anxious to attach it to the petition. The information concerns certain irregularities that seem to have occurred during the planning and funding processes of both the woodland grant scheme and the proposed visitor centre at Inverrigan. We have prepared some information that raises serious questions that we hope the committee will consider alongside the land reform implications of the petition. If not, perhaps the committee could recommend where we could raise the issue of anomalies in the planning process.

Maureen Macmillan (Highlands and Islands) (Lab): On a point of order. Is it appropriate for the petitioners to submit additional information today, which means that we will consider matters that are outwith the petition?

The Convener: I would like to hear what the information is before I decide whether it is germane—it might back up what is being said in the petition. It would be difficult to judge without hearing what the petitioner has to say. It seems reasonable to hear the petitioner.

Kirsty Macleod: Our key stumbling block is that we are told that the woodland grant scheme and the planning application have been granted consent and that there is nothing that we can do about it. However, if we look quickly at the planning application for the visitor centre, I could rattle through some of the points that are valid—

The Convener: I must interrupt you at this point. The Justice 1 Committee cannot investigate specific judicial cases, even if the subject of the cases falls within our remit. However, we can look at anything that tells us about more general matters that come within the remit of the committee. As the Justice 1 Committee will look at the land reform bill, the Public Petitions Committee passed petition PE227 to us to see whether any of the issues that flowed from the petition might influence our consideration of that bill. We cannot debate a particular planning application, or say that this or that was right or wrong in the process that led up to the application.

Maureen Macmillan: Petition PE227 has been before the Transport and the Environment Committee, which gave particular consideration to the planning issues. That committee's members said that it was not appropriate for a committee of the Scottish Parliament to act as a kind of a court of appeal in planning matters. The Transport and the Environment Committee recommended that the Justice 1 Committee look in general terms at how planning applications are dealt with. As the convener said, we cannot look into particular cases; we can talk only about the principles of planning applications.

The Convener: I ask Kirsty Macleod to construct her remarks bearing in mind our advice.

Kirsty Macleod: My final remark would be that this is no ordinary planning application. It has involved the Forestry Commission, Scottish Natural Heritage, the local authority, the Heritage Lottery Fund and various consultations with people outside Glencoe, including mountaineering clubs. The application has drawn together a number of powerful key players in the Highlands and Islands. At the core of the issues that we want to raise about the planning process is the question of funding and co-operation between those powerful organisations. The issues are not technicalities that were not followed or little mistakes that were made. The issues are major and they are all interrelated.

The Convener: Okay. I thank Kirsty Macleod for her evidence. Do members of the committee want to say anything at this point? If not, I will bring in Fergus Ewing.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am happy to appear again in support of the petitioners, Kirsty Macleod and Alistair MacDonald. As Michael Matheson said, this is a constituency matter for me. The petitioners are looking for a fair hearing. The fair hearing that they are looking for covers what has happened in Glencoe and also—as the wording of the petition recognises—the wider issues and role that wealthy voluntary bodies such as the National Trust for Scotland have as major landowners in the Highlands. Petition PE227 also relates to the power that that provides them and to the close—some would say unhealthily close—relationship between some of those wealthy voluntary bodies such as the National Trust for Scotland and RSPB Scotland.

The Justice 1 Committee or the Rural Development Committee, which might be considering the matter on 5 June, could hold an investigation into the wider issues that have been raised and could also consider the matter as a case study. The committees need not necessarily review the decision, because that might be beyond the powers of the committees. In that respect, I wait with interest to see the additional evidence that Kirsty Macleod said will be produced. No doubt that additional evidence will be considered carefully by the Justice 1 Committee and the Rural Development Committee's clerks if they are so instructed. However, I believe that there should be an inquiry into the wider issues and that this example could be used as a case study.

There are a few areas of concern. There has not been adequate consultation by the National Trust for Scotland. It claims that there has been, but I think that it has been proven that its claims are wrong. Recently, there was a report of misrepresentation by the National Trust for Scotland of comments made by the commissioner of the Canadian clan Donald, Peter Paton. Peter Paton recently issued a statement that—

The Convener: We are getting into specifics now and I do not think that we should do that. We have not yet agreed to undertake a case study. The Public Petitions Committee invited this committee to consider a certain specific matter—whether we would consider the future role of the National Trust for Scotland as a landowner when we come to consider the proposed land reform bill. If Fergus Ewing wants to try to persuade us of the wisdom or otherwise of that, I will be happy to listen. However, I caution him not to try to argue the specifics of whether a particular planning decision was flawed.

Fergus Ewing: On planning and on Government agencies, which were mentioned by the petitioner, the perception is that it is straightforward for wealthy voluntary bodies to obtain planning permission and grants—in this case of several hundred thousand pounds—but that there are clear double standards. Ordinary

individuals and businesses in my constituency—and, I suspect, in all Scotland—find it much more difficult to obtain planning permission and financial support for projects that they wish to pursue. There is an unhealthily close relationship, which is exemplified by the fact that SNH deliberately leaked the letter from Peter Paton to the NTS without permission, and quoted from it liberally. He complained, as was reported in the *Oban Times and West Highland Times*. In regard to the closeness of the NTS's relationship with the SNH, I can reveal today that the National Trust for Scotland has applied for another £200,000—

Gordon Jackson: On a point of order.

Fergus Ewing: It is to help with an interpretation centre, which is quite outrageous—

The Convener: Wait a minute, Fergus; we have a point of order.

Gordon Jackson: Fergus mentions fair hearing, and we give fair hearing. That is no reason to allow that fair hearing to be abused. We are in danger of using our remit as a platform for Fergus to make whatever speech he wants to make to the press. I do not think that you should allow that, convener.

The Convener: You were beginning to stray, Fergus, as I think you know.

Fergus Ewing: If I stray, I apologise. It is difficult to demonstrate the concerns that exist about the general issues without referring to specifics. To answer Gordon's point, it seems to me that some of the information that the National Trust for Scotland has provided to the Parliament is plainly incorrect. Therefore, it has not—

The Convener: Okay, I will stop you there. You have made the point that you wished to make about the National Trust for Scotland, other large bodies and the planning process. The planning process does not affect us: it is a matter for the Transport and the Environment Committee. Our particular interest is whether our consideration of the land reform bill will be affected.

Maureen Macmillan: Land use questions obviously arise with any proprietor or landed estate, whether the land is owned by charities, by private individuals or by a consortium. When we come to consider the land reform bill, there will be an opportunity to consider how landowners of any kind use the land. Systems should be put in place so that, if the land is not being properly used, communities can deal with it. However, what Fergus has been talking about is a planning issue. It was dealt with at the Transport and the Environment Committee and I do not think that we can go down the same road. We must decide whether to note the petition or say that, when we come to consider the land reform bill, we will bear in mind the fact that there could be proprietors—charities, voluntary groups or whatever—that have as much responsibility to the people who live on the land as do private owners.

11:45

Phil Gallie: I do not know whether I should declare an interest. I am not a member of the National Trust for Scotland, but it may be that my wife is. I am not sure, but I declare it just in case.

If we take away the specific detail of the application, behind it lies a wider question: that of planning applications overall and the fact that someone whose application has been turned down can appeal but those who have objected cannot appeal against a successful outcome. Many issues arise from the petition. If the petitioners have done anything, it is to have alerted the Scottish Parliament quite legitimately to wider issues that are not specific to the case of Glencoe.

I wonder whether, in order to ascertain whether there is a case here with respect to the National Trust for Scotland, it would be worth while writing to the minister to ask how many major planning applications have recently been received in Scotland, what levels—

The Convener: Hang on. It is not our job to consider planning applications or even to consider the law as it relates to planning applications. One of the committees is doing that. You are right that there may be an issue relating to the land reform bill when it comes before us. Is that what you are getting at?

Phil Gallie: Not really. I accept what you are saying about the other committee, but we have just been discussing the Convention Rights (Compliance) (Scotland) Bill. Elements of planning could affect individuals' rights under the ECHR. While it appears on the surface that we cannot contribute, because of the ECHR we perhaps should.

Michael Matheson: A number of issues come into play here. Several members have referred to the specific planning case that applies to this matter. The committee cannot look into that case. We should also keep in mind that there are current challenges to planning law, which I understand are still with the House of Lords. It may be that a revision of planning law in Scotland will happen further down the road, but that is not the remit of the committee. I should perhaps declare an interest because, as a mountaineer, I frequently use NTS land, especially in Glencoe.

There is an issue here relating to the NTS as a landowner and how it works with local communities that are affected by the way in which

it manages its land. That matter could be considered in the context of the land reform bill. The Rural Development Committee will consider on 5 June whether it wants to undertake a specific inquiry on the matter. I would be inclined for this committee to allow the Rural Development Committee to consider that. Depending on the outcome, we can—in the context of the land reform bill—consider how an organisation such as the NTS operates as a major landowner in Scotland. We should not rule out our own consideration of the matter.

Gordon Jackson: I do not disagree much with Michael Matheson's approach, but my instinct at this stage is that we should go little further than noting the petition. That is not because I do not want the committee to give anyone a fair hearing—I like to think that people who come before the committee think that they get a fair hearing. This is a matter of importance. It is obvious that the NTS and powerful interest bodies are getting preference. The issues that Fergus Ewing raised are matters of public interest and debate. I have no doubt that he and others will ensure that the matters are debated publicly and often. The ministers will be asked questions, and everyone will be called to account.

The difficulty is the committee's remit. If the land reform bill contains provisions that make the issues that the petition raises relevant to us, we will almost automatically consider the petition. We do not need to make a decision about that. We will consider the issues when we debate the land reform bill. If that bill contains provisions to which the petition is relevant, we will consider the petition in that context. However, given the other work that we are doing, the committee should not initiate an inquiry, whether or not the issues have anything to do with the land reform bill. The Rural Development Committee may be persuaded to or may want to do that. I have a sneaking feeling that such an inquiry might be more suited to it than us.

All that we can do is note the petition. If it is relevant to the land reform bill—as it may well turn out to be—we will ensure that those who have an interest in the subject will have an input into our considerations then.

The Convener: Gordon Jackson is talking about what might be in the bill, but what might interest us is provisions that are not in the land reform bill, but could be. That is potentially a broader question.

Gordon Jackson: I accept that.

The Convener: I suggest that we bear the petition in mind when we consider the land reform bill. If issues appear to be appropriate to consideration of the land reform bill, we should consider them. In the meantime, the Rural Development Committee will consider other aspects of the petition and the Transport and the Environment Committee will in due course consider the application of planning law issues after the House of Lords has dealt with the European case of which Phil Gallie reminded us. Is that proposal agreed?

Members *indicated agreement*.

Committee Business

The Convener: Agenda item 4 is the paper on committee business. The paper is private, but I have decided to debate it in public because it raises no issues that cannot be discussed in public. The paper is from the conveners liaison group and concerns the possibility of committees meeting when plenary sessions of the Parliament are taking place. Do members have comments on the paper?

Michael Matheson: I have not been able to read the paper in detail, but I note that it raises the possibility of committees meeting while Parliament is meeting. I have grave concerns about the implications of that. The paper raises issues about resources, the number of committees that can meet at the same time and the number of official report staff and clerks who are available to support committees.

The decision to have two justice committees should be revisited. Having two committees means that we have a clerking team and that a further meeting takes place each week, which involves official reporters and all the other support that accompanies a meeting. If we need to consider how we can direct resources, we must reflect on whether two justice committees, which gobble up resources as two entities, are required.

Phil Gallie: I agree with Michael Matheson. I will go further. He said that there is one committee meeting a week. This week and in previous weeks, two committee meetings have taken place. We must look back at some of the comments that were made when the Justice and Home Affairs Committee was split. At that time, the idea was that the new committees would meet once a fortnight. We now meet once a week. I have no objection to that: if there is work to be done, we must do it. The current structures are not benefiting Parliament to the full. Yesterday, when we failed to bring the Justice 1 Committee and Justice 2 Committee together, was an example. It was a fault of the system rather than the fault of individuals.

We have just considered the Convention Rights (Compliance) (Scotland) Bill. I know how hard it is to plough through a bill without support from others within our group. It was easier to scrutinise legislation when there was a larger committee—the Justice and Home Affairs Committee—and it is likely that a better level of scrutiny was applied by that larger committee. Michael Matheson's plea is a valid one, and I support it.

Gordon Jackson: I have never had strong views on having a committee meeting when Parliament is meeting. It is a difficult course to go down, but needs might require it.

For the record, I do not think that the point about the two justice committees is valid. I can understand the argument about having two justice committees and Michael Matheson's point about resources, but the Justice 1 Committee has a work load where we have done X, Y and Z, and we are continuing to do that. The Justice 2 Committee is considering matters such as the Procurator Fiscal Service and international criminal courts. One committee with a lot more members would do only half of that work; it could not cover all those issues. On balance, that would be a bad thing, although I agree that we could examine too many issues.

Michael Matheson: You could argue, for any committee, that if there were two they would be able to do more work. We must consider the resources that we spend trying to organise meetings between the Justice 1 Committee and Justice 2 Committee.

Gordon Jackson: Let me answer that. I do not want to get into a debate and I am sure that the convener does not want me to do so. First, the budget situation is an exception to the usual process. We will not be arranging joint meetings month in, month out.

I know that you could argue for any committee that two could do more work, but it was pretty much universally accepted that we had an especially heavy work load of legislation. I do not know whether other committees would agree with that, but there was a general view that because we had a heavy work load it was appropriate to have two committees.

I do not know what the Executive's position is on whether we should have committee meetings when Parliament is meeting, but I do not care much.

The Convener: I will outline my position before we consider what we have been asked to comment on. The fact that there are two justice committees is relevant, but it is not the sole issue. There are pressures on committees' time in general. It would be retrograde if we decided to have committees meeting at the same time as Parliament. That would cause problems in a relatively small Parliament such as this. People would genuinely want to be in two places at one time and obviously could not be.

We need to revisit the recommendation that committees can meet only on Tuesdays and Wednesday mornings. It is ridiculous that we confine our time available for parliamentary meetings to three days out of seven. That is not particularly sensible. A better alternative would be to have Monday afternoons available for committee meetings rather than spill into

Wednesday afternoons or Thursday mornings. We need to be more flexible in that direction.

We must go through the points and decide. We do not need to answer the conveners group questions and we can presumably make comments on questions that it has not asked. We can go through the points that are in bold type. What is the committee's feeling on point 18, on page 4, about whether committees should meet at the same time as Parliament?

Michael Matheson: A committee should only meet while Parliament is meeting when there is a need to deal with, for example, an emergency piece of legislation that we have to get through very quickly or when a major incident occurs and a committee that has a role in considering the issue has to meet to discuss the matter. I would restrict it to what I consider to be an emergency situation as opposed to when there is so much pressure of work that we feel we have to meet.

Gordon Jackson: I tend towards the convener's view that, as a generality, to have committee meetings clashing with meetings of the full Parliament is a retrograde step—although, for other reasons, I am not too keen on the Mondays and Fridays idea either. It does not make sense that, even if there is an emergency, the committee can never meet while the full Parliament is meeting. That is too much of a straitjacket. On occasion, it could be important for the Parliament for the committee to meet to thrash out something that was to go before the full Parliament. That balance strikes me as okay.

Phil Gallie: I go along with the convener's comments that the size of the Parliament is such that we would not want members to be taken out of the chamber on many occasions. Another factor is that members are sometimes involved in a second committee. Other demands are made upon members. If committees could clash with meetings of the full Parliament, because members are at times required to be in the chamber whether or not they want to be, we could open up all kinds of difficulties. Let us face it, we sit as a Parliament for nine hours in a week. That those nine hours should be sacrosanct seems to me not unacceptable.

12:00

The Convener: Is the general view that there should be no clash with the plenary meeting of the Parliament except in a genuine emergency? There should certainly be no clash just because there happens to be a lot of business.

Members *indicated agreement*.

The Convener: Should a limit be imposed on the number of committees that are permitted to meet at the same time as the Parliament? I suggest that that follows from our previous answer.

Members *indicated agreement*.

The Convener: We are also invited to consider whether a proposal should be put to the Parliamentary Bureau on whether committees should be permitted to meet at the same time as the full Parliament. Again, it follows that that should be the case, but only in a genuine emergency. Are we agreed?

Members *indicated agreement*.

The Convener: I suspect that we will not get much unanimity on whether we should say anything about moving outside the Tuesday-Wednesday envelope. We can already do that. There is no prohibition on our sitting on a Monday or a Friday, or even in an evening, if we so agree. Do we want to say anything else on that?

Gordon Jackson: The committee has had meetings on Mondays.

Michael Matheson: I remember that we turned up for a meeting that was not even on.

Gordon Jackson: Which makes up for yesterday.

Michael Matheson: Exactly. The one cancels out the other. You are quite right.

The Convener: And you got no credit for it?

Gordon Jackson: We get no credit for turning up too often.

The Convener: Let us move on to the next agenda item.

Phil Gallie: I want to raise one other thing, convener. In the shambles that occurred yesterday it would have been quite useful if we had had the facility to use substitute members on committees. When we talked about the change in the committee structures, we discussed an agenda item about whether we should be able to have substitutes. I would like it to be possible that we could nominate substitute members.

The Convener: I understand that the Procedures Committee is looking at that matter.

Phil Gallie: Would it be appropriate, as you suggested, for us to put in comments at the tail-end of the document? Are we unanimous about the issue of substitute members?

Michael Matheson: Could we also comment about the need for reflection on the splitting of resources between the Justice 1 Committee and the Justice 2 Committee?

The Convener: On Michael Matheson's point, there was a slight objection from one of our

committee members who has—whether temporarily or permanently, I am not sure—left the room, so I am not sure that we should put that in.

Michael Matheson: We could say, as we do in committee reports, that some members raised the matter.

Phil Gallie: The objections are recorded in the *Official Report*.

The Convener: I have no objection to saying that some members wanted to raise those matters. We will go along with that.

12:03

Meeting continued in private until 12:18.

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