COMMUNITIES COMMITTEE

Wednesday 26 May 2004

Session 2

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COMMUNITIES COMMITTEE
21st Meeting 2004, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

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

COMMITTEE SUBSTITUTES

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

*attended

THE FOLLOWING ALSO ATTENDED:

Bill Aitken (Glasgow) (Con)
Paul Martin (Glasgow Springburn) (Lab)
Margaret Mitchell (Central Scotland) (Con)
Mrs Mary Mulligan (Deputy Minister for Communities)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerry McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Hub
Committee Room 1

Scottish Parliament

Communities Committee

Wednesday 26 May 2004

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

Antisocial Behaviour etc (Scotland) Bill: Stage 2

The Convener (Johann Lamont): I call the meeting to order and welcome you to this meeting of the Communities Committee. The only item on the agenda is consideration of the Antisocial Behaviour etc (Scotland) Bill at stage 2. This is day six of stage 2.

Section 88—Antisocial behaviour orders

Amendment 121 not moved.

Amendments 135 to 137 not moved.

Amendments 71 and 72 moved—[Mrs Mary Mulligan]—and agreed to.

Section 88, as amended, agreed to.

After section 88

Amendment 73 moved—[Mrs Mary Mulligan]—and agreed to.

Section 89—Community reparation orders

The Convener: Amendment 407, in the name of the minister, is grouped with amendments 397 and 442. If amendment 407 is agreed to, amendment 397 is pre-empted.

The Deputy Minister for Communities (Mrs Mary Mulligan): Amendment 407 removes the current maximum age limit of 21 for the imposition of a community reparation order. Community reparation orders are designed to provide courts with a further sentencing option when dealing with offences that involve antisocial behaviour. They are at the low end of the tariff spectrum and are confined to summary cases. Our earlier view was that, if by the age of 22 individuals continued to indulge in antisocial behaviour, courts would be likely to take a more serious view of the offending and use one of the existing higher-tariff sentencing options.

However, having listened to the views of those who responded on the issue and to the views of committees during stage 1, we have concluded that it would be wrong to confine the courts to the 12 to 21 age group in using this sentence. Courts, in deciding on the appropriate sentence, have access to the full circumstances of the offence and the offender. The Executive's role is to ensure that there is as full a range of disposals as possible available to the courts in dealing with individual cases. We accept that there will be occasions when courts will wish to impose a community reparation order on an individual who is over 21 years of age and that is why we propose to remove the upper age limit.

Amendment 397, however, would remove from the courts the option of imposing a community reparation order when sentencing a person who is under 16 for an offence involving antisocial behaviour. It is important to remember that CROs merely provide courts with a further sentencing option; they do not displace any of the existing community sentences. Most important, the introduction of CROs does not mean that more children between the ages of 12 and 15 will end up in criminal courts rather than in the children's hearings system. The Lord Advocate's guidelines to chief constables set out which cases involving under-16s should be jointly reported to both the procurator fiscal and the reporter. There will be no change to the guidelines as a result of the provision made by amendment 407.

What amendment 407 does mean is that sheriffs will, where appropriate, be able to impose a CRO when dealing with any summary cases that appear before them. We believe that the option will be used sparingly with the under-16 age group and that it would be wrong to deprive courts of that option. We are introducing a new minimum age of 12 for antisocial behaviour orders and our approach to CROs is intended to ensure that there is a degree of consistency across the new measures. Amendment 407 would also mean that when courts were required to deal with a breach of an ASBO by an under-16, they would be able to impose a CRO if that were considered appropriate. The intention to have a minimum age of 12 for CROs has not resulted in significant levels of representation and our belief is that it enjoys broad support.

The Executive believes that the existing minimum age limit should be retained, so I ask Donald Gorrie to consider not moving amendment 397.

Amendment 442 seeks to introduce to the children's hearings system the possibility of imposing a community reparation condition as one of the conditions of a supervision requirement. I understand Donald Gorrie's intention in introducing the amendment, but I suggest that it is unnecessary.

Under section 70(3) of the Children (Scotland) Act 1995, a children's hearing can impose any condition that it deems appropriate within a supervision requirement. That could include

referral to a restorative justice service or requiring the young person to undertake reparative activities. Therefore, there is no need to legislate to allow that to happen. Mr Gorrie's amendment 397 provides that the option of a community reparation condition could only be imposed if the hearing was satisfied that the child had engaged in antisocial behaviour—that may put limits on what is achievable within the system at present.

I want to outline for the committee some of the issues around restorative justice, as members might find that helpful in reassuring them about where the Executive is going. As part of the wider antisocial behaviour strategy, we are working to raise the profile of restorative justice, which includes reparative activity, within the children's hearings system. It will be possible for restorative justice not only to form part of a supervision requirement, but to be used by the reporter when considering whether voluntary measures would be appropriate in individual cases.

Over the next two years, £3 million will be made available to local authorities to achieve our commitment to double the number of restorative youth justice places throughout Scotland by 2006. Children's panel members will receive training on the strategy and its impact on the hearings system in the autumn. The training will cover the use of restorative justice in that system; it will help to raise the profile of restorative justice and will provide guidance to reporters and panel members on when such a disposal would be appropriate.

Of course, we are introducing community reparation orders as an additional sentencing option for courts. The intention is not to displace the range of community disposals that is available to courts, but to add to it. It is not possible to draw a direct parallel between the two systems, because one of the inherent strengths of the children's hearings is their sheer flexibility in dealing with a child's full circumstances, which it is not always possible to do in the court system. We needed to introduce new legislation to provide courts with the opportunity to require the young person to make reparation. That is already achievable in the hearings system—we do not require new provisions to make that possible.

I move amendment 407.

Donald Gorrie (Central Scotland) (LD): Amendment 397 is on page 3 of the marshalled list but, because amendment 442 does not appear until page 14, some members may not have found it.

What the minister has said is helpful but, in relation to the bill as a whole, I would like to clarify whether, if a court imposes sanctions on someone who is under 16, the children's panel will have to be engaged in the discussion. In other words, is it the case that the court will not be able to go ahead and just impose a community reparation order, or any other order, without having to consider the matter alongside a children's panel? If that is the case, the situation is satisfactory to me. I kept amendment 397 in case anyone else wanted to support it. I know that the question whether the minimum age should be 12 or 16 is a big issue and I did not want to pre-empt someone else's amendment.

I want to concentrate on amendment 442. The minister says that the matters with which it deals are all covered anyway. In previous discussions with officials, the argument was made that children's hearings could not impose community reparation orders because they were a penalty and children's panels did not go in for penalties. If that advice was wrong—in other words, if children's panels can impose community reparation orders as the law stands—that may be satisfactory. I am indebted to the experts who rewrote my amateur effort at amendmentese. My objective with amendment 442 was to make it clear that children's panels could impose community reparation orders because they were not a penalty, but a condition of the package that was being imposed on the youngster.

As the minister said, the issue relates to people whom the panel considers to have committed antisocial behaviour. Amendment 442 says what would happen if there were a breach—the case would go back to the children's hearing. If the case had originally come from the court and the children's hearing could not make any progress with the young person, it would go back to the court. I think that it is important that children's panels should have that facility. If the minister can absolutely assure me that, as the law stands, it can, that might be okay. However, given that the bill is discussing the issue, there might be some merit in setting the matter out clearly so that we know what the rules are regarding children's panels and community reparation orders. The minister, the committee and the community at large feel that this is a good sort of disposal and the children's panels should be encouraged to use it where it is appropriate to do so. I will listen with interest to the minister. While I am still quite attached to amendment 442, I am happy to give way on amendment 397 if I am given the right assurances.

10:15

Mary Scanlon (Highlands and Islands) (Con): Minister, you probably saw a leaked report in *The Herald* on Monday about offenders saying sorry to their victims. It dealt with other restorative justice issues that you have mentioned, including the £3 million that you spoke about. A radio programme

on which I appeared later that day confirmed that that report was accurate.

While I am supportive of the approach that is being taken, I would like to know whether, when the considerable amount of guidance on the bill is published, the committee will be able to discuss the leaked report on restorative justice and all the guidance on the bill. I have been reassured by much of what the minister has said and have made decisions on amendments on the basis that guidance will be produced. However, the fact that the minister said that the panels will receive training in the autumn reminds me that we will be away from the Parliament for eight weeks in the summer. I want a clear idea about how the guidance on restorative justice and the other measures in the bill will be dealt with by the committee. What is the protocol?

Ms Sandra White (Glasgow) (SNP): I support Donald Gorrie's amendment 397. The age of 16 is fine, but 12 is far too young.

On amendment 442, I should say that I do not think that the report that Mary Scanlon mentioned was a leaked report as much as it was a report verifying what had happened after certain pilot schemes, particularly those in the Glasgow area, which had been running since last August.

I am very much in favour of restorative justice and was on the radio programme that Mary Scanlon mentioned, along with Scott Barrie. On that programme, I asked why, given that the Executive supports restorative justice and intends to introduce the measures in the pilot scheme across the country, the issue was not included in the Antisocial Behaviour etc (Scotland) Bill. I have not been given an answer, but the minister might give me one today. I support amendment 442 because I believe that restorative justice measures should be part of the Antisocial Behaviour etc (Scotland) Bill.

The problem that I have with amendment 442 relates to the children's panels. I thought that the pilot scheme would take some of the excess weight from the children's panels, but I am worried that amendment 442 might put more pressure on the children's panels. Extra funding might be required.

If Donald Gorrie moves his amendment, I will support him. We have to tell people that the bill is not only punitive but is also about helping people, particularly young people. Restorative justice should play a big part in the Antisocial Behaviour etc (Scotland) Bill.

Scott Barrie (Dunfermline West) (Lab): Amendment 397 relates to young people who are appearing in court on summary procedures—that is what is stated in the text.

We should bear it in mind that almost every young person under the age of 16 who commits an offence will not appear in court; however, as the minister pointed out, community reparation orders should be available for those whose cases do go to court. As a result, we should resist amendment 397, which seeks to set age limits. After all, if it were agreed to, we would take away from the very small number of youngsters who might appear in court a disposal that is available to anyone over 16. In any case, the vast majority of youngsters under the age of 16 would appear at a children's hearing.

That brings me to amendment 442. My understanding of section 70 of the Children (Scotland) Act 1995 and the provisions for supervision requirements in the Social Work (Scotland) Act 1968 is that any condition deemed reasonable can be attached to a supervision requirement. A children's hearing could not attach a condition that was impossible for the local authority to carry out or, as Donald Gorrie pointed out, was punitive in any way. Community reparation orders are not about fining youngsters for their behaviour; instead, they seek to ensure that the young people in question make some form of restitution. At the previous meeting, we all expressed support for restorative justice, and the orders are simply an extension of that concept.

As long as the local authority has the resources to enforce the order—which has always been the problem up until now—a children's panel will be able to make a community reparation order under the current legislation. That means that we do not have to specify that in the bill. If the order is reasonable, if the local authority has the resources to enforce it and if it has been offered as an option to panel members, who decide to make it a condition of a supervision requirement, it can be done.

One of my slight criticisms of social workers—including myself—and the children's hearings is that they have not been as imaginative as they might have been about attaching conditions to supervision requirements. Most supervision requirements are straightforward section 70 requirements and if any conditions are attached to them, they usually require the child to attend school regularly. People have not been imaginative about attaching conditions. If we can encourage them to do that, and give local authorities the resources to enforce, for example, community reparation orders, it would go a long way towards restoring people's faith in the children's hearings system. However, we do not need to go as far as the proposal outlined in amendment 442, because the current legislation allows us to do what it suggests.

Mrs Mulligan: Members have raised many points. Indeed, Scott Barrie's experience of the system is evident. I think that my response to some of the questions that have been raised in the discussion will reassure members that what we propose is the right way forward.

Donald Gorrie asked about the court's involvement with the hearings system. I reassure him that that is already provided for under section 49 of the Criminal Procedure (Scotland) Act 1995. He also asked whether those who were under supervision would be required to consult the hearings system itself. In fact, people who are under a supervision order must seek advice from the hearings system. In the rare event that the person in question is not under a supervision order, they may seek advice from the system; however, almost every case would be handled with a supervision order, because that is how the courts and the hearings system have worked together in the past.

As members have pointed out, community reparation orders from the hearings system are not a punishment. Indeed, we must acknowledge that such an order will be made only if it is in the best interests of the child or young person or if it allows them to learn something that will benefit them. It is important that we recognise the difference between punishment and the nature of the hearings, which are about working with the child or young person to change their behaviour by examining and trying to address what they have done or not done and their actions in general. If they are able to experience something that helps them to understand the issue through a community reparation order, that is obviously a positive way forward.

Mary Scanlon asked whether we would share the guidance with members. I am sure that she is aware that officials are already working on the guidance that will support the bill. She is right that there will be a lot of it, and the drafting will probably continue after the bill has been passed. It is our intention to share as much of the guidance as we can before the recess, and I have tried to reassure committee members that we want to be as open as possible about it. It is in all our interests for people to be aware of what the guidance will be so that the bill will work. We need not only to sit here scrutinising the bill, but to ensure that it works in practice in our communities, so it is important that people are made aware of the guidance, and we will try to share it with the committee as and when it becomes available.

I will need to get back to Mary Scanlon on the report that she mentioned, because we are not aware of it. I suggest that it is not in anybody's interest to keep restorative justice secret, and given that we are investing in it, we want to share it with as many people as possible. I will get back to her in writing and make further comments on the report, which I am not able to do at this stage.

Sandra White asked why powers for children's hearings to use community reparation orders are not included in the bill. That is because they are already available to the hearings. The power for the courts to use them, which is what we are introducing, is in section 89 of the bill. The irony of amendment 442 is that it would remove the hearings' ability to provide for community reparation orders for our young people. That would be a backward step, because there have been instances in which CROs have been useful, and they will continue to be so. I hope that Donald Gorrie will feel able to not move amendments 397 and 442.

The Convener: Perhaps it would helpful to the committee if we were given some information on the timetable for the publication of guidance so that we can ensure that we can timetable scrutiny of it.

Mrs Mulligan: I will look at that, convener.

The Convener: I remind members that, if amendment 407 is agreed to, Donald Gorrie's amendment 397 will be pre-empted. I will call amendment 442 later in the proceedings.

Amendment 407 agreed to.

Amendments 138 to 140 not moved.

The Convener: Amendment 408, in the name of Donald Gorrie, is grouped with amendments 409 and 439.

Donald Gorrie: Amendments 408 and 409 are minor amendments, but they are constructive. The bill says that a supervising officer must take account of the offender's religious beliefs and not interfere

"with the times at which the offender normally attends work or any educational establishment."

I felt that it would be reasonable to extend that to cover voluntary activity or training courses because we should be encouraging people who are in a bit of trouble into such activities. It would be sad if they were discouraged from carrying on with such constructive activities by the rules that would be imposed on them by a social worker's putting into effect a community reparation order. I hope that the minister agrees that the amendments are constructive and that she will accept them.

I move amendment 408.

10:30

Mary Scanlon: Amendment 439 seeks to delete the words "ordinary language" and insert "a

language which he understands". Although it seeks to ensure that a person is fully advised of the purpose, effect and consequences of breaching a community reparation order, it is more about ensuring that that person acknowledges their understanding of what they are told. The amendment was suggested by the Law Society of Scotland. As drafted, the section requires only that the court explain the impact of the CRO to the offender in ordinary language. The effect of that could be that a person would be advised of the information in a language that he or she did not understand, albeit that it was "ordinary language".

I understand that there might be language difficulties. It has come to my notice recently from research undertaken at Polmont young offenders institution that a high percentage of young offenders have communication impairments, which could mean that they have difficulty in expressing their views, but it could also mean that they have difficulty in understanding what is said to them.

Mrs Mulligan: I have listened to Donald Gorrie's and Mary Scanlon's comments. With amendments 408 and 409, Donald Gorrie is attempting to achieve greater clarity in respect of activities that supervising officers should take account of when setting the pattern of hours that an offender should follow to complete his or her community reparation order. I assume that the purpose of the amendments is to ensure that legitimate voluntary work that is already being undertaken by the offender is taken into account. That is a reasonable request.

We are not convinced, however, that the use of the term "voluntary sector placement" would achieve that intent. We recognise that there might be scope for considering whether the current wording is apt in relation to voluntary work and training that is undertaken outwith educational establishments. I suggest that Donald Gorrie withdraw amendment 408 at this stage and that we have further discussions about a more applicable amendment at stage 3.

On Mary Scanlon's amendment 439, the term "ordinary language" is used in existing legislation with reference to other community disposals including probation, community service and supervised attendance orders. As members are aware, the committee has already debated amendments in respect of antisocial behaviour orders and parenting orders. I acknowledge the points that Mary Scanlon made, but it is important to be consistent in the language that we use so that people understand what is required. Therefore, I suggest to Mary that the term "ordinary language" is sufficient and I ask her not to move amendment 439.

Donald Gorrie: I am content to work with the minister and her advisers to produce better wording. I therefore seek leave to withdraw amendment 408.

Amendment 408, by agreement, withdrawn.

Amendment 409 not moved.

Amendment 439 not moved.

Section 89, as amended, agreed to.

Section 90—Restriction of liberty orders

The Convener: Amendment 410, in the name of the minister, is grouped with amendments 411, 122, 123, 124, 125, 398, 413, 126, 412 and 433. It might appear that amendment 123 would pre-empt amendment 124 but, in fact, they are direct alternatives. I will therefore be able to put the question on amendment 124 even if amendment 123 is agreed to.

Mrs Mulligan: Given the number of amendments, I am sure that members will acknowledge that section 90 is an important part of the bill and that they will bear with me as I comment on each amendment.

The committee is aware that in making restriction of liberty orders available to the courts for under-16s, we are providing an additional disposal. I have given a great deal of thought to the conclusions that the committee reached following stage 1 consideration of section 90, as well as to the amendments that we are about to debate.

The committee sought assurance from the Executive that an RLO will be imposed only if a support mechanism is in place. I agree that the provision should be widened to take account of the committee's views, so I have lodged amendment 412, which will require the court to obtain from the local authority a report that details the support that will be provided to the young person during the period of the RLO. The court will need to be satisfied that the local authority will provide services for the individual offender's support and rehabilitation before it can impose an RLO. That will ensure that where such support is not available, the court may not impose an RLO. However, it will also give the court sufficient flexibility to deal with each case individually. Amendments 410 and 411 are consequential amendments.

Amendment 433 is also consequential on amendment 412 and will give the local authority the power to provide a service for supervision of, and provision of advice, guidance and assistance to, young people under 16 who are subject to RLOs. I hope that the amendments will allow Donald Gorrie not to move 398, which would provide that the court may impose a restriction of liberty order on an offender under the age of 16 only when the order includes provision of an

intensive support package. My difficulty with amendment 398 is that it gives no indication of what is meant by intensive support. Furthermore, it is not certain that intensive support—however that term is defined—will be needed in every case. I hope that Donald Gorrie will accept that the amendments that I have lodged are more flexible.

Amendments 123 and 124 would amend section 245A(1) of the Criminal Procedure (Scotland) Act 1995 to enable a court to impose a restriction of liberty order only on offenders aged 12 or over or 14 or over respectively. Amendment 125 would insert proposed new subsection (1A) into section 245A of the act and will provide that a court may impose a restriction of liberty order on an offender under the age of 16 only when that offender would normally be detained in secure accommodation, but such detention is not possible because no places are available when the order is to be made. Amendment 122 would insert a requirement into section 245A(1) of the 1995 act for the court to be subject to proposed new subsection (1A) when imposing an RLO on offenders who are under 16 years of age.

I have considered age limits for RLOs in detail and have concluded that if amendments 123 or 124 were accepted, we would restrict unduly the discretion of courts by preventing them from imposing an RLO on children under 12 or 14 when, having taken into account the individual circumstances of a case, it considers an RLO to be the most appropriate disposal. Section 90 of the bill will remove the age limit for imposition of an RLO, because we believe that courts should have the power to impose an RLO when they consider that to be the most appropriate disposal, having had regard to all the circumstances of the case.

To agree to either amendment 123 or 124 would involve substituting one relatively arbitrary age limit for another. There is no minimum age limit for detention in secure accommodation, so to impose a minimum age limit for RLOs may lead to the risk of young persons who are below the minimum age—whatever that age is—being placed in secure accommodation when the court might otherwise have considered an RLO to be a more suitable disposal. I am sure that members will agree that we do not want to operate a system in which there is greater risk of detention for younger children simply because suitable alternatives that may allow them to remain in the community are age restricted.

Our commitment to

"allow children who might otherwise be in secure accommodation to remain in the community through the use of electronic tagging"

was made clear in the partnership agreement. The effect of amendments 122 and 125 would be that the court could impose a restriction of liberty order only when no places were available in secure accommodation at the time of disposal. Amendments 122 and 125, like amendments 123 and 124, would limit the ability of the court to take account of the individual circumstances of the child.

A restriction of liberty order is an alternative to custody, but its use will not be limited to situations in which insufficient secure places are available. Rather, RLOs will be available when the court may be considering detention but, in the circumstances of a particular case, it considers that an appropriate community disposal may be more appropriate. A restriction of liberty order is flexible and can accommodate access to education, or interventions to support and address the child's behaviour, while allowing the child to remain at home with his or her family, if that is appropriate. Limiting the courts' discretion in that area could act against the best interests of the child, which are paramount.

I ask that amendments 122 to 125 not be moved.

I will resist amendment 413 for a number of reasons. There is already provision in section 49(1) of the Criminal Procedure (Scotland) Act 1995 that enables the court, when considering the most appropriate disposal for an offender under the age of 16 who is not subject to a supervision requirement, to seek the children's panel's advice on treatment of the child, as was mentioned in the previous debate. That advice would be considered before deciding on the most appropriate disposal.

In cases where the offender is subject to a supervision requirement, section 49(3) of the 1995 act requires the court to request advice from the children's panel. Again, that advice would be considered carefully before any decision was made on sentencing. Additionally, any child who appears before a court does so only after careful consideration by the reporter and the procurator fiscal.

In considering a case, the court will also have in its possession a social inquiry report that contains information about the child and his or her circumstances. The social inquiry report is comprehensive and must contain information about the offender's character, and personal and social circumstances. The report will also contain an action plan suggesting a specific course of action to address problems and issues related to offending, and will take into account the suitability of the child for an RLO. That will assist the court in determining the most suitable method of dealing with the case. Our amendment 412, as I have already mentioned, will strengthen that by requiring the local authority, in cases where the court is considering an RLO, to provide details of

the support and rehabilitation measures that it will put in place if the order is imposed. I therefore ask Elaine Smith not to move amendment 413.

Members are aware that the purpose of section 90 of the bill is to amend section 245A(1) of the Criminal Procedure (Scotland) Act 1995 to enable the court to impose a restriction of liberty order on children under 16 who have offended. Amendment 126 seeks to remove that option. As I said in discussing amendment 122, we are committed to providing that children can, in appropriate circumstances, remain in the community rather than be detained in secure accommodation. The removal of the present age restriction for restriction of liberty orders will mean that the courts will have another option available to impose on those who may otherwise have been detained in secure accommodation and whom the courts consider would be better served by remaining in the community. The courts will not be required to impose such an order if detention is considered to be the most appropriate disposal.

Amendment 126 would remove section 90, which would mean that the courts would not have the option of imposing an RLO on anyone under 16 who was deemed suitable for one. I will resist amendment 126 because it is important that we provide the courts with a broad range of community disposals and alternatives to custody. The flexibility of a restriction of liberty order means that it can be used as a tool in breaking the pattern of offending behaviour; for example, by requiring a child to remain at home when he or she is most likely to offend, or by enabling a child to break ties with peer groups that might contribute to his or her propensity to offend. As an alternative to custody, an RLO will allow the young person to remain with his or her family, if that is in their best interests. I therefore ask Mike Rumbles not to move amendment 126.

I move amendment 410.

10:45

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): As members and the minister will be aware, during the stage 1 debate on the bill I expressed concerns about two aspects. The committee has dealt with the power to disperse groups, and we now come to the other issue, which is electronic tagging. In the partnership agreement, the coalition parties agreed that

"children who might otherwise be in secure accommodation"

should be able to

"remain in the community through the use of electronic tagging."

I consider that to be a welcome and liberal measure. However, when the bill was published, it appeared to me that the law was being changed to give the authorities carte blanche to electronically tag children.

When I raised the issue in the stage 1 debate, the minister said:

"Mike Rumbles also asked about tagging. I reassure him that tagging is not about punishment. It will be used only if it is in the best interests of the child. We will use it only as part of a package of measures that will support the child, keep them out of secure accommodation and give them other options. We must consider tagging as an alternative to secure accommodation. I hope that Mike Rumbles will view the issue in that way."—[*Official Report*, 10 March 2004; c 6475.]

I view the issue in that way, but it is a pity that the bill clearly does not. I have therefore lodged amendments 122 and 124 to 126 for debate at stage 2. My amendments focus on criminal measures, but I am delighted that common sense has prevailed on the children's hearings system and that the minister has submitted amendments that will ensure that the criteria that children's hearings use to decide whether a child should be placed in secure accommodation will now be used to decide whether a child should be electronically tagged.

Before I decide whether to move my amendments and ask for the committee's support, I want the minister to confirm whether my understanding of the situation is correct. I would also like her to confirm that the criteria already exist in criminal law. The key point is that if the authorities are to use the same criteria that are currently used to decide whether to send a child to secure accommodation, in deciding whether to electronically tag a child, it should be no problem for the minister to confirm here and now that there will therefore be no overall increase in the number of children who are tagged or sent to secure accommodation as a result of the bill. That is the clear result that I seek.

I ask the minister to confirm that my interpretation is correct. If it is correct, that will be very good news; common sense will have prevailed and I will not move my amendments.

Elaine Smith (Coatbridge and Chryston) (Lab): Amendment 123 relates to the age of the child. I lodged it because I had visions of very young children being tagged. I did not arbitrarily pick the age of 12, as the minister suggested; there was logic in that choice in that the Scottish Executive had decided that courts should be able to make ASBOs in relation to children of that age.

I am concerned that the minister gave examples of tagging being used as an alternative to secure accommodation; I will return to that later. I am not comfortable with tagging anyway, but I take on board what the minister said about the age issue and I will listen to what she says when she sums up.

Amendment 413 would clarify the relationship between tagging and children's hearings. Other amendments have been lodged that relate to the children's hearings system, as Mike Rumbles said. I would be interested to know the consequences of breaching an RLO. When the minister spoke to amendment 413 she said that the courts could make a referral to the reporter, but is it a case of "could", "should" or "must"? I would welcome clarification on that.

On tagging in general, I supported Mike Rumbles's amendment 126. During pre-legislative scrutiny, the committee heard quite a bit of evidence on tagging as an alternative to secure accommodation. Secure accommodation is for young people who pose a risk to themselves or to others, so there seems to be no justification for substituting proper care and supervision in a secure environment for the less than adequate control of a tag. Electronic monitoring will confine young people rather than protect them. It was pointed out in evidence that tagging might even result in a young person's remaining in a situation that is abusive or that exposes them to the problems that underpin their behaviour. We must also consider the fact that, if secure accommodation is used as a sanction for the breach of RLOs, there will inevitably be an increase in the number of young people in secure accommodation, which will have an associated social and economic cost.

The committee also heard evidence on whether tagging would be a deterrent or a punishment. Some witnesses said that RLOs are punitive and would not benefit young people who need support programmes and supervision to effect change. It was mentioned that the bill contains no duties in that regard, so I am pleased that the minister dealt with the matter in her opening remarks.

The committee heard that RLOs might be unenforceable for under-16s. Successful enforcement might depend on, for example, parents' work commitments or the existence of a wider network of family support. There is no evidence that RLOs work for younger age groups—indeed evidence from England and Wales does not demonstrate that such orders have a positive impact on offending behaviour. The imposition of such an order would involve a key role for parents, which might put more strain on families that are already under pressure. Very young children would be significantly likely to breach the order.

RLOs do not offer a long-term solution to breaking the cycle of reoffending in the minority of young people about whom we are talking. In its response to the consultation paper, "Putting our communities first: A Strategy for tackling Anti-social Behaviour", NCH Scotland said:

"Electronic … control is the opposite of the engaged and caring parenting that society should be offering. In any case, children who are beyond control of their parents and/or offending are mostly characterised by impulsivity, and have no real recognition of cause and effect in relation to their behaviour."

NCH Scotland also thought that tagging might reinforce annoying or dangerous attention-seeking behaviour.

The committee heard evidence that tags might be regarded as badges of honour and that children who were required to wear tags might be too embarrassed to participate in sports.

Alternative approaches were suggested. For example, NCH Scotland works in the community and it says that it

"can demonstrate very good reductions in their offending within relatively short periods"

and that it achieves that

"by engagement, intensive supervision and rehabilitation through education, and training."

There might be a place for electronic tagging with the child's agreement as a condition of a supervision requirement in order to help the young person to exert more self-control, but perhaps that matter can be dealt with later when we discuss the hearings situation.

I ask the minister in summing up to address some direct questions: Does the Scottish Executive envisage RLOs as an alternative to secure accommodation? If support is provided, will the voluntary sector—and NCH Scotland, for example—be engaged in helping with provision of that support? If an RLO is breached, what will the consequences be? Will they involve secure accommodation? Will the minister comment on Scottish Executive research that showed that the younger an offender is when they are tagged, the more likely they are to breach the order? I refer to the Scottish Executive central research unit's publication of Lobley and Smith's "Evaluation of Electronically Monitored Restriction of Liberty Orders" in 2000.

Donald Gorrie: I am content that amendment 412, in the name of minister, will do the same as amendment 398. I was anxious to ensure that there will be an effective package of support to try to turn young people around and to sort out their problems. The minister's amendment will achieve that, so I am content not to press amendment 398.

I would like to deal with the big picture. I share Elaine Smith's concern about the fact that the minister said that the court "could" consult children's panels. Our previous discussions show that the committee as a whole is keen to involve the children's hearings system thoroughly in the court approach, where that is used. I would like assurance that that will happen and that the courts

will not charge ahead and impose conditions without properly consulting children's panels.

The question of the age limit is difficult. As I understand it, the minister's argument is that there is no lower age limit for children being put in secure accommodation and that, logically, if tagging is to be an alternative to secure accommodation, there should be no lower age limit for tagging. I find that argument difficult from a humane point of view, but the position is logical and I think I could go along with it.

The main issue for me, Mike Rumbles and our colleagues is that we must be absolutely clear about the criteria that govern restriction of liberty orders. Things are a bit confusing because the matter is covered partly by the courts and partly by children's hearings, which are dealt with in a separate part of the bill. Our aim is for the courts and the children's panels to have the option of using restriction of liberty orders as part of a package for dealing with young people who have problems or who have caused problems that could otherwise lead to their being sent to secure accommodation. As an alternative to that, there could be a package of conditions, including a restriction of liberty order. That is what we wish to achieve.

Mike Rumbles's amendments reflect the fact that he—like many of us, I am sure—was impressed by the views of many organisations that are involved in the sphere, and which feared that the bill would lead to a great and increasing wave of restriction of liberty orders, which they were anxious to avoid. Like Mike Rumbles, I would like an assurance that the legislation will not in itself lead to a big increase in the total number of those who are tagged plus those in secure accommodation.

Secondly, I would like an assurance that our interpretation is correct and that tagging plus a package of measures will be applied only when a child is in a position of such gravity that he or she might be sent to secure accommodation. Elaine Smith asked various questions about families and about tagging. We cannot put the matter in a bill, but perhaps the Executive could pursue more vigorously the idea of super foster parents, who could look after and improve children whose home conditions are bad. Restriction of liberty orders would help such foster parents and would strengthen their control when they were trying to help young people to improve themselves. The fact that the provision would not work in some families can be overcome. I hope that the minister has understood what Mike Rumbles and I are saying, and that she will give us the assurances that we seek.

11:00

Ms White: Donald Gorrie's amendment 398 is quite right, but amendment 412 covers what he is trying to do, and I am pleased with that. On Mike Rumbles's and Elaine Smith's amendments, I too have reservations about tagging and restriction of liberty orders. Mike Rumbles's amendments 122 and, in particular, 125 must be examined carefully. The minister indicates in amendment 412 that support methods will be put in place, but we all know that social work services, social workers, children's panels and the children's hearings system are overloaded and overworked. We do not have enough staff to deal with the work. Although the wording of amendment 412 is fine, I am concerned that it might not be as easy to put it into practice.

Sending someone to a secure unit is something that we must do if we get to that level, but my understanding is that when we do so, it is in the kid's best interest for them to get as much help as possible. My worry is that we do not have enough secure units and that those that we have are understaffed. Money will not be put into secure units, but will be spent on tags for young kids, which, as Elaine Smith said, will be treated as badges of honour. I cannot remember the exact cost, but I remember hearing the cost implications of tagging and it is an expensive option.

The minister said that children who are tagged will stay in their home environment, but I am afraid that that will mean keeping them in an environment in which some of their actions are copied from things that happen in the home or the environment outside. There is a lot of peer pressure on a child of 10 or 11, especially at school, and I do not see how tagging a child and locking them up in the environment that they are trying to get out of will restore a child and make them into a good and decent citizen. It would be much better to place them in a secure unit with additional support.

I am against the idea of tagging young kids simply because their environment and the behaviour of others have led them into antisocial behaviour; tagging is punitive and we should examine more restorative types of justice. Some people might not regard a secure unit as restorative, but at least the kids are secure there and they might get support. Tagging kids and saying that we will give them support is an easy option; words are fine, but they have to be put into action.

I would like to hear the minister's comments on the effectiveness of restriction of liberty orders. As Elaine Smith said, they have not been effective in England and Wales, yet the reoffending rate in the pilot scheme that we discussed earlier, and which was mentioned in *The Herald*, was just 1 per cent.

Surely it would be better to put money into such schemes than to spend it on making tags. For certain age groups in some areas, tags will be regarded as a badge of honour. In some places, a secondary industry might even develop, with kids making their own tags and running competitions for colours and styles of tags. That may sound laughable, but in the big, bad world it is not. Kids look on things such as tags as badges of honour. I do not think that tags will take kids away from the road to crime and I hope that Mike Rumbles will press his amendments.

The Convener: I will add my tuppenceworth. We are talking only about small numbers of people. Tagging should not be done randomly—the Scottish Executive has not suggested that it should. This is not a perfect world in which there are obvious, simple, straightforward, good solutions and bad solutions. Sandra White says that we do not want the bill to be punitive, but I have worked with young people who regarded having to face up to the consequences of their actions as punitive. They would regard restorative justice as punitive, as they regarded anything that involved their doing something that they did not want to do as punitive. We must accept that if we ask young people to be accountable for their actions, as the hearings system does, they will not like elements of the discussion or dialogue that takes place with them.

Some young people will see secure accommodation as punitive, as it takes them away from what they want to do, even if the people who make the decision regard it as being in their interests. There are two separate issues. It is possible for a tag to be used to support a young person to deal with their circumstances. However, it is totally inappropriate to use a tag when a young person is at risk in their own home. The bill brings out into the open some of the things that are being tolerated. Young people are being left in their homes because we cannot think of anything else to do with them. One good thing about the bill is that it forces us to confront the social cost of supporting young people who are at risk. That involves giving them proper support—in my view, robust, challenging support.

If a young person is at risk in their home, it may not be appropriate for them to go into secure accommodation. Perhaps foster accommodation, respite care and other such options should be considered. A young person might not jump at any of those options, but by ensuring that we consider preventive measures the bill highlights the actual experience of young people. Saying that young people are at risk at home is not a defence; if they are at risk, we should act on that and not leave them in such a situation. We are not dealing with a perfect world in which young people who offend also take part in sport and enjoy themselves. It has been said that young people who are tagged will suddenly stop participating in sport, but while that may be true in some cases, many young people are not involved in any sporting activities. A lot of good work with young people involves getting them to take part in sport, but we must get hold of them first. If a tag allows us to do that and allows their family to support them and to divert them into sport, it will be a progressive measure.

In the imperfect world with which we are dealing, we must think about victims of antisocial behaviour. We must consider the situation of young people, but we must also consider the consequences of their behaviour for others. Those who are particularly concerned about group dispersal powers may recognise that, in certain circumstances, tagging one young person may prevent the confrontations with the police that group disorder can cause, because the person who is causing most of the difficulty is being kept away. Other youngsters who want simply to do the sort of things that we have talked about, and who are not threatening, can then continue to gather.

One strong argument for using a tag when the young person's family is supportive is that it obviates the need for a blanket curfew. Many people would be much more comfortable with that approach, because it involves working with the person who is causing the problem and gives those who are simply going along with the behaviour—perhaps because they feel threatened or bullied—the freedom to do other things.

I understand that there is anxiety that there will be a rush to tag every young person, but in my experience that is not what communities are seeking. They want those who are out of control, threatening other young people and creating difficulties in a community to be dealt with. Being dealt with is not necessarily a bad thing for the young person concerned, as it can allow a discussion to take place about accountability for their behaviour and enable support to be provided.

There will be a separate discussion about the stage at which a tag is introduced and whether that should take place directly. A tag is a real alternative to secure accommodation for a young person before they are so out of control that a crisis occurs and must be managed.

Scott Barrie: I will say why I oppose amendments 122 to 126, but before I do that, I will pick up on a point that Sandra White made about where secure units fit into the current system. With my knowledge and experience of restorative justice, I do not see how secure units could feature in such a system. Secure units have a specific purpose and apply strict criteria. In our general debate about amendments, we should never become confused about whether secure units have a part to play in restorative justice.

Section 90 deals with the very small number of under-16s who appear in the court system. As I have said, almost no young people under 16 appear in court—they go to the children's hearings system. We are talking about a very small number of people who appear in court under one of two procedures. If they appear under the summary procedure, a children's hearing will be asked for advice. The bill will not affect that situation. In most cases, a hearing's advice to the court would be that a hearing was a more appropriate place to deal with a young person. If a young person appears in court under the solemn procedure, a social work department will have to provide a report for sentencing before a court can make any decision on that young person. We must be careful about cutting down one of the options for the court in that situation so that it is unable to use a restriction of liberty order.

Apart from appearing in court for serious offences such as murder, rape or attempted murder, young people under the age of 16 appear in court most commonly for taking and driving, which is a serious offence because it endangers not only the life of the young person who stole and drove the car, but the lives of other road users and pedestrians. Such offenders are a danger to themselves or others and, as such, would meet the criteria for admission to secure accommodation, which set a high threshold.

However, a restriction of liberty order might be appropriate in some such situations. That would depend on the circumstances of the young person who took the car, who may be becoming involved with young people who may or may not be over 16. We must consider those situations. To reduce the court's discretion to make a disposal for somebody who happens to be under 16 and who appears in court because of their offending, when that disposal would be available in the case of someone who is over 16, is the wrong way of thinking. That is just one example of a situation in which a restriction of liberty order would be a good way forward.

What the convener said was right. There is no point in exploring the use of a restriction of liberty order if a young person lives in a situation that places them in danger. That would be patent nonsense. If the court were considering that disposal, the situation would have to be taken into account.

Several amendments, including some from me, have been lodged to section 103, which concerns disposals for children's hearings. We should put children's hearings issues to the side at the moment and think about young people who appear in the courts—whether the High Court or the sheriff court. That is what the amendments to section 90 concern.

Donald Gorrie touched on remand fostering; he referred to special foster carers, but I think that he meant remand fostering. We will explore that further when we discuss disposals from children's hearings, because extra powers to help young people could fit in more clearly with that.

We want to have a system that is in the child's best interests. That will remain the threshold that must be crossed before the court makes any disposal, because the court will have to take that into account. We have disposals that are aiding people over the age of 16, and it would be wrong to cut off access to those disposals to a small number of youngsters under 16 who appear in our court system. For that reason, I urge members not to support amendments 122 to 126.

11:15

Mrs Mulligan: As ever, it is difficult for me to think how to respond to the committee, following contributions from the convener and from Scott Barrie, who have a clear understanding of the issues that we are discussing. However, I will seek to answer the questions that were addressed directly to me.

Scott Barrie set out clearly that what we are discussing is restriction of liberty orders for those who are being dealt with in the court system. As he said, such cases are at the upper end of the tariff scale and involve people who have been involved in very serious activities. We should remember, however, that the measure will affect a very small number of young people.

I can say to Mike Rumbles that it is not, nor has it ever been, the Executive's intention that the number of young people who would receive restriction of liberty orders or be sent to secure accommodation would increase because we were agreeing to the amendments or making provisions in the bill. That should not happen. As a number of members have said, the measure would be considered simply as an alternative to secure accommodation. For Mike Rumbles's benefit, I will read the wording in the Criminal Procedure (Scotland) Act 1995, which says that

"where a person of 16 years of age or more"

—because it refers to criminal procedures—

"is convicted of an offence punishable by imprisonment … the court may, instead of imposing on him a sentence of, or including, imprisonment or any other form of detention, make an order"

under the section that refers to restriction of liberty orders.

Restriction of liberty orders are purely an alternative to secure accommodation in relation to those under 16. They allow the courts the flexibility to consider other options. As Scott Barrie said, it

seems perverse to offer that option to those who are over 16 but not to those who are under 16. However, comments were made and concerns were expressed by other members, particularly Elaine Smith. I understand that the age of 12 is not arbitrary and that she was trying to be consistent, but by imposing an age limit—be it 12, or 14 as in amendment 124—we would restrict the court's ability to take the decision in the interests of the young person whom they are seeking to deal with and in the right circumstances. Is it right that somebody who is 11 would end up going to secure accommodation but somebody who was 12, in similar circumstances, would be offered a restriction of liberty order? We have to consider the case rather than the age.

I hear members' concerns about the conditions surrounding the restriction of liberty order. Let me assure members that, unless it was considered that it was in the right place and had the right support mechanisms, and that there was an opportunity for it to be successful, the restriction of liberty order would not be granted.

Members expressed concerns about the individual's home situation. The convener was right to say that, if someone's home circumstances were such that the court would not want to grant a restriction of liberty order, surely we should be thinking seriously about why we are pursuing the idea of the young person being at home at all. We should take a step back and consider the individual circumstances. As I said in my opening remarks, the social inquiry report would look into those circumstances to ensure that it was possible for the young person to remain at home with the support package. The concerns that have been raised are real, but I assure members that they have been addressed. All the bases have been covered.

Most of Sandra White's points have been covered elsewhere in the bill. However, I was concerned by one particular point. Sandra White seemed to argue that we should not consider restriction of liberty orders because everybody should go to secure accommodation. She seemed to argue for an increase in the amount of secure accommodation, which would be a backward step. If that is not what she was arguing, I have misunderstood her. It is important to acknowledge that restriction of liberty orders are an alternative to secure accommodation and will be used only when appropriate.

Elaine Smith asked what would happen if there were a breach of a restriction of liberty order. If that happened, the case would return to the court that had instructed the RLO in the first place. The court would then have a number of options, just as it would have with any other type of breach. The court would take the circumstances into account and deal with the case as it felt appropriate. That might result in the use of secure accommodation, or it might not; or it might result in other sanctions being put in place. The court should be left with that flexibility.

At the end of the day, we seek to give the courts more flexibility to provide an alternative to secure accommodation that is appropriate to the particular circumstances. RLOs will be an option. I stress that, at the moment, we are considering people who appear before the courts. Later today, I am sure that we will consider people in the hearings system.

Amendment 410 agreed to.

Amendment 411 moved—[Mrs Mary Mulligan] and agreed to.

The Convener: Does Mike Rumbles wish to move 122?

Mike Rumbles: I am very happy with the minister's comments and am delighted not to move amendment 122.

Amendments 122 to 125, 398 and 413 not moved.

Amendment 412 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 126 not moved.

Section 90, as amended, agreed to.

Sections 91 to 94 agreed to.

11:24

Meeting suspended.

11:37

On resuming—

After section 94

The Convener: Amendment 382, in a group on its own, is in the name of Paul Martin.

Paul Martin (Glasgow Springburn) (Lab): I have been asked what the problem with fire hydrants is—and it was not anyone from the west of Scotland who made that inquiry. I thought that it would be helpful briefly to provide some background to the issue. In Glasgow and other parts of the west of Scotland, we have difficulties with young people damaging fire hydrants and causing significant costs to Scottish Water. There are also issues around the loss of water supply to the local community as a result of fire hydrants being damaged and the environmental effect of that. Therefore, I have lodged an amendment that would make it an offence for someone aged 12 or older to damage

"equipment intended for the prevention of fire".

Members will have heard the fire service's concerns about how damage to fire hydrants can affect their ability to function. I thought that it would be helpful to lodge the amendment to indicate to the minister the kind of measures that we intend to take to deal with this serious issue. I add that we should also be considering ways in which to divert young people away from water features such as fire hydrants, to which they are so attracted. Perhaps we could put in place something to do that, and I have been working with Scottish Water, the fire service and other agencies to consider ways in which to do so.

It should be recognised that damaging fire hydrants is a dangerous activity. In Glasgow, there have been instances of parents and other adults condoning the behaviour of young people who have tampered with fire hydrants. To damage a fire hydrant to the extent that water is released is quite a sophisticated process, which makes us face up to the extent of the difficulty. Many measures have been put in place before. Keys to secure fire hydrants have been considered, but that has not proved an effective way of dealing with the problem. The fire service has tried all sorts of measures to deal with the problem, but to no avail.

I lodged amendment 382 with a view to the action that the Executive intends to take on the issue while ways to divert young people away from such unacceptable activities are considered. We should recognise the danger of such activities and the effect that they have on communities when they experience loss of water pressure.

I move amendment 382.

Mary Scanlon: Subsection (1) of the new section that amendment 382 would introduce refers to

"A person aged 12 years or older".

I understood that it was not possible to fine under-16s, so I seek Paul Martin's clarification on that.

Secondly, has Paul Martin checked that the offence that his amendment would create is not already an offence either in breach of the peace legislation, in the Civic Government (Scotland) Act 1982 or elsewhere? I understand that the offence might already be covered.

Patrick Harvie (Glasgow) (Green): I had basically the same questions. Is Paul Martin sure that there is a need to create a new criminal offence? Could the matter not be dealt with in other ways? We all recognise that the problem is a real and common one, which has a wide range of consequences, as Paul Martin outlined. The question is whether the creation of a new criminal offence is the appropriate approach.

Donald Gorrie: Paul Martin was right to lodge amendment 382, which covers an important issue. I was interested in what he said about possible efforts to educate young people not to do such things and I wondered whether he had any bright ideas on the subject. I remember one of my first lessons as a councillor, many years ago and before mobile phones. A police officer told me that he had gone round some local schools after some telephone kiosks had been vandalised and that he had explained to the pupils that it was a very stupid thing to do. He said to one of them that, if their granny took ill, they would not be able to phone the hospital. As a result of his lectures, the vandalism to telephone kiosks increased. As Paul Martin indicated, there is a problem because doing such things is an intellectual or manual challenge for young people and I am not sure how we can divert them in a different direction. I applaud Paul Martin's intention in lodging amendment 382.

The Convener: To reinforce Paul Martin's point, damaging fire hydrants is a very serious issue. In our local community safety partnership, the fire service and the police have indicated their frustration in dealing with the problem, particularly in hot weather. People might think, "Och, it's just the wee ones playing." They might think that it is just a bit of a laugh, and wonder why people are making such a fuss about it. However, then members of the partnership started discussing the costs of repairing hydrants and the significant amount of time that was spent on the problem by the police and fire services, as well as the impact on the local community. It was emphasised that the young people were not only a bit out of control, but were damaging property. They mentioned the degree of ingenuity that was used. The cleverer the people who made the fire hydrants got, the cleverer those who damaged them became. It became a challenge to them. There is obviously an education issue there, but I think that the fire service already highlights such issues very well.

If the minister tells us that the problem can be dealt with in another way, we would need to be reassured that support can be given in dealing with it, or that the powers that are already there will be given effect. Having spoken to people in my local area, my impression is that they feel completely frustrated and that nothing can be done. How do we find a way of emphasising that damaging a fire hydrant is not just a jape? I know of circumstances in which the fire service has been lured out and the firefighters have then been attacked. Other issues around attacks on emergency workers also come into play.

I ask the minister what can be done other than the measure proposed in amendment 382. If the powers already exist, what is being done to explore why they are not being used? What other support is required locally?

11:45

Mrs Mulligan: I fully accept the genuine concerns that have caused Paul Martin to lodge this amendment. I recognise the serious consequences that can arise when fire hydrants are damaged.

Paul Martin's amendment seeks to introduce a criminal offence of damaging fire hydrants and other devices intended for the prevention of fire. I agree that there is a need for the creation of such an offence but I cannot support the amendment because—in answer to Mary Scanlon's question—there is already provision under the Fire Services Act 1947, which makes Paul Martin's amendment unnecessary.

Section 14(5) of the Fire Services Act 1947 says that any person who damages or obstructs any fire hydrant, otherwise than in consequence of its use for any legitimate purpose, as specified in the 1947 act, or for purposes authorised by the water authority within the meaning of the Water (Scotland) Act 1980, shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale. Section 14(5) also makes it an offence to use a fire hydrant other than for the purposes specified.

I can confirm, as the issue has been raised previously, that the offence applies to people aged under 16 years as well as to those aged over 16. Of course, children who were involved in the offence would normally be referred to the children's hearings system on offence grounds rather than dealt with in court.

I was interested in Paul Martin's comments on working with young people and educating them about the importance of such facilities in their communities. Donald Gorrie shared Paul Martin's interest in that issue, which presents a useful way of tackling the offence. It might be possible for us to consider that as part of the local strategy on antisocial behaviour. Given that the problem is one that some areas are likely to suffer from more than others, it is appropriate to tackle it through the local strategies, as that will make it easier to assess the community's needs in relation to building in that education process.

In that context, I hope that Paul Martin will be content to seek to withdraw amendment 382. Legislation to deal with the problem that he is concerned about already exists and the proposal can be addressed in the development of local strategies.

Paul Martin: I welcome the minister's comments, particularly about the antisocial behaviour strategies. It will be important to include in such strategies the diversionary activities that might be proposed. There should also be a specific reference to the fact that we take damage to fire hydrants seriously. On that basis, I seek to withdraw amendment 382.

Amendment 382, by agreement, withdrawn.

The Convener: Amendment 404, in the name of Paul Martin, is grouped with amendments 404A, 404B, 404C, 404D, 404E, 405, 405A, 405B, 405C, 405D, 383 and 384.

Paul Martin: I thank Stewart Stevenson for kindly ensuring that my amendments 404 and 405 are compliant in a number of areas. I appreciate what he did.

The issue of quad bikes is similar to the issue of fire hydrants. It is helpful to set out the significant danger that quad bikes can cause and the noise pollution that they create for local communities.

In my constituency, the use of quad bikes poses a real threat to community safety, particularly in public areas, and is of grave concern. Their use is also becoming an issue in areas of private ownership, where groups informally adopt areas to use their quad bikes, causing fear, distress and alarm to the local communities.

I have always argued that people who want to engage in activities with motorised equipment should do so in a controlled environment in which they can be properly monitored. In certain parts of Glasgow and in other areas of Scotland parents and guardians are irresponsibly involved in quad bike activities with young people and condone unacceptable behaviour on quad bikes. On many occasions, there is no supervision of young people's use of quad bikes. Amendments 404 and 405 would deal with the noise pollution aspect of quad bikes and with the fear, alarm and despair that local communities experience from what is an antisocial activity.

I lodged the amendments to ensure that it is an offence to cause fear and alarm through the use of quad bikes and that the noise pollution element is taken into consideration. I also felt that it was important to point out to those who adopt certain areas to use their quad bikes the environmental impact on such areas. There are serious enforcement issues with existing legislation, so additional legislation is needed to deal with the issue. My experience of dealing with police authorities is that they believe that it is difficult to enforce existing legislation on illegal quad bike activity. Further, some people believe that such activity is acceptable and that local communities should accept it. I find that position unacceptable, which is why I lodged amendments 404 and 405.

I move amendment 404.

Stewart Stevenson (Banff and Buchan) (SNP): I thank Paul Martin for his remarks. Clearly, I broadly support what he is trying to achieve with amendments 404 and 405 and all

that I am trying to do is to ensure that the definitions leave no loopholes.

I recognise that further thought might identify a requirement for further amendments to the definitions. I speak in particular of amendments 404D and 405D, which refer to disabled people. I lodged those amendments simply because I did not want disabled people who properly use the equipment that is provided to them for mobility to be caught up in the definitions. I have met youngsters who seek to soup up their electric wheelchairs so that they can beat other competitors at basketball to the ball. My proposed constraint of a 10mph speed limit is probably sufficient to cover the purpose.

Paul Martin referred to the environmental impact of quad bikes. I do not believe that what is in front of us today is the end of the story on what we should consider in relation to quad bikes. In my constituency, there are rural and, in particular, coastal areas that are beginning to experience substantial environmental damage to sand dunes and tracks that is caused entirely by the inappropriate use of quad bikes. That needs to be considered further, although I felt that I did not wish to make proposals in that respect in the context of this bill.

I make the point that motorised vehicles do not gain any rights of access under the Land Reform (Scotland) Act 2003, except in the case of a disabled person in a wheelchair, so we have not created any gaps through which the use of quad bikes can sail. However, the use of quad bikes is becoming an increasing nuisance in many parts of the country. Paul Martin represents a more urban area, and I represent a more rural area, but we are both experiencing difficulties caused by the inappropriate use of quad bikes.

I move amendment 404A.

Mary Scanlon: I seek clarification from Paul Martin and Stewart Stevenson. Stewart Stevenson said that he did not want the definition to leave loopholes. While I understand the use of the term "quad-bike, motorcycle, scooter" in Paul Martin's amendment 404, the amendment also refers to a "similar vehicle". What would that cover? Stewart Stevenson's amendment 404D refers to

"ride-on mower or other similar vehicle".

What does he have in mind?

I seek a guarantee from Paul Martin and Stewart Stevenson that if someone is using a quad bike on their own land the provisions will not apply.

Patrick Harvie: I am glad that we have had a range of examples of situations in which the use of motorised vehicles can cause problems. The issue is not just the causing of noise problems for neighbours in residential areas; it is also the causing of lasting and serious damage to public footpaths and so on in more rural areas. I am glad that both those points have been acknowledged, and I hope that the minister will indicate that there are ways in which the issues can be taken on board.

I wonder about amendment 405. It seems only to address one limited aspect of the problem, in that it addresses situations in which noise causes alarm or distress to people, but does not address the physical or environmental damage that can be caused. If noise nuisance is the issue that Paul Martin wants to address, I wonder why he decided not to apply his proposal to other vehicles. Why not apply it to cars that have been souped up to be ridiculously noisy or that blare out music in the street or in residential areas? Once again, is creating an offence the correct way of dealing with the issue?

The Convener: I would find it helpful if Paul Martin would indicate whether he supports Stewart Stevenson's amendments. Even if, on balance, we hope that Paul Martin will not press his amendments—depending on what the minister says—it would be helpful to know whether his amendments should be amended. That would determine the issues to be pursued later.

Mrs Mulligan: As members have said, the irresponsible use of quad bikes and similar vehicles causes problems in a number of our communities, so I welcome the opportunity to debate the issue. I know that my colleague Marilyn Livingstone took out Margaret Curran, the Minister for Communities, to show her specific examples, and I know that the issue has been raised with a number of MSPs as we have discussed the bill.

The issue is exactly the type of issue that should be considered as part of the bill. It would be hoped that, between the police, the local authority and those who are affected by the nuisance that vehicles can cause, local solutions could be developed. Where the use of vehicles is not acceptable, it is important that sufficient legal powers are available and that those powers are enforced. I heard Paul Martin's comment about the fact that the powers are not always exercised and that there may be difficulties. I may come back to that point in my closing comments.

Although we are not ruling out strengthening the powers available, we consider that the type of offences that Paul Martin seeks to target are already covered by existing law. Section 34(1) of the Road Traffic Act 1988 already makes it an offence to drive a mechanically propelled vehicle on common land, moorland or land of any other description that does not form part of a road, or on any road that is a footpath, bridleway or restricted byway. That, of course, includes quad bikes.

12:00

Paul Martin's definition of a motorised vehicle is a "quad bike, motorcycle, scooter or other similar vehicle", which I suggest is a much narrower definition than "mechanically propelled vehicle", which would include cars, motorcycles, scooters, quad bikes and other vehicles. Indeed, the only exceptions are lawnmowers or other vehicles controlled by pedestrians, as specified in regulations, and electrically assisted pedal cycles up to a certain class. There appears to be no clear reason why the proposed offences should apply only to certain categories.

Stewart Stevenson's amendments 404D and 405D would amend the definition of a "motorised vehicle" specifically to include ride-on mowers and to exclude any vehicles constructed or adapted for use by a person with a disability, provided that such a vehicle is for low speeds only. Again, I do not see any particular reason why we need to cut across the definition in the Road Traffic Act 1988.

Stewart Stevenson's other amendments 404A to 404C and 405A to 405C would extend the proposed offences to motorised devices, which are defined in amendment 404C as being

"any device propelled by motor not designed for the carriage of persons".

That would include remote-control vehicles and lawnmowers. I do not think that devices that are not for the carriage of persons should be legislated for in the same way as those that are. Secondly, I do not think that we need to create new offences for those types of device.

Stewart Stevenson: One thing that I had in mind was the inappropriate use of motor-powered model aircraft, of which there have been instances.

Mrs Mulligan: That is an interesting example, which has perhaps not been considered, and I might return to it at the end of my comments. Stewart Stevenson leads an interesting life in Banff.

As Paul Martin said, the types of vehicles that his amendments would capture are more associated with off-road driving and high levels of noise. Indeed, off-road incidents appear to be what he is targeting, as the proposals include a statutory defence that the alleged offence took place on a public road. However, that does not justify limiting the protection from the antisocial use of vehicles to those types of vehicles. A car could easily be used in a manner that causes or would be likely to cause alarm or distress, whether on a road, for example revving an engine at traffic lights, or in an off-road situation. Those types of situation are already covered by the Road Traffic Act 1988 and, where necessary, by common-law powers. In that respect, new offences are not needed.

I appreciate the fact that problems can arise through the irresponsible use of motorised vehicles. Motorcycles and quad bikes always make a significant amount of noise, which for many people would be a nuisance regardless of the circumstances or where the vehicle was being used. Paul Martin's amendments refer to areas designated by local authorities in which the use of such vehicles is authorised. We do not have a system in place to designate areas in which use of such vehicles is permitted. At the moment, arrangements are made on an ad-hoc basis to cover the use of quad bikes on a commercial basis, for example. Where such arrangements have been made locally, the police will not enforce the powers under section 34 of the 1998 act.

There are already provisions under the Road Vehicles (Construction and Use) Regulations 1986 to deal with noise offences. Regulation 97 provides that no motor vehicle shall be used on a road in such a manner as to cause excessive noise that could have been avoided by the exercise of reasonable care on the part of the driver. The regulations also make provision for noise limits for certain vehicles, including motorcycles. They stipulate the limits of sound level, the conditions and method of assessment and the requirements for exhaust devices, which are all tied to European Union directives. If a vehicle creates excessive noise while not on a road, the police can use existing common-law powers. Excessive noise can constitute a breach of the peace, as can incidents in which a motor vehicle is used to cause alarm or distress.

Amendments 383 and 384 rely on amendments 404 and 405 being agreed to. They would ensure that the police had the power to issue a fixed-penalty notice under section 95 if an offence was committed of using a motorised vehicle in a manner that caused, or would be likely to cause, alarm or distress or noise nuisance.

As I have already outlined, I am not convinced that the proposed new offences are the best way in which to deal with the problems that Paul Martin has described. However, I recognise that there may be instances in which the existing powers are not sufficient, and, as I said earlier, I listened to Paul Martin's concern that the existing powers are not being enforced. We need to discuss further whether the existing powers are insufficient or whether the issue is enforcement. I am happy to discuss with Paul Martin and other interested individuals how we can address the issues and, if necessary, to lodge further amendments at stage 3.

Paul Martin: When we have the *Official Report* of the meeting, it would be helpful if we provided Strathclyde police with a copy of the minister's comments. There is a lesson to be learned about

enforcing the Antisocial Behaviour etc (Scotland) Bill. We must deal with what I have consistently called the database of excuses from authorities. We want existing legislation to be enforced, but it is difficult to do that. I lodged the amendments to ensure that we create additional legislation to make the existing legislation much more helpful and to wipe out the part of the database that states: "We would like to deal with the issue, but I am afraid that we cannot enforce the legislation because of a lack of clarity." We have existing legislation on the issue, but we need to improve it. I accept that my amendments might not be the most sophisticated way of doing that.

Mary Scanlon asked about the phrase "similar vehicle" in amendment 404. I understand that vehicles can be adapted to avoid their being classed as quad bikes. The use of the phrase "similar vehicle" would mean that no one could evade the law by adapting their vehicle. Patrick Harvie raised the issue of motors. I am talking about off-road activities rather than on-road ones. The examples that Patrick Harvie gave would be more difficult to deal with because such vehicles cannot gain access to many of the sites to which I am referring.

I will seek to withdraw amendment 404, on the basis that the minister will lodge specific amendments that create additional legislation to clarify the existing legislation—I would not like the issue to be included in the strategies under the bill. I want to ensure that we deal with the fact that police officers and other authorities are unable to enforce the legislation because of a lack of clarity.

The Convener: I will ask Paul Martin later whether he wishes to press or withdraw amendment 404—we will deal with Stewart Stevenson's amendments to the amendment 404 first. However, Paul Martin is entitled to wind up.

Paul Martin: I do not wish to press the amendment, on the basis that there will be further discussions.

The Convener: I will come back to you on that once the amendments to the amendment have been dealt with. I invite Stewart Stevenson to wind up on amendment 404A and to indicate whether he intends to press the amendment.

Stewart Stevenson: I seek the committee's consent to withdraw the amendment, on the basis that Paul Martin will not press amendment 404.

Amendment 404A, by agreement, withdrawn.

Amendments 404B to 404D not moved.

Amendment 404, by agreement, withdrawn.

Amendments 405 and 405A to 405D not moved.

The Convener: Amendment 399, in the name of Margaret Mitchell, is grouped with amendment 400.

Margaret Mitchell (Central Scotland) (Con): I am grateful to the committee for giving me the opportunity to move amendment 399 and to speak to this group of amendments. Amendment 399 seeks to introduce the offence of sexual grooming of children. Grooming is the process by which an adult paedophile prepares a child for a meeting, with the intent to commit a sexual offence. Amendment 400 is consequential and lists the categories of offences that would be included.

It will be useful if I provide the committee with some of the background to the issue and explain why it is so important that amendment 399 is agreed to. There is little doubt that with the advent of new technology—the internet, internet chatrooms and mobile phones—there has been an increase in the incidence of sexual grooming of children. The Westminster Government has recognised that fact and responded by inserting a clause in the Sexual Offences Act 2003. The legislation covers a situation in which there is abuse of a position of trust by

"causing or inciting a child to engage in sexual activity".

The result was the creation of an offence of sexual grooming. An adult over the age of 16 who meets or communicates with a child on two separate occasions with the intention of meeting for an illegal sexual activity or a sexual purpose will be liable, on summary conviction, to up to six months in prison or a fine up to the statutory limit of £5,000, or, on conviction on indictment, to 10 years' imprisonment.

At present, that offence does not exist in Scots law. There was an opportunity to provide for it in March 2003, when the Parliament agreed to a Sewel motion on the Sexual Offences Bill. That opportunity was not taken. Despite being pressed on the issue, the Executive was not persuaded of the need for an amendment similar to amendment 399 during the passage of the Sexual Offences Bill. However, things have moved on considerably since then and, in response to a parliamentary question, the First Minister indicated that he and the Executive intend to legislate for the offence. Moreover, in February 2004, a Scottish Executive spokesman told the BBC that the Executive would legislate for the offence as a priority at the first available opportunity.

Therefore, I have taken advantage of part 10—"Further criminal measures"—of the Antisocial Behaviour etc (Scotland) Bill to provide for the introduction of an offence of sexual grooming. I have been told that amendment 399 is competent. There is not the same protection for children in Scotland from paedophiles who would prey on them for the purpose of sexual grooming as exists elsewhere in the United Kingdom. That situation should not continue one day longer than is absolutely necessary. Part 10 of the bill provides

the opportunity to close the loophole and to ensure that children in Scotland have the same protection from the offence as children elsewhere in the UK.

I move amendment 399.

12:15

Stewart Stevenson: I have substantial difficulties with the specifics of amendment 399, but I will comment on the general subject first. Other committee members and I wish to ensure that we have adequate legal protection for children from sexual grooming, sexual abuse and sexual exploitation of any kind. However, it is not clear from any statistics available to me that there has been an increase in sexual grooming. There is certainly a range of new ways in which such activity takes place, but there have been convictions for the offence for at least 50 years under Scots common law. As an adolescent, I was aware of a conviction in my local area for what we would now describe as sexual grooming.

Amendment 399 proposes a substantial change to the bill at stage 2 without the benefit of pre-legislative and stage 1 scrutiny, which I believe is necessary to produce sound legislation in this area, should it be proved that the existing law is inadequate. To illustrate my concerns in that regard, I turn to the specifics of the amendment to highlight some of the issues that appear to me to be difficulties—as I am not a lawyer, I defer to lawyers present in respect of the drafting.

Subsection (1) of the new section that amendment 399 seeks to insert states:

"A person aged 16 or over ("A") commits an offence if—

(a) having met or communicated with another person ('B') on at least 2 earlier occasions".

I am concerned that no time limit has been proposed in that regard. As drafted, the amendment would treat someone who attended the baptism of an infant and met that child on one further occasion in the succeeding month as having met on two occasions someone who they then treat as a potential sexual victim 15 years later. I am not at all clear that that is an appropriate way of defining an offender.

Secondly, proposed new subsection (1)(a)(i) states that a person over 16 commits an offence if he "intentionally meets B". I simply do not know whether intention in that context will be easy to prove.

Proposed new subsection (1)(a)(ii) states that a person over 16 commits an offence if he

"travels with the intention of meeting B in any part of the world".

Given that much of the concern relates to the existence of new communication technologies, I have a whole series of difficulties with the extent to which A and B are readily known and identifiable to each other as individuals. I am even worried about our ability to ensure that we know that B is a single individual; B may be a succession of people, given the nature of the internet, text messaging and the rest of that range of technologies.

New subsection (1)(b) of the section that amendment 399 seeks to insert says that A would commit an offence if

"he intends to do anything to or in respect of B, during or after that meeting and in any part of the world, which … will involve the commission … of a relevant offence".

I am concerned about the burden of proof in that regard. Proposed new subsection (1) goes on to stipulate that an offence would be committed if

"(c) B is under 16; and

(d) A does not reasonably believe that B is 16 or over."

That appears to create quite a substantial gap, given that we are talking a piece of legislation that deals with intention.

Using electronic means, B may represent themselves as someone who is under the age of 16 to exploit the weakness and sexual depravity of an adult—perhaps for financial purposes—but they may not actually be under 16. Nonetheless, that does not in any sense change the intent of A, who might believe that B is under the age of 16, even though they are not. The fact that the drafting does not provide for that situation is a serious omission, because the offence remains the same, as far as the actions of A are concerned.

I move on to subsection (2) of the new section that amendment 399 proposes and, in particular, to paragraph (b), which deals with "relevant offence". As in other contexts, I have substantial difficulties with transnational offences. I will choose two examples from the schedule that amendment 400 proposes to insert. Offence 14 is

"unlawful intercourse with girl under 16"

and offence 15 is

"indecent behaviour towards girls between 12 and 16".

We must remember that there is not a worldwide view about the age at which a child makes the transition to being an adult. I believe—although I am prepared to be corrected—that, in some states in the United States, it is possible to marry at an age below 16. That is certainly the case in other countries around the world.

Let us say that someone who was over the age of 16 and who was a national of a country in which it was possible to marry at the age of 14, for example, was present in Scotland. Under the proposal as drafted, if that person were to communicate on two occasions with someone whom they intended to marry and who was under

the age of 14, with the purpose of having what in Scotland would be unlawful intercourse with a girl under 16, that person could be guilty of an offence, even though they would not be guilty of an offence in another domain. Whatever our views might be on the correct age for marriage and a range of sexual activities, we should be careful not to interfere with the rights of others. In saying that, I remind members that the age at which we define the transition from childhood to adulthood is younger than that at which some other countries around the world define it. People in such countries might be of the view that someone who was over the age of 18 and who married someone who was under the age of 18 could be considered to be committing an offence in their country.

I say all that merely to illustrate the range of questions that proper pre-legislative scrutiny would seek to address. I am not necessarily saying that I have the answers to those questions; indeed, given that some of my assertions are based on my limited knowledge of the law, it is perfectly possible that they are incorrect, but that is not the point. The point is that such a substantial and important matter cannot be dealt with simply as an add-on to the bill. Although, technically, amendments 399 and 400 have been ruled legitimate, they deal with a subject that is well removed from the committee's area of scrutiny at stage 1. On that basis, in this form and at this time, I simply cannot support these amendments.

Elaine Smith: I understand Margaret Mitchell's concerns and very much sympathise with her arguments about the need for such provisions. However, like Stewart Stevenson, I feel that the fact that the amendments have been ruled competent does not make them appropriate for the bill. Indeed, as Stewart highlighted, the committee has not had the opportunity to scrutinise or take evidence on the matter. As a result, it is unfortunate that the amendments have been lodged at this stage.

Like Stewart Stevenson, I noted down some questions about the substance of amendment 399. For example, how would one prove the offence in proposed subsection (1)(d)? Moreover, in amendment 400, to whom does the mention of "Rape" apply? We have already had debates about how the word "rape" is interpreted in this country. Does it apply to boys as well as girls? Where did the proposed schedule that amendment 400 seeks to insert come from? Are we sure that everything is covered in it, or are there any loopholes? Are we clear that the amendments will have no unintentional consequences? Although Stewart has already provided some examples, I will give one of my own. If a 16-year-old boy met his 15-year-old female pen pal from the internet, would the provisions apply to that reasonable relationship?

Although I do not agree with all Stewart Stevenson's assertions, the point is that we are both asking questions about the amendments. We really cannot support amendments that contain so many ifs, ands and buts and which need proper scrutiny. As a result, it would be better to pursue the whole issue through a member's bill—as Margaret Mitchell originally intended to do—or by the Executive including such provisions in another piece of legislation that would be subject to proper committee scrutiny.

Patrick Harvie: Although I am grateful for the opportunity to discuss these issues, I hope that the minister's response will make Margaret Mitchell feel that she does not have to press amendment 399. As several members have already pointed out, the committee has not had the proper time to scrutinise the matter. It is not possible to agree to such amendments without allowing the Equal Opportunities Committee to give them significant coverage and to find out whether they treat different groups equally.

In any case, as we have discussed with other matters, it is inappropriate to include such provisions in antisocial behaviour legislation. In fact, when the member spoke to her amendments, the words "paedophile" and "abuse" were among the first that she used. However, this bill has not been touted as a piece of legislation that deals with such extremely serious offences and they would be dealt with more appropriately elsewhere.

Like Elaine Smith, when I read the amendments, I wondered about what would happen to a 15-year-old and a 16-year-old who might be in the same year at school, might have been in a relationship for some time and might decide to start having sex. Although that would be an offence as far as the age of consent was concerned—and we could debate whether it is appropriate to criminalise people in that way—it would certainly be inappropriate to make it an additional offence relating to the serious abuse of children by adults. For those reasons, I cannot support amendments 399 and 400.

12:30

Scott Barrie: I find myself concurring with other committee members. In one respect, that is unfortunate, because I am keenly interested in child protection and worked in the field for many years. However, we have to be very careful that we do not simply say "Yes, this provision is a good thing. We should legislate", and leave it at that. Amendments 399 and 400 have not received the proper scrutiny that they need before we can decide at stage 2 whether to agree to them.

The situation is slightly different from the discussion that we had a couple of weeks ago on

private landlords. We did not take specific evidence on that issue, but Cathie Craigie did an awful lot of work around it and it was highlighted in the stage 1 report because it came up in discussions that we had and evidence that we took. At no time during our evidence taking did we touch on sexual grooming, and we did not touch on it in our stage 1 report at all.

I have a lot of sympathy with what Patrick Harvie said. We are talking about quite serious offences, and it is totally inappropriate to locate them in a bill on antisocial behaviour, because—and let us be honest—such offences are not antisocial but downright criminal, and need to be treated as such. We should not underestimate their seriousness.

Sexual grooming is not a new phenomenon by any means. I remember that, when I did my child protection diploma at the University of Dundee 12 or 14 years ago, awareness of it was one of the key elements of the course. When Fife Council's child protection committee, on which I sat at the time, redrafted the council's child protection guidelines, we were keen to ensure that people were well aware of the phenomenon of sexual grooming, because, until comparatively recently, a large number of people were completely unaware of the lengths to which some will go to ingratiate themselves with young people or their extended families.

The issue is important and, as Margaret Mitchell said in her introductory remarks on this group of amendments, the Executive has declared an intention to legislate on it. I hope that that will be done sooner rather than later. Indeed, I think that the Minister for Justice is on the point of publishing a draft bill for consultation, which is the key step in ensuring that we get the legislation that we want and need. Rather than rush to do something because we think that we should be doing something, we should ensure that what we do makes a difference.

Ms White: Most members have said exactly what I was going to say. I know that Margaret Mitchell is sincere in lodging amendments 399 and 400—as she was in proposing a member's bill on the sexual grooming of children—but I was always under the impression that, although there was no legislation on sexual grooming in Scotland, the common law dealt with such matters. I ask the minister to correct me if I am wrong, but I am pleased that, as Margaret Mitchell has mentioned, the Executive has taken the matter on board, following Westminster's insertion of a clause on sexual grooming into the Sexual Offences Act 2003. Like Scott Barrie, I would like to know exactly when a bill will be introduced.

As other members have said, antisocial behaviour is a serious issue for the public, but rape, attempted rape and the abduction of children are criminal offences, and although we have heard that the amendments have been ruled admissible, the Antisocial Behaviour etc (Scotland) Bill is not the place for provisions on sexual grooming. The matter needs separate legislation, and I would not be happy to support amendments 399 and 400 because of the seriousness of some of the offences that Margaret Mitchell has proposed be listed in the Antisocial Behaviour etc (Scotland) Bill. However, I would be happy to support an Executive bill when it is introduced and can be scrutinised properly.

Mrs Mulligan: Clearly, there is no disagreement within the committee that amendment 399 deals with a serious issue and that it addresses an area of the law that needs to be strengthened. Indeed, the First Minister, in his response to David McLetchie on 11 December last year, and the Minister for Justice have already made it clear that we intend to legislate to strengthen the law and to ensure that we have a robust legal framework to deal with predatory paedophiles who seek to take advantage of new technologies to abuse children.

The difference of view appears to be about the best way to take forward such legislation. The Executive intends to introduce a bill on the matter and we will do so at the earliest opportunity, as Margaret Mitchell said. However, we do not believe that the correct approach to the issue is to take the provisions that appear in the Sexual Offences Act 2003, which apply to England and Wales, and transplant them to a Scottish context. We think that it would be better to allow consultation on our proposed approach, to ensure that any legislation sits properly within the Scottish legal system. To that end, we will issue a consultation paper very shortly. Thereafter, as soon as we are able, we will aim to introduce legislation.

We have made it perfectly clear that we will take action to deal with grooming behaviour. It is a misrepresentation to say that, in the meantime, children are at greater risk. Let us be clear: in each and every case in which grooming behaviour has been detected, the police will seek to ensure that no substantive sexual assault follows. In many cases in which grooming behaviour is detected but an assault has not yet taken place, the procurator fiscal will be able to bring charges. Those charges will include lewd and libidinous behaviour, fraud, breach of the peace and offences under the Telecommunications Act 1984 or the Civic Government (Scotland) Act 1982. There are therefore charges that can be brought against offenders in this area—and, in fact, convictions have already been obtained. However, we are quite clear that the law needs to be strengthened; that will be the purpose of the legislation that we will introduce.

There is another aspect to the consultation that I would like to take a minute to explain. We intend to consult on the introduction of restraining orders, known as restriction of sexual harm orders—RSHOs—and on the extension of sexual offence prevention orders—SOPOs. The first of those, RSHOs, are orders that can be applied for by chief police officers in respect of people with a track record of inappropriate behaviour towards children. The orders will specify activities that the named person must not do—for example, contacting a particular child or loitering in a playground. More detail will be in the consultation document but I can say that those orders will form part of the package of measures to deal with paedophile activities. For that reason alone, I think that it would be better for us to introduce a bill with those measures set out together, rather than to agree to amendment 399, on grooming, in isolation.

The proposals on the second set of orders, SOPOs, are for the extension of orders applying to convicted sex offenders so that the orders can be made at the time of the court disposal. Again, more detail will be in the consultation document. I mention both types of order because it is important to point out that amendment 399, if agreed to, would put measures in the wrong place. They would be better as part of the overall package that the Executive will introduce.

We acknowledge that this is a serious matter and that—as we have heard this morning—there is cross-party agreement that the law needs to be strengthened. However, it is an area in which there is a clear commitment from the Executive to consult on separate legislation. That consultation will include a wider package of measures than those proposed by amendment 399. It is also the case that the very serious offence that amendment 399 deals with, which could carry a maximum sentence of up to 10 years' imprisonment, does not sit well in a bill that primarily deals with antisocial behaviour. I therefore hope that Margaret Mitchell, having heard the comments of a number of committee members and my reassurances that measures will be introduced soon, will feel able to withdraw amendment 399 and not to move amendment 400.

The Convener: I call Margaret Mitchell to wind up and to indicate whether she wishes to press or withdraw amendment 399.

Margaret Mitchell: I will respond to some of the comments made. Stewart Stevenson says that he is not a solicitor but he does an excellent impression of a barrack-room lawyer. I say to him specifically that meetings would have to have an element that illustrated an aspect of either passing off or grooming. Stewart talked about someone meeting someone at a christening and then, years later, that being regarded as one of the two contacts. However, that could not be the case.

I take the point that both Stewart Stevenson and Elaine Smith made about the competence of putting the content of amendments 399 and 400 in the context of antisocial behaviour legislation. At the very least, the offence is one in which trust is abused. The offence covers not only people who use the internet but the victims and survivors of childhood sexual abuse who have been abused by someone in a position of trust. The important aspect of the amendments that I have lodged that is not covered by Scots law at present is the ability to capture intent. In other words, none of the offences that are listed in the proposed new schedule would actually have to take place. It would be sufficient for the grooming act to become all important, which would mean that an intention to abuse the trust of another person would make someone liable to sentencing and indictment under summary procedure.

I appreciate that the committee has not had an opportunity to scrutinise the provisions of amendments 399 and 400 at stage 1. I did not think that it was competent to introduce the amendments at that stage. Indeed, it was only after stage 1 that I was given the assurance that the amendments were competent.

I realise that the committee has a genuine concern about its inability to scrutinise my proposals at stage 1. On the concern that was expressed about the list of offences in the proposed new schedule, I should say that it would be for a judge to decide whether an offence such as rape has taken place. Even if the committee had looked at the issue of sexual grooming at stage 1, it would still have been necessary to look into the details of each of the offences that are listed in the proposed new schedule at stage 2.

I am encouraged by what the minister said about bringing forward proposals at the earliest opportunity. However, I have to say to her that I have heard that said since last December; we are now in May and the earliest opportunity has not yet been found. In that time, children have been put at risk. As a way of putting the issue into perspective, I refer the minister to the memorandum that the Scottish Executive issued in 2003 at the time of the Sewel motion on the Sexual Offences Bill. It said that the purpose would be:

"to avoid possible loopholes between the application of provisions in each jurisdiction"—

in other words, between their application in the rest of the United Kingdom and in Scotland—

"to minimise the possibility of misunderstanding about the rules in each jurisdiction … to avoid the possible perception that one jurisdiction is regarded as less severe than

another; and … to ensure so far as possible that legislative changes in each jurisdiction are adopted at the same time."

Although I am encouraged that the minister has said that, at some time in the future, she intends to bring forward an Executive bill, there is no definitive timescale. I will press the amendment 399 in the hope that, in so doing, I can send out a clear and unambiguous message to anyone who might be encouraged to indulge in sexual grooming that the issue is one that we take seriously in Scotland and that they will be dealt with appropriately.

The Convener: The question is, that amendment 399 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 399 disagreed to.

After schedule 3

Amendment 400 not moved.

Section 95—Fixed penalty offences

The Convener: Amendment 414, in the name of Donald Gorrie, is grouped with amendments 415, 416 and 417.

Donald Gorrie: I draw members' attention to page 54 of the bill, on which a table of fixed-penalty offences is to be found. My amendments 414 to 417 reflect the concern of Scottish lawyers about whether those offences are suitable for being judged on the spot by the policeman who would issue the fixed penalty. I seek clarification and explanation from the minister, particularly on the offences that are covered by my amendments, which include

"Being drunk and incapable in a public place".

Is it possible that having a fixed penalty for that offence might result in more conflict between the police and drunk people, thereby increasing the problems on the streets instead of decreasing them? There is a similar concern about the offence of

"Being drunk in a public place in charge of a child".

The argument about vandalism is slightly different in that the Law Society of Scotland understood that, under other laws that are available, if someone's property is vandalised, that person can have some redress from the vandal, including monetary compensation or having the thing put right. The Law Society felt that using a fixed penalty might remove that right from the individual. I am totally ignorant about that aspect of the law, but I would welcome reassurance from the minister on that point.

On malicious mischief, the argument is the same as the one used on vandalism. Are we removing the right of the sufferer to get some sort of compensation? The argument about breach of the peace is that it is such a wide offence—it covers everything from near murder to something relatively trivial—that a fixed penalty may be suitable for some of the less serious breach of the peace offences, but not for the more serious ones.

I lodged my amendments to seek clarification and justification from the Executive that what is proposed in the bill is a reasonable use of fixed penalties. I have no problem with the concept of fixed penalties; the concern is about identifying offences for which they are suitable.

I move amendment 414.

12:45

Stewart Stevenson: I did not think that Donald Gorrie made a substantial case for deleting "Vandalism", "Breach of the peace" or "Malicious mischief" from the table, as someone can accept or reject a fixed penalty anyway in respect of those offences. However, on the offence of being drunk and incapable, I found slightly humorous the idea that a police constable would be capable of applying a fixed penalty to someone who was incapable and therefore unlikely to be in a condition to understand what was being done. Therefore, amendment 414 has some merit, although I remain sceptical about the other amendments.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I wonder whether Donald Gorrie had considered other elements of the bill when he lodged his amendments. I understand that the Executive will roll out the proposals in pilot areas in Scotland. Under section 95(2), the minister will be able to amend the entries in the table and to remove anything that is in the table. If we are saying that we want to see how the fixed penalties work, it is worth giving the list in the table a shot.

Stewart Stevenson made a fair point about the offence of being drunk and incapable. However, if the police were to arrest someone who was drunk and incapable, they could take drop them at their house and leave the fixed-penalty notice with

them. That would surely free up a lot of police time and accommodation. Currently, the police would have to take the offender back to the police station and keep them in overnight or perhaps even longer if it is a holiday weekend. I support the bill as it stands and I hope that Donald Gorrie will be persuaded not to press his amendments.

Mrs Mulligan: As committee members will be aware, fixed-penalty notices are being introduced under the bill to free up police time and to reduce some of the burden on the courts of dealing with minor cases. We want to ensure that, when antisocial offences take place, swift, effective and fair justice is provided for.

The proposals would not interfere with the independence of the judiciary or of the Lord Advocate. Matters of the prosecution of criminal offences in Scotland are in the exclusive jurisdiction of the Lord Advocate, who may direct the police about the circumstances in which the issuing of a fixed-penalty notice is appropriate in respect of offences that are listed in the bill. That is made clear in the policy memorandum and, to remove any doubt, I confirm that the Lord Advocate will issue guidance on the use of fixed-penalty notices in respect of offences that are listed in the table in the bill. It is also worth reiterating that the scheme will be piloted and evaluated before being more widely rolled out, so there will be an opportunity to consider it further.

Donald Gorrie's amendments 414 to 417 would remove a number of the offences that have been included the table of fixed-penalty offences in section 95. Although I appreciate the intention behind the amendments, I do not agree that there should be no power to issue FPNs in respect of such offences. I emphasise that there will be no blanket extension of FPNs to all cases that involve those offences and that the measures offer a means of dealing effectively and efficiently with low-level antisocial offences. If the police believe that a FPN is not appropriate, other approaches will be taken. As with other matters that we have discussed today, the power to issue a FPN represents just another option for addressing the problem.

I have every confidence that the Lord Advocate, as the head of the Crown Office and Procurator Fiscal Service, will give appropriate instructions to police officers for the use of FPNs that will take account of relevant factors—Donald Gorrie referred to some of those factors—and of the fact that the scheme is designed to tackle low-level offending. I have no doubt that, for example, consideration will be given to the possibility of compensating a victim of vandalism or malicious mischief—that would still be an option if such a case went to court. The Lord Advocate's guidance will direct the police on the types of incident that are suitable for the issuing of a FPN and on when a report should be submitted to the procurator fiscal. That is particularly important in relation to the common-law offence of breach of the peace, although it is relevant to all offences. The police are experienced in using their judgment in determining how to proceed in accordance with guidance and training.

I reassure Stewart Stevenson, Cathie Craigie and other members that the police would not just slap a fine on someone whom they had picked up for being drunk and incapable; they would process the individual in the normal way. By the time the person received their FPN, they would be sober and capable of understanding it—so I reassure members that the measure would not be used inappropriately.

As I said, the powers will be piloted and evaluated before wider roll-out. If it is considered that any of the offences in the table should not be part of the fixed-penalty scheme, we can remove an entry from the list by statutory order. It would also be open to the Lord Advocate to instruct that FPNs should not be issued in respect of a specific offence.

The pilot on fixed-penalty notices for antisocial behaviour in England and Wales operated from August 2002 to March 2003. More than 3,000 notices were issued, predominantly in relation to two offences: causing harassment, alarm or distress; and disorderly behaviour while drunk, in relation to which some 41 per cent of notices were issued. The closest Scottish equivalents of those offences are breach of the peace and being drunk and incapable in a public place. The pilot demonstrated that the FPN scheme can operate effectively in practice. For the third time, however, I reassure members that our scheme will be piloted first.

I assure Donald Gorrie that even after the pilot scheme has been evaluated, the table of offences will be considered as part of the on-going monitoring of the implementation of the bill. Ministers will have the power to add, remove or amend an entry in the table by order. If the inclusion of an offence is not helpful as a deterrent or as a means of effectively and efficiently administering justice, we will consider removing the offence from the table. That would happen by instrument subject to the affirmative resolution procedure. I hope that Donald Gorrie will accept my reassurances and withdraw amendment 414.

Donald Gorrie: In light of what the minister said, I am happy not to pursue amendments 414 to 417. It is encouraging that there will be a trial period for the scheme, which will enable us to learn as we go along. The minister gave a satisfactory explanation and I hope that what she said gives comfort to the Law Society and anyone else who

is concerned about the matter. If people are still desperately worried, they can contact members before stage 3 and we can try again. I am happy to seek the committee's agreement to withdraw amendment 414.

Amendment 414, by agreement, withdrawn.

Amendments 415, 383, 384, 416 and 417 not moved.

Section 95 agreed to.

The Convener: I propose that we break now. Lunch is available in committee room 1 from 1 pm and we can gather there and get back to business as soon as possible after that.

12:57

Meeting suspended.

13:38

On resuming—

The Convener: I call the meeting back to order. As members know, we thought that we would probably finish at about 3 o'clock. I am keen to complete consideration of stage 2 of the Antisocial Behaviour etc (Scotland) Bill today and, with that in mind, I intend to continue the meeting for as long as necessary. I do not imagine that it will continue into the dark watches of the night—obviously, that is in members' hands, but I hope that we will finish at a reasonable time.

Section 96—Fixed penalty notices

The Convener: Amendment 333, in the name of the minister, is grouped with amendment 334.

Mrs Mulligan: Amendments 333 and 334 relate to the piloting of fixed-penalty notices for antisocial behaviour offences; we referred to them briefly in the debate on the previous group of amendments. We made clear in the policy memorandum our intention to pilot FPNs, but the bill as introduced does not include the provision. We have further considered the matter and have lodged amendments 333 and 334 to make the piloting more transparent. From the debate on the previous group, I know that the committee supports the introduction of FPNs for antisocial behaviour offences and welcomes the intention to pilot the scheme.

Amendment 333 makes it clear that the power to issue FPNs will be available to the police only when they have reasonable belief that a fixed-penalty offence has been committed in a prescribed area. The amendment allows FPNs to be piloted in prescribed areas.

Amendment 334 gives Scottish ministers a regulation-making power to prescribe areas for the purpose of piloting FPNs. The provision is wide enough to provide flexibility in selecting areas in which the pilots should take place. We want to ensure that the pilot areas are not necessarily whole force areas. It might be more appropriate to pilot in smaller areas, such as urban or rural divisional commands within a force area, and the amendment provides for that. Decisions on which areas and commands should exercise the FPN powers will be taken by the police, the Crown Office and ministers and then reflected in the regulations. The regulations will be subject to the negative resolution procedure by virtue of section 108(3). We will, of course, evaluate the use of FPNs in the pilot areas, and we will provide the committee with details. I ask the committee to agree to amendments 333 and 334.

I move amendment 333.

Amendment 333 agreed to.

Amendment 334 moved—[Mrs Mary Mulligan]—and agreed to.

Section 96, as amended, agreed to.

Section 97—Amount of fixed penalty and form of fixed penalty notice

The Convener: Amendment 335, in the name of the minister, is grouped with amendments 336 to 341.

Mrs Mulligan: I start by speaking to amendment 341, which removes section 99, which set out general restrictions on proceedings for the offence to which a fixed-penalty notice relates. Those restrictions are not necessary, as the recipient of a fixed-penalty notice is forever free from prosecution for the offence to which it relates, unless that individual makes a request to be tried for the alleged offence within 28 days of the FPN being given. If the fixed penalty has not been paid and the individual has not made a request to be tried within 28 days, the penalty will increase by 150 per cent and it will be treated as if it was a fine imposed by the district court.

Amendments 335 to 340 are consequential. Amendment 335 removes the requirement for a fixed-penalty notice to specify the period during which proceedings may not be brought—that requirement is no longer necessary, due to amendment 336 and the removal of section 99 by amendment 341.

Amendment 336 clarifies that unless the person who is subject to the fixed-penalty notice asks to be tried for the offence, proceedings may not be brought against them for the offence to which the fixed-penalty notice relates. Amendment 337 specifies the period during which a request to be tried must be made—that period is to be

"28 days beginning with the day on which the notice is given".

Amendments 338, 339 and 340 are minor technical amendments.

I move amendment 335.

Amendment 335 agreed to.

The Convener: Amendment 440, in the name of Mary Scanlon, is grouped with amendment 441.

Mary Scanlon: Amendments 440 and 441 were suggested by the Law Society of Scotland. Amendment 440 seeks to extend the information that is contained in a fixed-penalty notice to include the fact that legal advice can be sought prior to acceptance of the fixed penalty and the fact that legal aid may be available for that consultation. It is believed that before a person accepts a fixed-penalty notice, they should be aware that they can seek legal advice. The consequences of accepting a fixed-penalty notice will vary, and it is important for the individual to be aware of the implications before they accept it. The amendment seeks to ensure that the recipient of the fixed-penalty notice is aware of his or her rights before paying the notice.

Amendment 441 seeks to inform the person to whom a fixed-penalty notice is given that it may appear in enhanced criminal record certificates issued by the Scottish ministers. It is intended to provide that additional information so that people are fully aware of all the consequences and implications surrounding the issuing of a fixed-penalty notice.

I move amendment 440.

13:45

Donald Gorrie: I have given some thought to the two amendments. I will be interested to hear what the minister has to say about them. My concept of fixed-penalty notices is that they are a swift, uncomplicated method of justice. The idea that people will read some text on their fixed-penalty notice saying that they can get free legal aid to discuss it would spoil the whole purpose behind issuing one.

Although we need to give out fair justice, I would have thought that if there was to be some indication that people did not need to pay, but might still go to court and possibly end up paying a bigger penalty, that should be put fairly simply. I am not sure that Mary Scanlon's wording is a helpful way of putting it. As I said, I will be interested to hear what the minister has to say about the proposal.

Most people will not know about enhanced criminal record certificates—they are a fairly obscure area of law. People will confuse them with ordinary criminal records. The intention behind Mary Scanlon's amendments are obviously good—it is to make things clear—but they might make things more unclear, with the result that people become more confused and errors occur. The amendments are well intentioned, but I am not sure that they hit the right button.

Mrs Mulligan: As Mary Scanlon said, similar amendments were previously lodged and debated in relation to noise and fly-tipping, and they were subsequently withdrawn. I notice that, since then, time has been taken to remove the technical error that appeared in the previous amendments and it is only right that we consider the arguments with respect to fixed-penalty notices under section 97. Members might recall that the previous amendments referred to criminal record certificates as being issued by Disclosure Scotland, although it is in fact the duty of Scottish ministers to issue the certificates.

I note that amendment 440 refers to

"the right to consult a solicitor prior to paying the fixed penalty"

In the previous amendments, reference was made to the right to consult a solicitor prior to accepting—rather than paying—the fixed penalty. It is unnecessary for the bill to be so prescriptive on the content of fixed-penalty notices in order to safeguard legal rights. Other statutory regimes involving the use of fixed-penalty notices, such as dog fouling and littering, do not require such matters to be expressly stated in the notice.

We have already provided that a fixed-penalty notice issued under part 11 will inform the person to whom it is given of the right to ask to be tried for the alleged offence and will explain how that right may be exercised. In my view, that is sufficient, and it strikes the balance to which Donald Gorrie alluded, on using fixed-penalty notices to enable swift and effective justice, while giving people a little bit of information as to how they can approach the situation.

Regardless of the content of the fixed-penalty notice, anyone who is issued with an FPN can seek legal advice. They may be able to do so under the advice and assistance scheme under part II of the Legal Aid (Scotland) Act 1986.

On the matter of enhanced disclosure, there is a possibility that information about the payment of an FPN could be disclosed in an enhanced criminal record certificate. However, non-conviction information would be included only if it was deemed relevant to the post by the chief constable. As members are aware, enhanced certificates are restricted to those positions involving a greater degree of contact with children or vulnerable adults, such as positions involving training, supervising or being in sole charge of young people. It is also important to remember that FPNs will be used to deal with offences

effectively and efficiently. It is not a question of net widening or of trying to entrap more people. Neither is it about generating money by slapping notices on innocent people. Individuals can challenge the FPN by asking to be tried. If FPNs were not available, the likelihood is that the individual would end up with a conviction and the information would be on a basic disclosure certificate, never mind an enhanced one. In view of that, I do not think that it is necessary to refer explicitly to enhanced disclosure certificates.

I should also point out—because we have already discussed it—that the FPNs will be piloted and evaluated. If, during the course of the pilot, other issues emerge that we consider should be specified on the notices, we can use the order making power at section 97(3)(g) to prescribe other information to be included in the notices. Therefore, I hope that Mary Scanlon will feel able to withdraw amendment 440 and not to move amendment 441.

Mary Scanlon: I think that it was worth lodging the amendments simply to get additional clarity surrounding the issue. I liked Donald Gorrie's point about swift and uncomplicated justice, and I certainly would not be looking for anything that would further complicate what we have. I also accept the minister's point about being able to prescribe information in the fullness of time, if that is deemed necessary. Having sought those reassurances, I am happy not to press the amendments.

Amendment 440, by agreement, withdrawn.

Amendment 441 not moved.

Section 97, as amended, agreed to.

Section 98—Effect of fixed penalty notice

Amendments 336 to 340 moved—[Mrs Mary Mulligan]—and agreed to.

Section 98, as amended, agreed to.

Section 99—General restriction on proceedings

Amendment 341 moved—[Mrs Mary Mulligan]—and agreed to.

Sections 100 to 102 agreed to.

Section 103—Supervision requirements: conditions restricting movement

The Convener: Amendment 418 is grouped with amendments 401, 419, 419A, 402, 420, 420A and 421 to 432. If amendment 418 is agreed to, I cannot call amendment 401 on the ground of pre-emption.

Mrs Mulligan: Our proposals for electronic monitoring through the hearings system have generated a lot of debate, both within and outside the Parliament. In speaking to the amendments in this group, I want to take the opportunity to dispel a few myths and to be clear about how the proposals will operate and who they will affect. We have never suggested that electronic monitoring—tagging, if you like—would be used willy-nilly or, to use a phrase that was used this morning, carte blanche. Rather, it is the Executive's view that, in a small number of cases, a tag may prove useful in helping to keep young people out of secure accommodation.

As drafted, the bill provides that a hearing could impose a movement restriction condition—a tag—as part of a supervision requirement whenever it considered that to do so would be in the best interests of the child. Arrangements for the use of tagging in practice would be set out in regulations and guidance. However, we have given the matter further consideration and have decided that the provisions, as drafted, could permit the use of tagging more often and more widely than is necessary. Amendment 418 will ensure that tagging through the hearings system can be used only as a direct alternative to secure accommodation—that is, a young person could receive a tag only if they met the criteria for entry to secure accommodation. The amendment provides that, where a child meets those criteria, a hearing will have two options. It can either recommend a secure place for the child or impose a tag as part of a supervision requirement.

To facilitate the change, amendment 418 will amend the wording of the Children (Scotland) Act 1995. The secure test will remain the same in practice. There will be no up-tariffing or bringing in of those who would not currently meet the criteria. When recommending a secure place or a tag, a hearing would need to satisfy itself that the child would either abscond and put themselves in danger, or be likely to injure themselves or others without the imposition of either a tag or a secure place. I can confirm that the amendment will not increase the number of children who meet the criteria for secure accommodation.

Scott Barrie's amendment 419A would widen the limited use of tagging that I have just described. It would allow a hearing to impose a tag when, in its view, the secure accommodation or tagging test has not been met, but is likely to be met within the next six months. In imposing such a tag, the hearing would need to be satisfied that doing so was in the best interests of the child. It is clear that the aim of such a pre-emptive tag would be to prevent a young person from needing secure accommodation in future. I have some sympathy with the suggestion, but want to wait to hear Scott

Barrie's comments on the matter before I comment further.

Amendment 420 provides that, when imposing a tag, a hearing must also attach conditions—that is, support measures. It will also allow us to prescribe in regulations the type of intensive support measures with which children who are subject to tags should be provided—for example, access to a 24/7 crisis support team. It will be for hearings to decide, in line with the regulations, what intervention is appropriate for the individual in question. We intend to consult on a draft of the regulations in the summer and to lay them before the Parliament in the autumn.

I hope that in the light of amendment 420, Donald Gorrie will not move amendment 402, which would alter the definition of "movement restriction condition" in the bill to mean a condition that includes the provision of intensive support. It is clear that Donald Gorrie and I seek to achieve the same thing with our amendments, but I believe that my amendment is stronger. Donald Gorrie's amendment does not define what is meant by "intensive support", which we discussed this morning. My amendment will allow us to set out in regulations what intensive support services should look like and it will ensure that young people who are subject to a tag will get the help and support that they need.

If the committee accepts amendment 419A, I suggest that it should also accept Scott Barrie's amendment 420A, which is his other amendment in the group. That amendment would require a support package for all those who are subject to a tag, both those who are given pre-emptive tags and those who pass the test.

My only other substantive amendment in the group is amendment 432, which will allow us, through regulations, to limit the use of tagging initially to those regions taking part in phase 1 of the tagging roll-out. That will ensure that, to begin with, tagging can take place only where the appropriate intensive support is available.

Amendments 419 and 421 to 431, in my name, are consequential to those substantive amendments.

Donald Gorrie's other amendment in the group—amendment 401—seeks to restrict the use of tagging through the hearings system to those who are aged 12 or over. I do not think that such a change is either desirable or necessary. There is provision for an age limit of 12 in parts of the bill, for example, for an ASBO, because it is a civil provision and young people are not considered sufficiently mature in civil law to instruct a solicitor before the age of 12. Similarly, CROs are restricted as a sentence for the over-12s. However, ASBOs and CROs are court-based disposals, whereas there are reasons of care and consistency why we should oppose minimum-age limits in the hearings system.

Under the hearings system, no lower age limits apply to the use of secure accommodation for children who are a risk to themselves or others. If, as amendment 401 proposes, a lower age limit were set for tagging, a younger child would be required to be sent to secure accommodation whereas an older child could be tagged and stay at home. That could up-tariff younger children.

Imposing a minimum age would not display much faith in panel members. When a panel considers whether a young person should be tagged or placed in secure accommodation, the best interests of the child will remain at the centre of the panel's considerations. I have complete confidence that no panel would impose a tagging order unless it was completely satisfied that that was the most appropriate way forward. Clearly, the age and understanding of the young person will be fundamental to any such decision.

In light of those points, I hope that Donald Gorrie will withdraw his amendments.

I move amendment 418.

14:00

Donald Gorrie: I welcome amendment 418, which I am happy to support although that means that I cannot support my amendment 401. Accepting the logical argument that we discussed previously, I agree that if children under 12 can be sent to secure accommodation, it is reasonable that they should be able to be tagged as an alternative.

The minister claims that her amendment 420 says the same thing as my amendment 402. As examples of amendment-speak go, amendment 420 is pretty extreme. However, the minister is an honest and intelligent lady, so I assume that she is correct in saying that amendment 420 means the same as 402, although it is rather less elegant.

The other substantive issue is raised by Scott Barrie's amendment 419A. I will be interested to hear what he has to say, but I prefer to stick to the position that we agreed earlier when we discussed these matters in relation to the courts. If, taking everything into account, the children's panel is in a position where it could send the young person to secure accommodation, it should be able to impose a restriction of liberty order instead.

There is perhaps a slippery slope aspect in that, although I have never been on a children's panel, I understand that these things are not absolute. They are not like a high jump, for which people are required either to jump over 5ft or they fail; things are a bit more elastic. I think that the wording of

amendment 418 will allow us to leave such matters to children's panels, but I will be interested to hear what Scott Barrie has to say.

I am in my good-boy mode, so I will not move amendments 401 or 402.

Scott Barrie: I am not sure whether I am in good-boy or bad-boy mode in persisting with amendments 419A and 420A.

Before I speak to my amendments, I want to raise a question about amendment 418 that struck me as I re-read the amendment just now. If I have not misunderstood it, the amendment may need to be amended. Proposed new subsection (9), which amendment 418 will insert into section 70 of the Children (Scotland) Act 1995, refers to a requirement that

"one of the conditions mentioned in subsection (10) is met".

However, proposed new subsection (10) provides two conditions that are joined by an "and" rather than an "or". That suggests that both conditions should be met, so I am not sure whether that ties up. I ask the minister to reply to that point when she winds up.

I make my substantive point in amendment 419A. Basically, the amendments that the minister proposes would mean that we could use electronic monitoring in certain cases in which it was felt to be appropriate to do so. I refer members to the debates that we had this morning, in which we said that we would have to be satisfied that the household in which the young person was residing was suitable. However, when the minister introduced her amendment, she said that electronic monitoring could be used only as a direct alternative to secure accommodation. That is the problem that I have. If we set electronic monitoring as being a direct alternative to secure accommodation and nothing else, we are losing an opportunity to prevent those youngsters who are heading at a rapid rate of knots toward secure accommodation, but who might not yet fulfil the criteria for admittance, from ending up there in the near future.

I know that some people have a different view of secure accommodation, but I do not think that it is a panacea for young people's problems; some people blithely think that it is. It does not have a particularly good record of turning young people around and it should be used only in incredibly rare circumstances when it is patently obvious that the young person is so out of control that they have lost control of everything, including their own behaviour. In those cases, it is utterly appropriate; in other cases, it is not.

If the Executive's amendments mean that electronic monitoring could be considered only as a direct alternative to secure accommodation, I think that the test is being set at too high a level.

I appreciate that the wording of my amendment might not deliver exactly what I am looking for, but I would like us to consider the possibility of using electronic monitoring for those youngsters whose behaviour has not yet meant that they can be admitted to secure accommodation, but who are likely to end up there shortly.

This morning, when we were discussing the imposition of restriction of liberty orders by sheriff courts, Donald Gorrie mentioned secure fostering and said that the use of electronic monitoring as an aid to ensuring that someone stayed in a foster-care placement would be an added incentive for the use of that disposal. However, I point out that secure fostering is not a direct alternative to secure accommodation, although it is similar. If we are threatening to use electronic monitoring as a direct alternative to secure accommodation, we will cut against using it for what was judged by Donald Gorrie to be a worthwhile purpose.

We must be careful that, in trying quite appropriately to ensure that the criteria are drawn tightly enough to ensure that we do not have a situation in which far more youngsters than we would like end up being tagged, we do not cut off our noses to spite our faces and end up with a proposal that will not achieve what we want. We want to turn young people's behaviour around without having to use the ultimate sanction, which is secure accommodation.

Ms White: I thank Scott Barrie for explaining better than I probably did this morning the issues around tagging and secure accommodation. I am glad that he has come around to my way of thinking and that he picked up on the fact that the minister said that electronic monitoring could be used only as a direct alternative to secure accommodation.

The point that I have been trying to make when talking about punitive justice and restorative justice is that the minister is saying that tagging will be used only in the last resort, as a means of preventing someone from having to go into secure accommodation and that, therefore, it is a direct alternative.

I understand that the kids who are tagged instead of being put into secure accommodation will be given full support. However, what happens to kids who are in secure accommodation? Do they not receive the same support? It emerges from the bill that two routes—secure accommodation or tagging—are available. What Scott Barrie said makes perfect sense. We must be careful and I agree that we need resources for secure accommodation. We do not want to send more kids into secure accommodation. We want to help them to live normal lives, but if the alternative to secure accommodation is tagging and we do

not have secure foster carers or any other back-up help for that, that shows that the bill is being rushed through with no thought for how its implementation will be practically managed after kids appear in court or at a children's hearing.

I agree with Scott Barrie, as I have visited secure accommodation. In some cases, we would not want to send kids to such establishments—we all know which schools and accommodation we are talking about—because help and back-up are not provided. If we are to tag young people, we must provide that back-up. As I said this morning, we cannot put young people back into the environment that led to their behaviour with no thought given to how long that will be for, how much money will be needed or what will be put in its place.

No thought has been put into the tagging provisions. It sounds good to say that we will tag kids and that we will do this or that, but will those kids be given an alternative to being locked up in their houses 24 hours a day? What back-up will be provided that those kids do not receive now? Members say that secure accommodation does not work and that no facilities have been put in place in secure accommodation—but such facilities will be available under tagging. I find it difficult to get my head round the provisions. We are not talking about punitive justice. What will we put in place and how long will it take? Will money be available? If so, why is that money not available to help kids in secure accommodation now? All of a sudden, we have the alternative of tagging as a last resort.

The Convener: The debate is partly about what we mean by alternatives to custody. The approach is to reduce the numbers of young people who end up in secure accommodation and of adults who end up in the prison system. That involves taking measures early enough for them to work.

I have a general concern that we place a high tariff on some projects that are available to young people, such as projects that encourage them to understand more about cars and to be less excited about joy-riding. The tariff to join such a project means that it deals with a tiny number of young people and that other youngsters who would benefit from the project earlier do not join it. We must wait until they are in a crisis and have become completely involved in such behaviour before they can join, which is at a point when the project is less effective.

I understand the argument for not tagging everybody and for saying that tagging must be for a certain group of young people, but perhaps a level can be added, even in the medium term, that prevents young people from reaching the stage when a children's hearing says that it can do nothing else and that it faces someone who is completely out of control. We may prevent that by trying slightly earlier, for someone with a supportive family, an electronic tag that keeps them away from a difficult place at particular times of the day. If that does not work, that is fair enough, but at least that gives the person another chance.

If we make tagging a direct alternative to secure accommodation, it becomes only crisis management. I would regard tagging as the stage before that for some youngsters, when it might be worth their while to try it. To reassure people who are concerned that tagging will be used slightly more randomly, I want to know from Scott Barrie that tagging will be a measure to prevent young people from entering secure care. Could you be explicit about the caveats—they are probably in amendment 419A—that will prevent a panel from saying at an early stage that it imagines that if tagging is not undertaken, the person involved may, possibly, end up in secure accommodation seven or 10 months down the road? You say that that is clear. What guidance would be given to a children's hearing to make that clear? Knowing about that would reassure people who are genuinely concerned that tagging will be inappropriately used. I believe that tagging should be an alternative to custody and that we need more steps on the road to what some people regard as pressing the nuclear button, when a young person has lost the plot and we do not know what we will do with them.

14:15

Elaine Smith: I seek clarification either from Scott Barrie or the minister, or both. First, would a child be able to agree to a tag? I think that I mentioned during this morning's session that a child might want to agree to a tag, for example, to help them exert more self-control or because they want to get away from bad company and a tag would help them to do that. That point carries on from what the convener said.

I also seek clarification of some of this morning's discussion that relates to the part of the bill that we are discussing. It was said that a child would not be tagged into a difficult or abusive home situation and that that should be dealt with. What worries me is that children do not always mention that they are in such situations. Sometimes they do not mention what has happened to them until they are much older, when they perhaps explain what happened to them as the reason—if that is the right word—for some of the actions that they took when they were younger. It is important that a young person's view of being tagged is made central to the decision about whether they should be tagged.

Can we also clarify that the support that would be available with tagging would be individually tailored? Could the support be provided by, for example, NCH Scotland? Could it involve cognitive or behavioural programmes such as those that have been successful in Canada? Further, what would be the consequences of a breach of a tagging order that was imposed by the children's hearings system? I am still not clear whether a breach would be a criminal matter or whether it would have to go back to the hearing for it to discuss another way forward.

Finally, on the issue of direct alternatives, only a small number of children need to be in secure accommodation, as Scott Barrie said. We would not want to send any children there unnecessarily. If that is happening, it is worrying.

I said that that was my final point, but I have one further point for the minister. This morning I asked about Executive research that showed that the younger an offender was, the more likely they were to breach a tagging order. The minister did not comment on that then, so I wonder whether she can do so now, under the section on consequences.

Mrs Mulligan: I cannot respond directly to the point on the research that indicated that the younger the offender was, the more likely they might be to breach a tagging order. We would need to investigate that further. If Elaine Smith provides us with the details of that study, we can consider it.

Can I clear up the confusion that has arisen from the wording of amendment 418 first, before I get into the substance of the discussion? I confirm that subsection (9) requires only one of the conditions in subsection (10) to be met; subsection (9) does not required both subsections (9)(a) and (9)(b) to be satisfied before the power referred to can be exercised. I know that I am playing into the hands of Donald Gorrie when I say this, but the use of the "and" at the end of subsection (9)(a) is normal drafting practice; it is in because it is always in, although it actually indicates a list rather than the normal meaning of "and". Therefore, amendment 418 refers to only one of the conditions and it would be that part of amendment 418 that would be referred to when subsections (10)(a) and (10)(b) are being considered. I am sure that that is now very clear to members, so I shall move on to the substance of the discussion.

Can we just consider the current situation? If a child's behaviour is such that a panel feels that the child needs secure accommodation, that is where they will go. Amendment 418 says that a children's hearing may exercise a power to specify an alternative to that, which would be tagging. The panel may consider that the child still needs secure accommodation; amendment 418 would allow that to take place.

A number of members, including Sandra White and Scottie Barrie, referred to the current situation with secure accommodation. We recognise that, for a number of children who are placed in secure accommodation, the outcomes are not as good as we would like them to be and that there is room for improvement. That is why the Executive's intensive support fund is investing £9 million over four years. The aim is to increase support levels within current secure accommodation and tailor packages to the individual child to help deal with the needs that have caused them to exhibit certain behaviours. That will continue to be the case. We recognise that secure accommodation must be available for those children who need it. However, we propose that for some of those who would otherwise have gone to secure accommodation, the alternative arrangement of tagging may also be possible. Yes, those children will need secure support—in some cases 24-hour support—but if that makes it possible for them to stay in the community, and it is the most suitable arrangement, it should be an alternative. That is what my amendment 418 seeks to implement.

I acknowledge the concern that the bill should not miss an opportunity for early intervention, which is the subject of Scott Barrie's amendment 419A. We consider early intervention in a host of areas within the Executive's remit, such as health and education, so why should we not consider whether a package of early intervention might prevent a child or young person from eventually being put into secure accommodation for their own sake? I sympathise with what Scott Barrie said. The discussion has been useful, and a number of helpful points have been made. I want to take amendment 419A away and consider it again, purely because I recognise that a number of people are concerned that tagging, because it is seen as a lesser tariff than secure accommodation, might be used in a wider way than would secure accommodation, which could bring its own problems.

We need to examine the wording of amendment 419A and the intention behind it in more detail. I clearly hear your concerns, convener, and those of Scott Barrie, which are addressed in his amendment 419A, that we should not ignore the plight of children or young people who, if they continue to exhibit their present behaviour, will undoubtedly be sent to secure accommodation. That is in neither their interests nor the interests of their communities.

The Convener: The question is, that amendment 418 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 418 agreed to.

Amendment 419 moved—[Mrs Mary Mulligan].

The Convener: I call amendment 419A, in the name of Scott Barrie.

Scott Barrie: The minister said that she wants to give amendment 419A further consideration. I want to work with her on that, so I will not move my amendment, but I reserve the right to bring it back at stage 3.

The Convener: That will be subject to the Presiding Officer allowing you to do so.

Scott Barrie: Indeed.

Amendment 419A not moved.

The Convener: The question is, that amendment 419 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 419 agreed to.

Amendment 402 not moved.

Amendment 420 moved—[Mrs Mary Mulligan].

Amendment 420A not moved.

The Convener: The question is, that amendment 420 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 0, Abstentions 3.

Amendment 420 agreed to.

Amendments 421 to 432 moved—[Mrs Mary Mulligan]—and agreed to.

Section 103, as amended, agreed to.

After section 103

Amendment 442 moved—[Ms Sandra White].

The Convener: The question is, that amendment 442 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

ABSTENTIONS

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 2, Against 3, Abstentions 4.

Amendment 442 disagreed to.

Section 104 agreed to.

After section 104

The Convener: Amendment 179, in the name of Bill Aitken, is in a group on its own.

Bill Aitken (Glasgow) (Con): The purpose of amendment 179 is to reduce the age limit for children sent to children's hearings from 16 to 14 once the youth court system has been rolled out throughout Scotland. The fact that the bill has been introduced indicates that the Executive acknowledges that there is a real problem with disorder in many of Scotland's communities. We all share that concern; the difference between us is in how to resolve the problem.

The children's panels were set up under the Social Work (Scotland) Act 1968 as a result of research carried out between 1965 and 1967, which is almost 40 years ago. I submit in the strongest terms that that research could certainly do with being updated. I am aware that an Executive consultation process is under way on the way in which the children's hearings system might be retained or adjusted for the future, but I suggest that early action is necessary. The fact is that 15-year-olds in 1965 were not the same as 15-year-olds today. Kids are maturing earlier, as many of us know to our financial cost apart from anything else.

A system that at that time was apposite in dealing with offenders in the 14 and 15-year-old bracket is simply not acceptable today. There is clear evidence that 14 and 15-year-olds are imposing a great degree of criminality and disorder on Scotland's communities, which the present system is utterly weak in combating. Those youngsters hold the system in contempt, which is unfortunate to say the least.

The children's hearings system has been extremely successful in dealing with welfare cases and in many instances it is difficult to distinguish between cases in which the welfare of the child is the principal concern and cases in which the issue is the wider question of criminality. The court is the forum to determine that. A large number of 14 and 15-year-olds are cocking a snook at the whole system. We have to ensure that our communities and society are better protected.

The youth court system has not yet been rolled out throughout Scotland. As we are all aware, it was pioneered in Hamilton and I have absolutely no doubt that it will be a tremendous success—every Executive initiative is reported to be a tremendous success. The system is certainly worth considering and we have to give it time to see whether it will work effectively. In my submission, it would work much more effectively than the current system in dealing with 14 and 15-year-olds.

I move amendment 179.

14:30

Scott Barrie: It will come as no surprise to the committee or to Bill Aitken that I wish to speak against amendment 179. Bill Aitken said that 15-year-olds are different now from the way they were in the 1960s when the Kilbrandon report, the forerunner of the children's hearings system, was published. Of course, he is quite right. In the 1960s, young people could leave school at 15 and get a job, which they certainly cannot do now, so things have clearly changed.

There will be 14 and 15-year-olds cocking a snook at the children's hearings system, but anybody who spends any time in our sheriff courts will see a procession of 16, 17 and 18-year-olds who make remarkably frequent appearances in the adult courts system, which appears to make very little difference to their behaviour, given the number of times that they appear and reappear. It is hardly the case that one system is working spectacularly well while the other system is not working at all.

If the age for referral to court on offence grounds is reduced to 14 and the age for referral on welfare grounds remains 16, that brings in the big danger of having two systems running in parallel, with all the attendant difficulties that that will entail. I would like Bill Aitken to think about a scenario in which a young woman who is in the children's hearings system on care and protection grounds goes on to commit an offence of shoplifting at the age of 15. She would end up having to go through the court system while her welfare needs were still being considered by the children's hearings system. It would not be in anyone's interests to try to cope with the two systems and with the bureaucracy that would have to be involved in order to ensure that those systems were working in tandem.

Another issue about the court-based system versus the children's hearings system is that the children's hearings system is purely and simply based on one's home address. If a young person lives in the jurisdiction of Perth and Kinross, for example, they will go to the children's hearing that is administered in Perth and Kinross. If they commit an offence in Dunfermline, they will go to the court in Dunfermline, and if they commit another offence in Perth, they will go to the court in Perth, so different systems will be in operation. That would not happen with the children's hearings system. In that system, irrespective of where the grounds or referral originated, the case would be dealt with in the young person's home area. I do not think that Bill Aitken has thought through the difficulties that his amendment would entail in that respect.

Those are practical examples—not extreme plucked-out-of-the-air scenarios—that illustrate why we must be careful about agreeing to the sort of proposal that Bill Aitken is making. His proposal would drive a coach and horses through the children's hearings system, which most people who spoke in last week's debate in the chamber said that they wanted at least to be retained, although they acknowledged that improvements could be made to it. It is entirely appropriate that improvements should be made and that is why the review is taking place. However, to give carte blanche so that young people between 14 and 16 could be referred to the court system is totally inappropriate.

Stewart Stevenson: I wonder whether Bill Aitken could enlighten us as to when he last read the Kilbrandon report. It is available on the internet and he can read it before he goes home tonight. In the appendix to that report are the statistics for youth offending for the years 1950 to 1961. One of the interesting things that we find looking back at an era of court disposals for young people, which we can compare with today's disposals through the children's hearings system, is that the number of people currently found guilty of offences is lower than in any single year reported on in the Kilbrandon report.

Bill Aitken does himself and his considerable intellect no justice by pursuing for doctrinaire reasons, which are not supported by the facts, a policy of reintroducing a retributive approach to youth justice as opposed to a rehabilitative approach. Although the system is capable of improvement, it has nonetheless delivered an outcome that is measurably better.

That is not to say that perfection prevails. In many areas of Scotland, there are considerable difficulties. That is precisely why the bill is before us today. I do not welcome all the provisions of the bill, but I welcome the fact that there is engagement with the issue. However, to return to the legal system of the 1950s is—quite literally—to turn the clock back and potentially to increase the problem that intellectually Bill Aitken wants to solve. I urge him to see sense and to seek leave to withdraw the amendment.

Bill Aitken knows that he is entirely out of kilter with mainstream opinion and is likely to be shown to be out of kilter with the committee and the wider Parliament, as he was in last week's debate on the children's hearings system, which was one of the best debates that has taken place in the Parliament in the time that I have been here. We heard a wide range of opinions expressed, but the voices suggesting anything remotely approaching what Bill Aitken proposes to do in amendment 179 were very quiet. It would knock the heart out of the children's hearings system to forbid children aged 14 or 15, who currently have access to the system, from accessing it and to commit them to the court system. As the figures in the Kilbrandon report show, the court system failed in the 1950s and 1960s. It would fail again now.

The Convener: The Antisocial Behaviour etc (Scotland) Bill is not age related. It is about the nature of antisocial behaviour, rather than the age group that is responsible for it. The significant themes are the fact that there is unrecorded crime and that people in communities are silenced and feel unable to speak up because of our inability to police and manage offences. There is no pain-free or cost-free action that we can take. If we are not seen to act on the problem, it will not go away, but people will be silenced. It would trouble me very much if we said simply that things should go on as they are and that the situation is much better than it was in the past. That is to misunderstand what happens in some of our communities.

The other theme that concerns me is that the justice system has signally failed to take antisocial behaviour seriously. There is no sense that an accumulation of persistent offences over time—not one person jumping up and down, but 20 people jumping up and down—can cause great distress, even if an individual act does not seem terribly serious. Bill Aitken's amendment does not address my concern.

There is an issue that we must address in the children's hearings system. There must be a sense that persistence and the accumulation of offences matter and there should be some progression in the system. Once someone is in the system, we should not keep reinventing the wheel—people should not be told the same things each time they enter the system. Failing to comply or to change one's behaviour should have consequences.

I believe strongly that the system should treat young people appropriately for their age—we should not speak to or deal with an eight or nine-year-old in the same way as we speak to or deal with a 14 or 15-year-old. However, those differences can be accommodated within the system, especially if we begin to consider issues relating to the cases that never get that far. One difficulty that we have is that we do not reach people early enough. There must be much more interrogation of what happens when it is decided that no further action should be taken. That might deal with the concerns not only of Bill Aitken but of some of our communities about the fact that nothing appears to be happening and that quite serious offences have no consequences. That approach is not pain free, because many young people say that nothing has happened to them, which has consequences for communities.

The hearings system must change. That involves understanding persistent offending and age-related offending. I am concerned that immature young people between the ages of 14 and 16, who have never offended previously, might unwittingly get involved in offending and end up in the court system, whereas other young people who might wittingly have become involved in offending at the age of 10 or 11 will end up in the hearings system. My big concern is that amendment 179 does not address the issue of persistent offending.

In the review of the hearings system, we will have to be rigorous about listening to local communities. Sometimes, when people attack the hearings system, it is because of their experiences

and not because of any ideological drive. A review would be the proper place to address such issues, so I do not think that Bill Aitken's amendment 179, which categorises young people on the basis of age rather than on the basis of the seriousness of the offence, is helpful.

Mrs Mulligan: I have listened to Bill Aitken's comments and the comments of other committee members. I believe that Bill Aitken lodged a similar amendment during the passage of the Criminal Justice (Scotland) Bill in the previous session. That amendment was rejected and I have heard nothing today to change my mind about his proposal. I hope that the committee will reject amendment 179 today.

As a number of members have said, the amendment could have the unintended effect of impacting on a hearing's ability to deal with care grounds. If Bill Aitken can tell us, I would be interested to hear what soundings he has taken from sentencers as to whether they will welcome having to deal with large numbers of 14 and 15-year-olds in the courts.

In the partnership agreement, a commitment was made to roll out youth courts as they were needed. They are being tested through a pilot scheme to ensure that we have firm evidence of their success and effectiveness before we consider rolling them out across Scotland. Youth courts will focus primarily on 16 and 17-year-olds who persistently offend—although, on occasion, some 15-year-olds will be dealt with. The stated intent of amendment 179 does not reflect our policy on youth courts, which is to find a more effective way of dealing with young people in that age group who would otherwise find themselves in the adult court system. Confusion arose during the debate last week, when understanding of what youth courts are about was perhaps not as clear as it might have been.

Throughout stage 2, I have sought to reaffirm the Executive's commitment to the children's hearings system. I know that some have doubted our commitment; I can only reiterate today that we are committed to seeing the children's hearings system develop in relation to dealing with offences and care needs of children and young people.

The Antisocial Behaviour etc (Scotland) Bill will provide additional tools for dealing with young people who exhibit persistent antisocial behaviour and for dealing with young people for whom existing measures in the hearings system have not proved effective. Antisocial behaviour orders may be one of the solutions. As we have discussed already today, electronic monitoring will be available through the court system and the hearings system.

In launching the review of the hearings system last month, Peter Peacock was clear about our belief that the time is right to ensure that the system has the correct set-up and adequate resources. I hear the convener's concerns that communities feel that the hearings system is not as responsive as it might be to the actions of some of our young people. Those concerns will be considered in the review. Some comments were made in that regard during the debate in Parliament last week. However, Peter Peacock made it equally clear that the Executive remains committed to the fundamental principles of the children's hearings system—including the belief that, for under-16s, hearings should consider offending and welfare issues at the same time.

We have heard references to the Kilbrandon approach of dealing with children holistically. The present system is an integrated one. It considers the needs of children—those who offend and those who are in need of care and protection. The current system allows for children to be prosecuted when that is appropriate. However, amendment 179 interferes with the discretion of the procurators fiscal in their discussions with reporters about jointly referred cases and, indeed, with the criminal justice system's fundamental principles of addressing the offending behaviour of 14 and 15-year-olds. I ask Bill Aitken to withdraw amendment 179. If he wishes to press it, I ask other members not to support it.

14:45

Bill Aitken: Members have made some interesting contributions to the debate. I realise that Scott Barrie and I are not likely to agree on this issue, but I acknowledge that he raised several interesting points. He is correct in saying that sheriff courts throughout the country see a large number of 16 to 18-year-old offenders. However, one has to wonder whether any of those people would be performing so regularly in the courts if they had recognised earlier in their criminal careers that their actions might have consequences. As those who frequently attend a children's hearing acknowledge no such thing, their behaviour is not tempered in any way.

Scott Barrie also gave the example of a 15-year-old shoplifter who might find herself under two or possibly three jurisdictions at the same time. I do not think that the court system would be unable to cope with that. Indeed, the minister failed to acknowledge the fact that in dealing with a 15-year-old a sheriff can take advice from the children's hearings system on any likely disposals. I think that that also covers Scott Barrie's point.

Stewart Stevenson mentioned the Kilbrandon report and, unless I misheard him, stated that, according to the figures, the number of offenders today is much lower than it was in the 1950s. With the greatest respect, I have to say that that is complete nonsense.

Stewart Stevenson: I do not—

Bill Aitken: Hear me out, please.

In the 1950s, offences were prosecuted that nowadays would never see the light of day. Indeed, it pains me to confess to the committee that I was once a young offender, because I was dealt with in the court for the heinous offence of playing street football and fined the princely sum of five shillings. These days, that sort of case would quite properly never reach the courts or result in a prosecution. That is why, as Stewart Stevenson pointed out, so many cases were prosecuted in the 1950s and 1960s. The figures are totally distorted.

Society in general has taken the view that a degree of apathy is necessary in dealing with youth crime. Bearing in mind the area that you represent, convener, you know as well as I do that in many cases people will not report minor acts of vandalism, disturbances or assaults because they know that nothing will happen. As a result, the figures for such offences are never recorded. Stewart Stevenson's analogy is not apposite because the figures reflect both the overreactive approach taken in the 1950s and 1960s and today's lenient approach.

Convener, you appear to be reasonably supportive of my proposal. I imagine that that is born of your experience of what is happening in the real world and in many areas over which we have jurisdiction. Frankly, there must be a much greater appreciation among members of the situation.

The minister may have let the cat out of the bag when she said that, if the amendment were agreed to, the courts would see a large number of 14 and 15-year-olds. I have not taken any advice from sentencers on the matter, but rest assured that they will certainly not be lax in dealing with the additional number of offenders who will come before them. Of course, my proposal will create much more work. However, the minister appeared to acknowledge that much of the offending is committed by 14 and 15-year-olds, which indicates that there is a problem.

I support the children's hearings system. Three years ago, I sat in on half a dozen children's hearings in the Glasgow area. I heard some cases that were terribly sad—one would have needed to be a much harder man than I am not to have been affected by them—but every case that I heard was a care and protection case; no criminal cases went before the children's hearings system in Glasgow on the days that I attended. When I followed that up and got the figures, I discovered that very few such cases were going through the system, so it is clearly not working particularly well.

The children's hearings system has had great possibilities and has done a lot of good in dealing with cases involving children in need of care and protection, but I am not convinced that it has been so successful with regard to criminality. We must move with the times and recognise that the nature and age group of offenders have changed greatly since the Social Work (Scotland) Act 1968. It is frequently said that the children's hearings system is admired throughout—and, indeed, is the envy of—the world. It should be admired, but perhaps we should consider why no one has copied it.

The Convener: The question is, that amendment 179 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Lamont, Johann (Glasgow Pollok) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 179 disagreed to.

Section 105 agreed to.

Before section 106

The Convener: Amendment 101, in the name of the minister, is in a group on its own.

Mrs Mulligan: The purpose of amendment 101 is to protect the interests of children. In our view, there should be a presumption that proceedings before a sheriff relating to antisocial behaviour orders and interim orders in respect of a child and proceedings before a sheriff relating to parenting orders should be conducted and determined in private. The court should have the discretion to direct that the whole proceedings or part of the proceedings should be held in public or that additional persons should be present, but the starting point should always be that the proceedings should take place in private.

In the bill, we have provided that there should be a presumption that decisions on antisocial behaviour orders for under-16s should not remain confidential but that decisions on parenting orders should remain private. For ASBO cases involving under-16s and parenting orders, the proceedings should normally be in private to ensure that the interests of the child are protected. There are other issues to consider once an order is made, if that is the outcome of the proceedings; once an

ASBO is made, the interests of the child are considered alongside the need to protect the community in determining the arrangements.

It is also important to remember that proceedings in the children's hearings are in private. The confidentiality of the hearings system could be undermined if undetermined ASBO applications involving children in the sheriff court were held in public. Moreover, section 142 of the Criminal Procedure (Scotland) Act 1995 provides that, when summary proceedings are brought against children, those proceedings will not be held in open court and access will be restricted to certain persons.

I move amendment 101.

Patrick Harvie: I ask the minister to clarify whether amendment 101 will affect a young person's right to have a supporter with them.

Mrs Mulligan: The amendment would not affect the young person's right to have a supporter.

Amendment 101 agreed to.

Section 106—Disclosure and sharing of information

The Convener: Amendment 376, in the name of the minister, is grouped with amendments 102, 103, 377, 104 to 106, 378, 107 and 127.

Mrs Mulligan: The amendments in this group are largely technical amendments to improve the effectiveness of section 106. As members know, the efficient exchange of information between agencies and others about antisocial behaviour is vital if we are to improve our ability to tackle such behaviour. I was struck, as I am sure many other members have been, by how many times the issue was raised during the consultation process in which we were engaged. I know that the evidence that the committee received verbally and in writing backs up the concern.

Amendment 377 will provide that the protection that is afforded by section 106 applies if the disclosure or sharing is necessary not only for the purposes of any provision of the bill, but for the purposes of any other provision in any other act that relates to antisocial behaviour. That will support, for example, the exchange of information about eviction on the ground of antisocial behaviour, as is provided for in schedule 2 to the Housing (Scotland) Act 2001. Amendment 376 is a consequential amendment to amendment 377.

Amendment 106 will add the principal reporter to the list of relevant authorities that may receive information under the protection of subsection (1). That makes sense, given the important role of the reporter in that area. Amendment 378 does the same thing for

"an authority administering housing benefit".

That puts beyond doubt that a local authority, when acting as an agent of the Department for Work and Pensions—which it does for housing benefit purposes—will be a relevant authority for the purposes of section 106.

Amendment 104 makes it clear that, where a person discloses information that is confidential to a relevant authority under the section, and where they inform the authority of the breach of that confidentiality on disclosing the information, the authority must respect that confidentiality. That makes sense because it will allow someone who discloses confidential information to be certain that the information will not be passed on further without them knowing about it. Amendments 103 and 105 are consequential to amendment 104.

Amendment 102 makes it clear that the protection of section 106 will apply to someone who has shared information with a relevant authority for the purposes of tackling antisocial behaviour, irrespective of whether the authority has requested that information or whether the person disclosing the information is volunteering it.

Amendment 107 brings the guidance-making power in section 106 into line with the other guidance-making powers in the bill. Scottish ministers will have the power to issue guidance and the amendment clarifies that, if guidance is issued, those who give or receive information for the purposes of the act shall have regard to it.

Amendment 127 is a technical amendment. Given the other changes that are being made to section 106, the provisions in subsection (4) are no longer necessary.

I move amendment 376.

Amendment 376 agreed to.

Amendments 102, 103, 377, 104 to 106, 378, 107 and 127 moved—[Mrs Mary Mulligan]—and agreed to.

Section 106, as amended, agreed to.

Section 107 agreed to.

Section 108—Orders and regulations

Amendments 260 and 108 moved—[Mrs Mary Mulligan]—and agreed to.

Section 108, as amended, agreed to.

Section 109 agreed to.

Section 110—Interpretation: "antisocial behaviour" and other expressions

The Convener: Amendment 109, in the name of the minister, is in a group on its own.

15:00

Mrs Mulligan: Amendment 109 is a minor amendment to make it clear that the general interpretation of "antisocial behaviour" that is provided at section 110 does not relate to parts 7 and 8 of the bill. The interpretation of "antisocial behaviour" in those parts is different, to ensure consistency with other housing legislation. That was considered earlier in stage 2.

I move amendment 109.

Amendment 109 agreed to.

Amendments 141 to 143 not moved.

Section 110, as amended, agreed to.

Section 111 agreed to.

Schedule 4

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendment 433 moved—[Mrs Mary Mulligan]—and agreed to.

The Convener: Amendment 434, in the name of the minister, is grouped with amendments 436 and 437.

Mrs Mulligan: Amendment 434 provides ministers with an express power to vary or revoke the directions that they give to local authorities on the content of community justice schemes. Schedule 4 makes provision for ministers to make such directions, but circumstances can change over time and amendment 434 is designed to make it clear that such directions can be varied or revoked.

Amendments 436 and 437 are technical amendments that simply tidy up the definition of "relevant authority" in the interpretation section of the Children (Scotland) Act 1995.

I move amendment 434.

Amendment 434 agreed to.

The Convener: Amendment 435, in the name of the minister, is grouped with amendments 438, 438A and 438B.

Mrs Mulligan: The committee will recall that we debated some of the issues to do with the link between antisocial behaviour orders and security of tenure when we discussed part 2. The committee agreed to the amendment in the name of Elaine Smith to prevent landlords from having the power to demote a tenancy to a short Scottish secure tenancy in cases in which a child who resides with the tenant is subject to an ASBO. Amendment 438 does not interfere with the effect of the amendment in the name of Elaine Smith.

Amendments 435 and 438 make consequential amendments to housing legislation as a result of the repeal of section 19 of the Crime and Disorder Act 1998, which introduced ASBOs. The Housing (Scotland) Act 2001 established a link between ASBOs and the short Scottish secure tenancy. It is our intention to maintain that link in relation to ASBOs that are made under section 4 of the bill and ASBOs that are made on conviction, under section 88 of the bill, which amends the Criminal Procedure (Scotland) Act 1995. Amendment 438 fulfils that intention without having an impact on the introduction of section 12A as a result of the amendment in the name of Elaine Smith, which limited the link to ASBO cases that involve over-16s.

Before I consider the amendments in more detail, I thank Stewart Stevenson for agreeing to substitute for amendment 406 amendments 438A and 438B. Those amendments will have the same effect as amendment 406 would have had, but by lodging them he has enabled the committee to debate and vote on all the options separately.

It might help if I explain the effect of the amendments, which are fairly technical. Section 35 of the Housing (Scotland) Act 2001 allows a public sector landlord—the local authority or a registered social landlord—to serve a notice on a tenant that converts the tenancy to a SSST

"where the tenant … or a person residing or lodging with … the tenant is subject to an anti-social behaviour order under section 19 of the Crime and Disorder Act 1998".

The repeal of section 19 of the 1998 act will negate the provision in section 35 of the 2001 act. Accordingly, we are making provision for the reference to section 19 of the 1998 act to be substituted with references to section 4 of the bill and section 234AA of the 1995 act. Similar reference is also being made in schedule 6 to the 2001 act, which lists the grounds for granting an SSST. The second ground is that the prospective tenant—or joint tenant—or a person who will reside with the prospective tenant is subject to an ASBO.

Section 5(2) of the Homelessness etc (Scotland) Act 2003 refers to section 19 ASBOs in the new section (2C) that is to be inserted into the Housing (Scotland) Act 1987. I can see that I am losing members; I ask them please to bear with me. The purpose of that reference is to allow intentionally homeless persons with priority need to be given bottom-line accommodation if certain conditions are met. One of those conditions is that the homeless person, or someone who it is proposed will reside with that homeless person, is subject to a section 19 ASBO. In amendment 435, we are again just making provision for the reference to section 19 ASBOs to be substituted with references to section 4 of the bill and section 234AA of the 1995 act.

No decision has been made about the proposed date on which section 5(2) of the Homelessness

etc (Scotland) Act 2003 will come into force. In the circumstances, we are amending the Housing (Scotland) Act 1987 rather than the 2003 act.

Amendments 438A and 438B would limit the links to housing legislation to ASBOs that are made in the civil court. I appreciate where Stewart Stevenson is coming from with those amendments and have some sympathy with his argument. ASBOs that are made on conviction in the criminal court are less clearly linked to housing situations, largely because they are made at the point of sentencing rather than on application by the local authority or a registered social landlord.

I appreciate that there are concerns that people in the social rented sector will be treated unfairly, as the additional element of the link to tenure will not be available to owner-occupiers or to people in the private rented sector. However, it is important to remember that ASBOs are available to deal with antisocial behaviour wherever it occurs. Although—to date—most ASBOs have been used to deal with housing-related problems, the scope of their use has never been limited to neighbours from hell. I consider that there should be consistency in the operation of ASBOs. If an individual who is behaving in a persistently antisocial manner against their neighbour is found guilty of committing a breach of the peace—for shouting abuse, for example—before an ASBO action is taken, the court may grant an ASBO on conviction. In such a case, it would be perfectly reasonable for the tenancy to be converted to an SSST.

We will make it clear in guidance that, in situations in which the behaviour that brought about the ASBO is completely unrelated to tenancy, we would not expect the landlord to exercise their power to convert the tenancy to an SSST. Landlords are required to have regard to the statutory guidance. Landlords have had the power to convert the tenancy to a short SST in situations in which an ASBO has been made since the 2001 act. That power is not a duty. Landlords who take up that option have a number of responsibilities to fulfil and they must provide support to enable the tenant to convert back to a full SST after 12 months. The committee will be aware that a tenant has a right of appeal to the courts if they do not agree with the conversion of their tenancy to an SSST.

Landlords already have the power to serve a notice for possession when a person residing or lodging in the house with a tenant, or a person visiting the house, has behaved in an antisocial manner towards people in the locality. In such cases, conversion to an SSST, with support, can be used by landlords as an alternative to eviction. Amendments 438A and 438B could have the opposite effect from the one that is intended, because the option of an SSST, with related support, would not be available. Landlords could use the evidence of an ASBO on conviction to proceed straight to eviction, without the buffer that is provided by an SSST, which is likely to prevent the need for eviction.

Having said that, I understand the point that the effect of linking antisocial behaviour orders to tenancy may be seen to be unfair on tenants of public sector landlords. It is true that such a tool will not be available against private sector tenants or home owners, but it is only one of many tools for tackling antisocial behaviour. I believe that we should equip those who must deal with antisocial behaviour with every reasonable means of doing so. One could also argue that the reverse is true. It might be argued that it is unfair that private sector tenants and owner-occupiers will not be given the support to improve behaviour that public landlords will be required to put in place for those whose tenancy is converted to an SSST.

In addition, the SSST is an alternative to eviction. Ultimately, the intention behind SSSTs is not to secure the eviction of families from their homes but to support tenants in improving their behaviour and the quality of their tenancy.

In view of those points, I hope that Stewart Stevenson will not move amendments 438A and 438B and that the committee will support amendments 435 and 438.

I move amendment 435.

Stewart Stevenson: I thank the minister for that comprehensive delineation of the case for my amendments. Replacing amendment 406 with amendments 438A and 438B was largely done by telephone and mostly while I was driving, so if she thought that the issue was complicated, she will understand the difficulties that I experienced. However, I was able to catch up with suggested wording and reasoning at a later date, when I was able to reach some conclusions.

I will not add a great deal to the minister's comments, but the general point that I want to make is that if we agree to amendment 438 without amendments 438A and 438B, the tenancy of person A will be affected by the actions of person B. A matter of some principle is at stake because, as the minister mentioned, amendment 438 will discriminate against certain householders in our communities. I suspect that such discrimination might be open to challenge in a variety of ways but, as I said this morning, I am not a lawyer.

The minister somewhat gave the game away when she said that it does not matter that private sector tenants and owner-occupiers will not be affected by the provision because it will be only one of many tools. However, if it does not matter

that the provision will not apply to those persons, it is equally not required for public sector tenants. It would be entirely fair and proper to remove that discrimination.

The minister mentioned that an ASBO can be issued after a criminal conviction. However, if the ASBO is issued at that stage rather than as a result of an application by a local authority or RSL, the sheriff who issues the ASBO will not necessarily consider its effect on the tenancy of another person. Presumably, it would be open to the local authority or the RSL to consider such matters.

The minister also mentioned that there will be a right of appeal. That is fair enough, but the person on whom the need to appeal would fall would be the tenant, not the person who was subject to the ASBO. For example—although this is perhaps unlikely—if the person who was subject to the ASBO qualified for legal aid but the tenant did not, the tenant might have to bear considerable costs in exercising that right of appeal. It is complicated, and I suspect that all of us will need to read the *Official Report* of the meeting before being finally, absolutely certain—perhaps—that we fully understand the various ways in which the proposals might operate but, for the moment, the safe way forward is to sustain amendments 438A and 438B.

15:15

Donald Gorrie: This is an extremely complex part of the bill. I suggest that my proposal under amendment 403, which we debated last week and on which we will vote shortly, to have more consultation on the registration of private landlords, could perhaps be extended to cover discussions with housing associations and other people concerned about the technical housing issues that are before us now. That could offer a way forward. I do not think that any of us would be able to pass a higher exam on the ramifications of amendments 435 and 438—I certainly would not be able to.

As far as I understand it, I would go with Stewart Stevenson on the fundamental point. Like other members on previous days' consideration, I have been concerned that misbehaviour on the part of person A may have an adverse effect on innocent person B's tenancy. I hope that we can ensure that such matters are consulted on more fully by supporting amendment 403.

Elaine Smith: When I looked at the amendments in this group, I wondered whether they would affect my amendment 168, which the committee has already agreed to, so I am pleased that the minister has said that they will not do so.

I was of the opinion that the amendments in this group were technical amendments. Given everything in the bill that has been agreed to so far, I understood that they would have to be passed to amend references in existing legislation. Given the discussion that we have had, and particularly given what the minister has said, I am not quite so sure any more. The amendments are not quite as simple as I thought they were. Tenants will already have tenancy agreements in the public rented sector. If they break those agreements, landlords will presumably be able to take action under their terms.

As I outlined when we were discussing proposals on ASBOs for children and links with tenancies, I have problems with the idea of people's tenancies being affected by the behaviour of others. Originally, ASBOs were meant to deal with the particular person and their behaviour. I am concerned about the Executive amendments and I would like the minister to clarify what the consequences would be if the committee did not agree to those amendments, given that parts of them are technical?

Cathie Craigie: There has been some misinformation and misunderstanding in the debate on ASBOs and the ability of local authorities and RSLs to convert to the short Scottish secure tenancy. We need to get some sort of explanation of the position. As a result of amendment 168, which the committee passed a few weeks ago, tenants who are residing with young people below the age of 16 who have had ASBOs issued against them are now in a worse position than they were under the Housing (Scotland) Act 2001. Under the 2001 act, we introduced the short Scottish secure tenancy to allow people a breathing space in which to get help and support from the local authority that was considering evicting them.

A number of short Scottish secure tenancies have been taken out over the past year in my local authority area, and there has not been one eviction as a result. I have done some checking up with Glasgow, Edinburgh and Dundee and found that about 50 SSSTs have been taken out and not one has resulted in eviction. However, those SSSTs have resulted in packages of support being offered to the tenants and families who have a problem. As a result of amendment 168, which the committee passed a few weeks ago, local authorities or RSLs will be able to move straight to eviction and the tenants and their families will have less power. Instead of there being a year in which local authorities or RSLs can work intensively with the tenants and their families, those bodies can move straight to eviction. The protection will be denied. I hope that the minister will address that issue because it is a serious concern.

There are differences between the rented sector and the owner-occupied sector. Lenders do not

have powers under the terms of ASBOs, but they have powers. Lenders should deal with the antisocial behaviour of owner-occupiers who, for example, use their back garden as a tip. I have mentioned that before because I have an example of it in my constituency. Lenders have powers to repossess property and they should take responsibility. I do not want anybody to lose their house, whether through eviction or repossession. I introduced legislation to try to make the situation more secure. However, I feel that we need the SSSTs as part of the bill. We must amend at a later stage the decision that the committee took. We also need to agree to amendments 435 and 438, in the name of the minister, to ensure that everything works together and benefits and supports people who have difficulties.

Mrs Mulligan: Elaine Smith is absolutely right that amendments 435 and 438 are intended to carry on what already happens under the 2001 act. If we do not make the amendments today, we will be left with links to nothing, which would mean that the only alternative for local authorities and registered social landlords could be to move to eviction, as Cathie Craigie has outlined. The issue is important.

As I said, the measures are technical because they will ensure that links between pieces of legislation exist. However, the aim of the bill is to address antisocial behaviour and the amendments provide an opportunity to address the behaviour of a number of people. It would be remiss of us to miss the opportunity to offer the kind of support to which Cathie Craigie referred, which is about telling people that their behaviour is unacceptable and putting in place a package of measures to seek to change that behaviour. That work would be in the interests of the person, but it would also have the wider impact of improving the quality of life of those who have been affected by the person's antisocial behaviour.

Elaine Smith: I want to clarify a point that I have raised several times but on which I have not yet received an answer. Why can packages of support not be provided anyway when notices of repossession are given, or for people who live in the private rented sector? If local authorities put the packages in place, surely everyone should be entitled to assistance.

Mrs Mulligan: In this case, local authorities put the package of measures in place and there is nothing to prevent authorities from doing so for others. The Housing (Scotland) Act 2001 allowed tenancies to be demoted to short Scottish secure tenancies so that packages of measures could be introduced in order to support people and work through the difficulties. That was seen as preferable to what had happened in the past, whereby people automatically moved towards eviction action and no measures were given to help those people to change their behaviours or to make life better for the people who lived around them. Cathie Craigie was on the Social Justice Committee when it considered the Housing (Scotland) Bill—I do not know whether other members were—and that provision was discussed and seen as a preferable move for helping people to retain their tenancies. Helping people to retain their tenancies has to be our ultimate aim, but we cannot expect people to be able to do that if the outcome of their behaviour is detrimental to the people who live around them. That argument has been had and the solution has been agreed to. We are seeking merely to transfer the connections between the various pieces of legislation to ensure that we are consistent and deal with antisocial behaviour in a consistent way so that we change that behaviour without resorting to eviction. I believe that that is helpful.

I recognise the points that Stewart Stevenson made about certain circumstances perhaps causing further problems, but I do not think that that is the situation at the moment. As Stewart said, the Executive needs to think about that in a bit more detail, but I am not convinced that the committee should support his amendments.

Amendment 435 agreed to.

Amendments 436 and 437 moved—[Mrs Mary Mulligan]—and agreed to.

Amendment 438 moved—[Mrs Mary Mulligan].

Amendment 438A moved—[Stewart Stevenson].

The Convener: The question is, that amendment 438A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

ABSTENTIONS

Scanlon, Mary (Highlands and Islands) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 2.

Amendment 438A agreed to.

Amendment 438B moved—[Stewart Stevenson].

The Convener: The question is, that amendment 438B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

ABSTENTIONS

Scanlon, Mary (Highlands and Islands) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 2.

Amendment 438B agreed to.

Amendment 438, as amended, agreed to.

Schedule 4, as amended, agreed to.

Schedule 5

REPEALS

Amendment 111 moved—[Mrs Mary Mulligan]—and agreed to.

Schedule 5, as amended, agreed to.

Section 112—Short title and commencement

Amendment 403 moved—[Donald Gorrie].

The Convener: The question is, that amendment 403 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

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

ABSTENTIONS

Scanlon, Mary (Highlands and Islands) (Con)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1. There being a tie, I use my casting vote against the amendment.

Amendment 403 disagreed to.

The Convener: Amendment 110, in the name of the minister, is grouped on its own.

Mrs Mulligan: Amendment 110 is a minor drafting amendment to the commencement provision for the bill at section 112. The amendment simplifies the provision and removes unnecessary text. Specifically, amendment 110 removes reference to the means by which any order commencing the act is made, for example, by statutory instrument, and leaves out the provision making explicit that commencement may be appointed on different days for different purposes. Those references are not necessary as any commencement order will be subject to the general provision relating to orders and regulations at section 108, which already covers those points.

I move amendment 110.

Donald Gorrie: I take the opportunity to make a totally irrelevant speech and congratulate the minister and the convener. The stage 2 procedure has worked well, whatever the outcomes have been. I also thank the support staff, although I am sure that the convener will do that anyway. The whole procedure has gone off very well and reflects credit on those in charge of it.

15:30

The Convener: Donald Gorrie brings in irrelevance at the very end as if it were a novelty. I take it that the minister does not want to respond to that.

Mrs Mulligan: I could indeed reply to that, but I will not delay you further.

Amendment 110 agreed to.

Section 112, as amended, agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the clerks, the official report, security staff and all those who have been involved in managing the process, which has been straightforward, although it has felt like a marathon at times. I record my thanks to those MSPs who visited the committee and added to our discussion without annoying us too much. They added to rather than detracted from the debate. I also thank committee members for co-operating fully with what can be a difficult process in certain circumstances. I appreciate that an awful lot of work never gets seen, such as managing the process and getting the papers to us, and we very much appreciate that.

Stewart Stevenson: I echo the convener's remarks and associate myself with them. At this stage, however, I post my concern about the very short gap between the completion of stage 2 and the proposed date for the start of stage 3, which I understand to be 17 June. As it is necessary to have the *Official Report* before we start to consider what needs to be done at stage 3, as well

as appropriate deadlines, we are left with a week or 10 days in real life to consider the amendments that we might wish to lodge at stage 3.

I have yet to consult my business manager, but I intend to express to him my concern that we do not have just a little more time to deal with the legislation. I understand why the Executive wishes to complete consideration of the bill before the summer recess, and I have no objection to that, but I think that 17 June is inappropriately soon to schedule the beginning of stage 3. A substantial number of amendments have been made to the bill at stage 2 and there needs to be a period of consideration of their effects. Through the convener, I urge the Executive to consider whether a more appropriate timescale might be proposed by its business managers.

The Convener: I do not propose to have any further discussion about that because it is not a matter for the Communities Committee; it will be for members of the Scottish Parliament, their business managers and the Parliamentary Bureau to discuss timetabling. I am sure that there will be avenues through which you can raise your points.

However, I understand that the amended bill will be published tomorrow and stage 3 amendments can be lodged from that point. The matter is not for discussion in the committee now because we have done our bit and discharged our responsibilities fully. As we move on to stage 3, we will act individually and collectively. With that, I thank members for their attendance and I close the meeting.

Meeting closed at 15:34.

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