JUSTICE 1 COMMITTEE

Tuesday 14 January 2003
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE
1st Meeting 2003, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Maureen Macmillan (Highlands and Islands) (Lab)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)
*Lord James Douglas-Hamilton (Lothians) (Con)
*Donald Gorrie (Central Scotland) (LD)
*Paul Martin (Glasgow Springburn) (Lab)
*Michael Matheson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)
Kate Maclean (Dundee West) (Lab)
Mrs Margaret Smith (Edinburgh West) (LD)
Kay Ullrich (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Kenneth Macintosh (Eastwood) (Lab)
Mr Jim Wallace (Deputy First Minister and Minister for Justice)

WITNESSES

Professor Gill McIvor (University of Stirling)
Fergus McNeill (University of Glasgow)
Bill Whyte (University of Edinburgh)

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 3

Scottish Parliament

Justice 1 Committee

Tuesday 14 January 2003

(*Afternoon*)

[THE CONVENER *opened the meeting at 13:32*]

Items in Private

The Convener (Christine Grahame): I convene the first meeting in 2003 of the Justice 1 Committee. I ask members to ensure that their mobile phones and pagers are switched off, and inform them that no apologies have been received.

I propose that the committee consider items 2, 7 and 8 in private. Item 2 is lines of questioning for witnesses for the committee's inquiry into alternatives to custody. It is usual to take such an item in private to enable the committee to consider a detailed approach to questioning. The committee should also consider whether to discuss questions for witnesses for its inquiry in private at future meetings. Are we agreed?

Members *indicated agreement*.

The Convener: Item 7 is consideration of the committee's draft report on the Prostitution Tolerance Zones (Scotland) Bill. Again, taking the item in private will enable the committee to consider its detailed approach to the report. The report will be published in its final version as part of the Local Government Committee's stage 1 report on the bill. Is it agreed to take that item in private?

Members *indicated agreement*.

The Convener: Item 8 is consideration of witness expenses in relation to the committee's inquiry into alternatives to custody. That item should be discussed in private because it concerns expenses relating to individual witnesses, and it would not be appropriate to discuss such matters in public. Is it agreed to take that item in private?

Members *indicated agreement*.

13:34

Meeting continued in private.

13:40

Meeting continued in public.

Convener's Report

The Convener: The one proposal that I have to report is that, if the committee gave leave, it would be appropriate for us to write to the Minister for Justice about the recent disturbances in HM Prison Shotts, to ask him to report to us after his meeting with the chief executive of the Scottish Prison Service pro tem and to keep us informed, rather than leaving us to find out what is happening through the usual channels. Is the committee content with that?

Members *indicated agreement*.

The Convener: Given our interest in prisons, that matter is important.

Alternatives to Custody Inquiry

The Convener: We continue our alternatives to custody inquiry. I welcome Professor Gill McIvor, who is from the social work research centre at the University of Stirling; Fergus McNeill, who is a lecturer in social work at the University of Glasgow; and Bill Whyte, who is the director of the criminal justice social work development centre for Scotland at the University of Edinburgh. I understand that Professor McIvor will be the speaker.

Professor Gill McIvor (University of Stirling): I will informally chair the panel.

The Convener: It was tactless of me to call you the speaker. The phrase "informally chair" is more polite.

I refer committee members to papers J1/03/1/2, J1/03/1/3 and J1/03/1/4, which are helpful written submissions from the witnesses, for which I thank them.

I will launch my questions to the panel. One of the committee's concerns is the lack of evaluation of alternatives to custody nationally in Scotland. What, if any, evaluation of the effectiveness of alternatives to custody in Scotland has been undertaken?

Professor McIvor: I said in my submission that one difficulty in a small country is often that relatively few offenders are made subject to some types of disposal. That has implications for gathering outcome evidence in the longer term. However, in the past 12 to 15 years, most of the community-based disposals in Scotland have been subject to some evaluation.

It is fair to say that, whether we have evaluated sentences and disposals such as probation or community service, or programmes such as the Airborne Initiative and the Freagarrach project, the evidence has been positive, by and large. That is also backed up by broader analyses of reconviction rates among offenders who are given different non-custodial sentences and offenders who are given sentences of imprisonment.

We have data on the outcomes of community service orders. We had a large programme of research that considered them from several perspectives. Research has been conducted on probation, community-based throughcare, supervised attendance orders and restriction of liberty orders. More recently published research focused on drug treatment and testing orders and the pilot drugs courts in Glasgow.

The Convener: Has the research been collated in such a way that the committee could get its hands on it?

Professor McIvor: Some of those data have been collated in the Scottish Consortium on Crime and Criminal Justice's report. However, a single volume that pulls the material together does not exist. Most of the research was commissioned by the Executive and has been published as research reports in the Executive's social research series.

The Convener: Is that in the public domain?

Professor McIvor: Yes.

The Convener: Are the consortium's findings also in the public domain?

Professor McIvor: Its report is available on its website. The report is also published in hard copy, as are the Executive research reports.

13:45

Bill Whyte (University of Edinburgh): All the summaries are available in the central research unit series; the full documents are fairly lengthy. The challenge is, as Gill McIvor said, what is meant by evaluation. Everything has been subject to some kind of evaluation, but inevitably there is a debate about how well something works in comparison with something else. We have not had a tradition in Scotland of setting up very good control groups or match groups to compare one initiative with another. Such data remain somewhat limited.

In the United States over the years, a percentage of all initiatives would be evaluated through the RAND Corporation—they would go to an evaluation unit. However, in Scotland, we do not set up initiatives and say that 15 per cent will go to on-going evaluation. We do not seem to have that kind of formula. The Executive central research unit commissions individual pieces of research; I presume that that is done against a priority list, but it is not done as a routine activity in initiatives. That is a pity.

The Convener: Are you saying that evaluation should be a routine activity?

Bill Whyte: Yes.

The Convener: You have said that it depends what we mean by evaluation, but it also depends what we mean by effectiveness. Do we measure that in the short or long term? Is a standard test not applied for different alternatives that are being used?

Professor McIvor: There will usually be a focus on reconviction rates as the ultimate aim is to reduce reoffending. What the research examines additionally will depend on what the initiative is intended to achieve. For example, the research may focus on changes in the offender's attitudes or circumstances. In some cases the outcomes that are examined will be general—such as

recidivism—but in other cases they will be specific to the initiative and its objectives.

The Convener: Can you give me an example of two distinct programmes? It would be difficult to say that you compare apples with apples.

Professor McIvor: Community service and probation might be a good example. The explicit objective of the supervision in probation would be to bring about changes in the offender's attitude and behaviour and probably in their social circumstances so that offending would become less likely. Community service, on the other hand, has been set up not so explicitly as a rehabilitative type of disposal; it has been set up largely as a fine on the offender's time. We would not necessarily expect to find deliberate changes in the offender's behaviour to be the focus of the supervision of the offender when they are performing community service. We may find that there are additional benefits, but the purpose is different.

Maureen Macmillan (Highlands and Islands) (Lab): You have said that to make a proper comparison it is necessary to set up a control group. How easy would that be to do? Would it be affected by the sheriff's discretion and the kind of sentences that he gives? How can you focus on a certain court and say that you will consider 15 cases of one type and 15 cases with a similar background but a different sentence? I would not have thought that it was possible to do that.

Professor McIvor: Difficult ethical questions arise when we talk about random allocations to different types of justice. That is a huge barrier to undertaking that type of controlled experiment. People would rightly be concerned if they felt that justice was being administered randomly. We can get round the issue in other ways. For example, if there is an excess demand for places over the supply of places on a new initiative, we can compare the outcomes for people who were not able to take part in the initiative because there were no places available but who otherwise would have been appropriate for that type of disposal.

Bill Whyte: A number of courts do not have access to all the disposals that are available, but most disposals have been rolled out over time, so it would be possible for some comparisons to be made between jurisdictions and between matching offender samples. I do not think that random allocation would be ethically acceptable.

Fergus McNeill (University of Glasgow): The other possibility is to compare predicted rates of reconviction with actual rates of reconviction. That would be done by determining the expected rate of reconviction for a sample of a particular type of offender with a particular type of history and of a particular age, but that would rely on having information on how the wider population of offenders progress through the justice system. We are still some way behind England and Wales in that respect.

Professor McIvor: The situation is beginning to improve. We approached the justice department's statistics unit with a sample of cases of people who attended the Airborne Initiative, and we asked the unit to generate a similar sample of cases where alternative disposals were received, using a number of different variables to match the two samples. By using that approach, as Fergus McNeill mentioned, we were able to compare the reconviction rates of people who went to the Airborne Initiative with those of people who received prison sentences or other community disposals.

The Convener: If it is not part of an on-going academic paper, it would be useful if that information could be provided to the committee in written form.

Bill Whyte said that certain disposals are not available to certain courts. Do you know which courts?

Bill Whyte: Restriction of liberty orders are being piloted. I do not have—

The Convener: I do not expect you to have the information to hand. To some extent, we are prodding around and trying to find out which data are available. Perhaps Audit Scotland will have some for us. If you have information from your own research, it would be helpful to the committee if you could provide it.

Bill Whyte: It strikes me that there are two or three points. The first concerns the data that we already have. I talked about routine data. One of the issues that concern me is that academic institutions are often commissioned to do projects, but when the data stream finishes, whether that is 12 months on or 24 months on, nobody in the criminal justice service carries on—I am not trying to do us in the academic world out of a job. A practical illustration is that it is difficult for services to get routine access to Scottish Criminal Record Office data. Indeed, we know from some of the research that we have done that data are not even configured in a way that would allow agencies to follow up their clients and determine how they are doing over, say, two years or five years. Other jurisdictions have the required data—that is certainly the case in England, Australia and parts of New Zealand. It is a huge challenge. I gather that a project is under way in Scotland to get the data systems together, but that is a real weakness in our system.

The Convener: That is a good issue to raise with the Minister for Justice when he comes before us.

Lord James Douglas-Hamilton (Lothians) (Con): In the written evidence that the committee received from Professor McIvor, it was suggested:

"The attitudes of sentencers towards community-based alternatives to imprisonment are likely to be the single most important factor influencing their use."

Do you believe that a comprehensive evaluation process would go some way to persuading sentencers of the efficacy of alternatives to custody? You mentioned that research projects were insufficient. Would you, for example, recommend that the Scottish Administration—which already commissions a large number of research projects across the areas for which it is responsible—should commission projects that are not university based and time limited, but which are more comprehensive? Would comprehensive evaluation help to determine more objective outcomes for the dilemma that faces us?

Professor McIvor: There are two types of evaluative information that would be of value. The first is the independent evaluation of new initiatives, which aims to establish whether they are doing what they purport to do. As Bill Whyte suggested, the other type is the on-going collection of data, by which services can routinely establish how well they are performing. They can use that information as an educative tool for the public and for sentencers. To some extent, sentencers are in the dark about the effectiveness of community-based disposals. Sentencers might be more positively disposed towards such disposals if they had available, in an accessible format, some of the data that academics know are available.

Fergus McNeill: To put the matter in an historical context, since the advent of national objectives and standards, services have primarily been required to provide monitoring data that relate to meeting those standards, which, in effect, are about efficiency. The standards relate to whether a service sees somebody enough times within the prescribed time scale, whether work is done on time and whether reports are submitted timeously. To date, the focus on whether the objectives on reducing reconviction or the use of custody have been met has been less comprehensive than the focus on monitoring and evaluating services.

Lord James Douglas-Hamilton: Professor McIvor argues at the end of her report:

"The use of more structured, 'evidence-based' approaches to community supervision is … increasing and the impetus generated by the Getting Best Results initiative … should have a positive impact upon the quality, range and effectiveness of programmes".

Is it your evidence that increased objective research and assessment would help in dealing with the subject?

Professor McIvor: I think that it would. We can also draw on evidence from other jurisdictions for areas on which no Scottish data are available. Services will become more effective if they are developed under the rubric of getting best results. We can begin to draw on the large amount of research evidence from other jurisdictions to show us which approaches are more likely to be effective. We must implement ideas from other jurisdictions on the ground in Scotland and ensure that they are evaluated and monitored properly to find out whether they are fit for purpose in the Scottish context.

Lord James Douglas-Hamilton: Many offenders who are eligible to receive a non-custodial sentence might have a large number of problems that contribute to their offending behaviour, such as drug misuse, psychological distress or homelessness. How effective are the available alternatives to custody in dealing with offenders who have multiple problems?

Professor McIvor: An increasingly wide range of community-based disposals that can be tailored to particular offenders' needs is becoming available. For example, drug treatment and testing orders provide a real alternative for dealing in the community with offenders whose offending is linked primarily to their use of drugs. Another example is probation orders with drug treatment requirements. Probation orders are generally used with offenders who have a number of personal and social problems, whereas drug treatment and testing orders are more directly focused on drug use and offending. Probation provides a vehicle to enable offenders to access a range of services in the community, such as housing or employment services.

The Convener: Can I glean from your reply that, as a rough-and-ready guide, probation is probably the best option when an offender has multiple problems?

Bill Whyte: The issue of providing a range of services is one reason why the structure in Scotland is designed in the way that it is. Local authority social workers are involved because, as well as focusing directly on the offence and the victim, they can link up and broker services from a wide range of services. That is one advantage of the structure in Scotland.

The Convener: The recent Audit Scotland report entitled "Dealing with offending by young people" said that there is anecdotal evidence that some local authorities try to avoid putting people on probation because the costs fall to the local authority. What is your view on that?

Bill Whyte: There are disadvantages. If you are talking about youth justice, it might not necessarily be probation. You are referring to the example of

secure accommodation, for which the local authority has to pay. If those young people were drawn into the criminal system, the state would have to pay for it. Criminalisation therefore becomes an incentive for the local authority.

The Convener: Do you believe that there is some merit in that proposal?

Bill Whyte: With the kind of expenditure that secure accommodation demands, the current funding arrangements raise practical problems.

14:00

Maureen Macmillan: I want to go back a question or two and talk about evaluation. You seem to think that until there is proper evaluation, we will not be able to persuade sentencers to use alternative disposals. It is a chicken-and-egg situation. If we are not going to get the sheriffs to use alternative disposals, how are we going to get enough disposals to evaluate? Could we consider the information that is given to sentencers rather than waiting for evaluation?

Some of us visited East Kilbride to see how restriction of liberty orders worked. We heard that some sheriffdoms were using those orders quite freely and others were hardly using them at all. There did not seem to be any logical explanation for that. It might have been because the people who were delivering the restriction of liberty orders had not gone out to sell the idea to the sheriffs in a particular sheriffdom. Do you have any comments on that?

Professor McIvor: That is probably absolutely right. There is a need for evaluation but the pilot schemes for restriction of liberty orders have already been evaluated so data exist that can be used to persuade sentencers that restriction of liberty orders are a useful addition to the range of community-based disposals.

It might also be the case that, in many parts of the country, sentencers are not aware of the full range of options and initiatives that are available locally. They would probably benefit from regular updates of information from local authority social work departments, for example, to remind them of the range of provision that is available. Arrangements are in place for regular liaisons between the judiciary and the local authority social work departments. Something more practical could be used, such as information leaflets that summarise the key points or purposes of disposals, what they can achieve and what is available in the local area.

Bill Whyte: I agree that that is important. However, there is a strand in the argument that assumes that when community disposals are good enough, judges will use them and custody will fall. We should consider examples from other jurisdictions such as Finland. However, I am afraid that the Executive has decided that custody will fall and community disposals will then get used. That is a challenge for the committee.

I have given you quite a bit of data about Finland. Other mechanisms are used there that remind us that there are some people whom policy might determine should not be dealt with by custody unless they present a severe risk to people in the community. That has not been our practice but it is a clear challenge for the committee.

Fergus McNeill: We have evidence that the relative share of all sentences for community disposals between 1990 and 2000 doubled. The same happened to rates of custody.

The Convener: Your written submission says that.

Fergus McNeill: We are stuck with a conundrum that says that we can work tirelessly to make such disposals more effective, to publicise them, to enhance their credibility and to resource them, but sentencers need to be permitted, encouraged or required to think more carefully about community disposals. I should not say "more carefully" because I think that sentencers are extremely diligent in attending to the range of options that they have. However, they need to go beyond the credibility of community penalties. There are bigger questions about the purpose of sentencing.

The assumption of our discussion thus far is that sentencers are forward-looking when they sentence and that they are thinking about what the impact will be on the person's subsequent behaviour. Of course, many of the issues that sentencers are thinking about—for example, how to balance the harm done with the punishment, or how to denounce or censure that harm—are retrospective. As a result, the issue does not just come down to the effectiveness or credibility of community penalties.

The committee might find it useful to know that we and colleagues at the University of Strathclyde are about to embark on a two-year study of the production of inquiry reports for sentencers and how they use those reports. From that research, we hope to learn more about the processes of communication and the ways in which sentencers use those reports to think through the issues that are raised.

The Convener: That is helpful. Instead of simply considering data, I wish we had time to ask you more questions about this very deep area. Maureen Macmillan will ask you about public perception, which is an issue that will also be in the minds of sentencers. After all, there are

several audiences out there for whom justice must be done and must be seen to be done.

Fergus McNeill: Absolutely.

Maureen Macmillan: We were interested in the suggestion in Bill Whyte's submission that

"The first objective of National Objectives and Standards for Criminal Justice Social Work in Scotland is the 'reduction of custody', as opposed to the reduction of offending."

How could we successfully transplant the objective of reducing offending into public consciousness, given that the rhetoric is at odds with what is actually happening?

Bill Whyte: The quotation from Lord Bingham that I have included in my submission captures fairly well part of the problem that judges face. People feel that if offenders are not taken into custody, they have not been dealt with properly. We have to challenge the major issue of the lack of confidence in community disposals and highlight the fact that those meaningful and purposeful disposals contain sanctions and punishment and have effective outcomes.

In my submission, I appear to reach towards the experiment that is being carried out in England. If we start to think that every offence that is reduced represents a serious reduction in harm to a potential victim—which echoes Fergus McNeill's points about prediction—we should conclude that the reduction of offending must be the service's primary objective and that any outcomes should be measured against that.

I refer quite deliberately to reduction. After all, we would love people who are placed on a community disposal to stop offending. It seems the obvious outcome for such a measure. However, for people who are under 21 and have a long history of difficulties and criminality, such reduction is probably the first realistic step towards stopping offending behaviour.

In our study of the children's hearings system, we followed young people into the criminal court and found that about 40 per cent of those who were reported—the most persistent offenders—were in custody by the time they were 18. We also discovered that, although the courts had indeed tried probation and community service, they had done so within a six to nine-month period.

The reality is that, given the difficulties that many of these young people face, it is unrealistic to think that they will stop their offending behaviour within six or nine months. However, they might stop within three years. As a result, we must be confident that in the first six months we see some progress towards reduction. Such a mindset has not been built into policy.

Maureen Macmillan: Are there any data to show that community disposals turn round young people's offending behaviour within three years?

Professor McIvor: We have data that show that reoffending rates are highest among that particular group of young people, with 18 to 19 as the peak age for offending among young people. Usually, the majority of young people have stopped offending by the time that they have reached their early to mid-20s.

The issue becomes one of damage limitation in that period. We recognise that imprisonment is a very damaging option for young people: it affects relationships, accommodation and employment prospects, for example, and other prisoners might have an impact upon the young person's subsequent behaviour. As a result, we must find alternative mechanisms to work with people in a way that does not cause the same type of damage.

Probation is a reasonably effective mechanism for suppressing offending behaviour over a reasonable period of time. Completion rates for probation orders are reasonably high, and the majority of people who are given probation complete their orders and do not reoffend while they are on an order. We are considering the choice between a six-month prison sentence, which we know will be damaging and will probably not have a positive impact on young people who are offending persistently, and something that might hold them for a period of time in the community. A range of services could then be produced that would promote inclusion rather than exacerbating the problems that cause the young people to offend.

Maureen Macmillan: If a community disposal does not work, there is a likelihood that the young person will be given a custodial sentence without another community disposal being tried.

Professor McIvor: There is nothing in the legislation to prevent the courts from imposing another community disposal, and the person's circumstances might have changed in such a way that it would be more appropriate to use a different disposal. There is nothing to prevent the court from imposing another probation order and perhaps adding conditions to it that would focus the order more directly on some of the issues that seem to cause the young person to continue to offend.

Bill Whyte: As I say in my paper, national objectives and standards make the distinction between standard probation, probation with conditions and intensive supervision. However, it would be very hard to discover in Scotland the difference between a standard order and an intensive order, and the graduated nature of orders. The research suggests that intensive probation should be reserved for those who are likely otherwise to be in custody and that it might take up as much as 70 per cent of their week,

whereas the standard order might involve seeing somebody for a few hours a week.

We do not have the graduation built into our practice, although it is in the national objectives and standards. I am not sure that it is built into sentencing practice. If a young person fails, as they are likely to do to some degree, the intensity of the supervision could be graduated through standard probation. There might be three or four steps before the sentencer would consider custody. However, I do not think that that happens in practice.

Fergus McNeill: When social workers write a social assessment report, they examine a set of antecedents and previous convictions along with the complaint. If they see from the list of previous disposals that probation and community service have already appeared, even if they have appeared only once, they know that they are on a sticky wicket and that they will have a difficult job persuading the sentencer that such disposals can work next time. They go back to ask the person about the circumstances of their supervision—why it was not more effective, what is different now and what they can do differently to assist the person. They then have to present the different nature of the new community disposal. The disposal might have the same label, but it has to have different content before the social worker can reasonably expect to persuade the sentencer.

Bill Whyte's point was absolutely right. There is no clarity in the differentiation of grades of probation from standard through to intensive supervision and that would be a useful way forward.

The Convener: I do not think that I have time to ask you about the interesting information about Finland in your paper. If I do not have time to ask about that today, I might ask you to write to us to explain why certain things are happening. I have noted the information that it would be useful for us to know about.

Michael Matheson (Central Scotland) (SNP): You have mentioned the patchy nature of the availability throughout the country of various alternatives to custody and the problems that can occur as a result of the attitude of the sentencers. Would you say that there are sheriffdoms in which there are an adequate number of alternatives to custody but that they are not being used effectively, or is there a general lack of alternatives to custody across the board?

14:15

Professor McIvor: It would be difficult to identify such areas, as the picture is much more complex that you suggest. One of the reasons that distribution is patchy, as Bill Whyte said, is that in recent years there has been a substantial increase in the number of community-based disposals that are available, such as restriction of liberty orders, drug treatment and testing orders and supervised attendance orders.

The Executive, rightly, has taken the approach of establishing in a limited number of pilot areas how the disposals work. Prior to reaching decisions about whether disposals should be rolled out nationally, lessons can be learned from the pilot areas. Once a disposal has been piloted, it takes time for a roll-out to happen and for provision to be made in other areas. In large part, that accounts for the patchy distribution in which some areas have a wider range of disposals available to them than others do.

Another issue is the range of programmes and initiatives that are provided by local authorities and voluntary organisations. I am thinking of probation orders, for example. It is undoubtedly the case that provision varies from area to area.

The member asked whether options are not being taken up in areas in which they are available. Again, that is undoubtedly the case. We know that sentencers in certain courts in certain sheriffdoms appear to be much more reluctant to make use of community-based disposals.

Michael Matheson: I asked whether there should be a baseline. Should all sheriffdoms have a certain range of alternatives to custody available to them? I understand and am aware of the fact that a patchy approach is taken because of the Executive's piloting process, which I believe to be appropriate. The issue that must be addressed, however, is how the programme should be rolled out. If I am a sheriff who travels to various parts of the country and I turn up in a sheriffdom in which alternatives to custody are not available, I am left without much option other than a custodial sentence.

I am trying to get to grips with the sort of model that we should be looking for. Is it a model in which A, B, C and D are available in every sheriffdom? In addition, if new ideas are to be brought on board, the Executive would pilot them and, if they were found to be effective, the Executive would set an agenda to roll them out across the rest of the sheriffdoms.

We have to be clearer about what we are looking for in each sheriffdom. Some projects will be particular to individual communities, for whatever reason; they will develop on their own and elements of good practice may be found in them. The question is whether we should be seeking national standards, in which a minimum number of alternatives to custody would be available, that would apply across all the sheriffdoms.

Bill Whyte: The simple answer is yes. That is why, as a nation, we went for national objectives and standards. It is clear that differentials exist between sheriffdoms in rural areas—for example, on the islands—but standards ensure that everything is exactly the same. The member used the word "minimum", and I agree that there should be a minimum standard.

We need to ask who will deliver the programmes. We have dedicated criminal justice social workers in all the groupings in Scotland, who are undoubtedly capable of providing well-structured personal change programmes. However, if those practitioners were to say that 60 per cent of their time is taken up in writing social inquiry reports for the courts, that would clearly challenge how much time should be taken on such reports.

One of the questions that I would like answered, because it is difficult to get a handle on the issue, is how much time those social workers spend on working directly with offenders and providing structured programmes. That needs to be measured against the time that social workers spend on providing information to the courts and all the other business that they have to undertake. The answer to that question may be a straightforward one of resources. I think, however, that we are talking about more than resources; we are talking about the utilisation of staff.

The quality of this staff group and flexibility within the system would allow it to move towards a baseline model. The policy context would need to change to allow the committee to suggest to sheriffs—I use the word "suggest" deliberately, as it is up to the committee to determine how to do that—whether such community disposals should be used.

The other solution would be to offer sheriffs a menu of options and ask them which one they fancy. However, much of the discussion today has been about how to persuade sheriffs to take up those options. To some extent, the available evidence on those disposals is strong enough to suggest that they should be used in place of the custody option.

The Convener: We would be on delicate ground if the committee tried to tell a sheriff that, but I see where you are going.

Michael Matheson: In your submission, you mention that

"combinations of approaches … show the most positive impact on reducing offending."

Do you have any examples of that occurring in Scotland?

Bill Whyte: Of the reduction in offending?

Michael Matheson: Of a combination of approaches.

Bill Whyte: A number of good projects have been evaluated, but I cannot tell you about them off the top of my head. We are beginning to see that the methodologies that we have discussed and which have been drawn from wider research in other jurisdictions are being translated meaningfully into practice in Scotland.

Fergus McNeill: It is worth emphasising that much of what works has emerged or has been popularised in the latter half of the 1990s and subsequently, whereas the services that have been mentioned began their redevelopment after the national standards at the start of the 1990s.

Practice is developing rapidly in response to what is emerging from research, but it takes time to learn. Bill Whyte mentioned aspirin. It took 12 years for evidence about the effectiveness of aspirin in treating heart conditions to have an impact on general medical practice. The first edited volume of information relating to what are commonly referred to as the "what works?" results was published in 1995, so we still have a few years to go before we can expect the general level of practice to rise to that which is best.

Social workers need to be liberated to use their skills by being properly resourced and being allowed to have enough contact time with the people with whom they are working. One of the consequences of our focus on monitoring and evaluation is that we might overburden those professionals with paperwork and create a situation in which they no longer do what they should be doing because they are so busy compiling evidence to show that what they are doing is working. New technology should make it easier for us to develop systems that collect the information routinely so that the workers are not having constantly to fill in forms.

Bill Whyte: I do not want to get too technical, but, on the example of aspirin, the committee might be interested to know that the effect size—the outcome measure—for aspirin is half as good as the average outcome for community disposals, yet people have followed that without any doubt. The evidence is much stronger than we think it is.

Maureen Macmillan: I did not quite follow that.

The Convener: I think that I did.

Michael Matheson: Is community disposal a pill?

Bill Whyte: There are no pills involved.

Professor McIvor: There are specific examples of what Bill Whyte has described as multimodal approaches. A multimodal approach simply involves focusing on a range of issues, rather than

just one issue, in relation to why young people offend and providing a range of inputs to try to change the circumstances or the behaviour.

The Freagarrach project, run by Barnardo's, is one example of that approach; that project was evaluated by Lancaster University. The Glasgow community justice partnership project, which is funded by the Treasury under its invest-to-save initiative, is operated by Glasgow City Council, Apex Scotland and NCH Scotland. We recently conducted an evaluation and found that the imprisonment rates for young people who went through the project were much lower than those for young people who received alternative disposals.

Another example, again funded by the invest-to-save initiative, is the Matrix project, which is run by Barnardo's. The project works with younger children who have not yet become involved in persistent offending. We found positive outcomes such as reductions in risk factors and improvements in resilience factors among the children and families who received intensive supportive services.

One of the critical issues is that such services are not cheap, as they require a large investment of resources to bring about sustainable changes in damaged families living in difficult circumstances.

The Convener: You say that such services are not cheap, but do you have any evaluations of the costs relative to, say, keeping someone in prison for a year or several years? It might be better to spend money earlier to save money later.

Professor McIvor: The Scottish Executive's recent research studies into the effectiveness of various disposals have usually contained a costing of the initiative along with an estimate of the comparable cost of an alternative sentence. Some costs relating to probation, community service and imprisonment are published annually by the Executive in its statistical series and we also have individual costings for the area initiatives that I have described and for particular disposals, such as drug treatment and testing orders and supervised attendance orders. Cost data are available for the majority of the initiatives that have been introduced and evaluated in recent years.

The Convener: Are such data available even for initiatives that involve multiple agencies? In addition to having costs in one direction, such initiatives might involve medical costs, for example. Is comprehensive costing available to enable us to see whether the costs are comparable to the cost of custody?

Professor McIvor: The costs involved would generally be the immediate costs of providing the service. In most instances, the alternative disposals are significantly cheaper than the prison sentence that they probably replaced.

Michael Matheson: Would it be fair to say that although projects such as Matrix or Cluaran, which work with younger people and family groups at an early stage, may initially be more costly than the provision of secure accommodation, if such younger people are put on a probation order once they get older, such programmes will work out significantly cheaper than custody? Is it more costly to intervene and work with the family at an earlier stage?

Professor McIvor: The intervention may be more costly in the short term, but if we are able to turn families around, it may be less costly in the long term because of its impact on the risk that, further down the line, the children may need to go into secure accommodation or may end up in custody. The invest-to-save initiative recognises that an initiative that is trying to have a preventive impact may have resource implications at the start but will hopefully bring about longer-term benefits, such as a reduction in offending and other problem behaviours, several years down the line.

Fergus McNeill: This is not a terribly scientific measure, but the research on the costs of youth crime that was conducted in, I think, 1998—I cannot remember the exact date—came up with a figure of around £2,100 per crime. The accountants that produced the costing—I cannot remember which company it was—thought that £1,700 of that cost would be recoverable if the crime could be prevented. That figure of £1,700 per crime gives us an idea of what could be saved through investment in crime prevention activity.

The activities that we are talking about are one form of prevention. Tertiary prevention is that which is used for those who are persistently involved in offending behaviour. The frequency with which those people may be offending, or the frequency with which they are convicted, might be anything upwards from what is currently defined as persistent offending. Sorry, what is the current definition of persistence in the youth justice agenda?

Bill Whyte: The working definition is five episodes in a six-month period, but that is an arbitrary measure.

Fergus McNeill: So, if somebody is committing 10 offences per year, they are costing £17,000 of recoverable costs. I am not aware of any intervention that would cost £17,000 to deliver.

Bill Whyte: There is a formula linking the shift to alternatives to custody with a reduction in offending, which is based on actuarial work that was carried out for the National Probation Service for England and Wales. We can probably learn from that. The estimate was that reducing each offender's level of offending by 5 per cent would

save the economy—never mind the direct cost to victims—£700 million.

The Convener: Is that figure for the whole of the UK?

Bill Whyte: No, I understand that the figure refers only to England and Wales.

The Convener: Given that Scotland has 10 per cent of the UK population, we are perhaps looking at a saving of £70 million.

Bill Whyte: I do not know how the figure was worked out, but it would be possible to find out.

The Convener: It would be extremely useful for the committee to get the various costings for the alternatives to custody to see how those compare with custodial costs.

We must now move to Donald Gorrie's question. I advise members that I want to finish by 2.35 pm.

Donald Gorrie (Central Scotland) (LD): Perhaps we have time for a quick visit to Finland. Bill Whyte's submission states:

"Finland is facing the challenge of managing large numbers of offenders in the community".

Might we face a similar challenge if we go down the same path?

Bill Whyte: Despite its radical changes in custodial policy and custodial outcomes, Finland is not much further on than us in asking questions about the effectiveness of community disposals. To some extent, the science and art of community disposals that we have discussed today is at much the same stage in Finland as it is here. Finland is a small country that did not do its own research on the effectiveness of community disposals.

Like us, Finland is searching for more effective ways of dealing with people in the community. However, in Finland, the issue of the impact that community disposals have on reducing offending behaviour has become detached and separate from the issue of whether people should go into custody. Our practical problem is that the two issues are interlinked, so we are always running the tension that, because custody rates seem to rise as our investment in community disposals rises—the same happened in England in the 1980s and 1990s—people are tempted to conclude that community disposals do not work. I do not think that such a conclusion should be drawn. Finland has much still to learn, just as we have much still to learn, about the most effective way of dealing with people in the community.

Donald Gorrie: Is there an issue about a lot of potential criminals or troublemakers wandering about the community, even if they are doing community service? People on the other side of the argument from us may well dwell on that.

14:30

Bill Whyte: Inevitably, there must be a level of community tolerance and acceptance of policy in Finland. That is a sociological issue, and I cannot give a simple answer on why people accept or tolerate the policy.

The document to which I refer in my submission is a review of the situation in 1998, which makes it clear that Finland's politicians and public were shocked that the prison population of Finland was three times higher than those of its neighbours, Norway, Sweden and Denmark. They asked, "Why are the Finnish people so criminal that we must lock so many of them up?" The issue is as much about ideology or politics as it is about the effectiveness of alternatives. However, it gives us a clue that mixing up different issues may cause difficulties. There must be a will in Scotland that believes that custody is not a sensible way of protecting victims, and that will have to come from a political decision as much as from anywhere else.

Fergus McNeill: It is worth commenting on the notion of dangerous offenders at large. I do not know much about the Finnish experience, but most of the time when we consider the effectiveness of community disposals, we are comparing them with very short prison sentences. The vast majority of relevant cases are sheriff summary cases with a maximum penalty of six months, even for second and subsequent convictions. People spend three months in jail. The incapacitating effect, or the question of public protection, that arises from such custodial sentences is marginal.

I shall give a brief practical example. Several years ago, I found myself writing a court report on a man who was being prosecuted for what were considered by the fiscal as minor sexual offences. In the course of my writing the report, the man disclosed to me that he had committed several more offences for which he had not been convicted. He was a motivated individual who wanted to change. One part of me thought, "This man must surely go to jail because of the nature of his crimes and the risk that he poses to the community." However, the part of me that understands the legal system thought, "He would be given a three-month sentence and come out in six weeks, with no possibility for intervention." I knew that I could propose to the court that he should be under supervision for three years, with various stringent conditions attached. I proposed the latter, and that is what he got. I worked with him for three years, and I am entirely satisfied that the public were better protected by what I did as a practitioner than by him spending six weeks in Barlinnie. We must keep that comparison in mind when we consider alternatives to custody.

Bill Whyte: We hope that the thrust of our evidence encourages the focus to be on the short sentence. A large number of longer sentences are being given out in Scotland. Sentences are longer than they have ever been, having almost doubled in 10 years. However, we must deal with the issue of the short-sentence prisoner. The prison does not have the chance to work with such prisoners, and the contaminating effect prompts the question whether short sentences are a wise policy.

The Convener: We have been considering prisoners for three and a half years, so we are aware of the figures.

Ms Wendy Alexander (Paisley North) (Lab): I should like to touch on the point with which Fergus McNeill concluded. I want to pursue the role of social workers and social inquiry reports.

Fergus McNeill stated in his submission that there is evidence that social work personnel can be

"well equipped to engage offenders in the requisite processes of change."

He cited one personal example, but could he talk more generally about the situation? How typical is his example? How could the conclusion that he arrived at become the norm, in terms of the roles that are played by the social worker and the social inquiry report?

Fergus McNeill: As Bill Whyte said, we do not have studies that give us information on the amount of contact time. That is a major issue for main grade workers when demands for court reports mean that contact time with people on probation or other orders suffers.

I could not say, with my hand on my heart, that the example that I cited was the norm, but that is because of the individual and his particular desire to change. I certainly think that social workers are well equipped to help people to navigate their way towards desistance, although they could be better equipped. Our education and training of social workers can improve and is improving. Bill Whyte's work at the development centre has made a major contribution to that.

There is evidence from research—undertaken not in Scotland, but elsewhere—that personnel who are trained in social work and who have experience of problem-solving processes and of engaging, motivating, carrying and sustaining people through processes of change, are especially well equipped in comparison with correctional personnel. That research was done in Australia by an academic called Chris Trotter. I found it ironic that that evidence emerged just as England and Wales were abandoning social work education for probation officers. However, that is what happened.

We are in a stronger position in Scotland. The education that we provide should encourage and enable workers in that way. However, whether workers are able to undertake such education, within the current constraints and considering the demands on their time, is a question that I do not have the evidence to answer. I am five years out of practice, but I strove to be an effective worker and was effective in a number of cases. I do not know enough about what is happening on the ground now and I have not seen research studies that deal with the time-and-motion aspects of what workers are doing, which would enable me to answer your question.

Ms Alexander: It would be helpful if you could write to us with anything that you want to add.

The Convener: I was coming to that. There are many things that we would still like to ask, but the pressures of time prevent us from doing so. I suggest that members submit to the clerks any supplementary questions on matters that they wish to pursue—I have some such questions myself. If we may, we will put our questions in the form of a letter to the three witnesses, who can then provide us with written answers that we will put in the public domain along with our letter.

As usual, having academics before us—I hate the word "academics", but you know what I mean—has raised a lot of interesting issues. You have so much knowledge in the area whereas we have only skated over the surface, and there is much more that we would like to know. It would be useful if members' questions could be forwarded for the next meeting. Thank you very much.

Subordinate Legislation

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2003

The Convener: We move to the next item on the agenda and I refer members to committee papers J1/03/1/05 and J1/03/1/15. I welcome the Minister for Justice, Mr Wallace. Minister, I ask you to speak to and to move motion S1M-3739.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Before I go into the details of the order, I shall explain briefly its purpose. The Scotland Act 1998 recognised that, in some cases, it would be appropriate for Scottish ministers to be able to exercise executive powers in areas where primary legislation continued to be a matter for Westminster. Section 63 of the Scotland Act 1998 allows functions in reserved areas to be transferred to the Scottish ministers, in so far as they are exercisable in or regarding Scotland, instead of or concurrently with the minister of the Crown. The order authorises the transfer of functions under certain provisions of the Taxes Management Act 1970, the Rehabilitation of Offenders Act 1974 and the Transport Act 2000. The United Kingdom minister of the Crown will continue to exercise those functions as regards the rest of the United Kingdom.

I turn to the content of the order. Members will have seen the note that has been prepared by the Executive, which explains briefly the various entries in the order. The order transfers to Scottish ministers the power to commence in Scotland sections 101 to 103 of the Access to Justice Act 1999, which will amend the Taxes Management Act 1970, and to make associated regulations.

The amendments concern immunity and indemnity for general commissioners of income tax and their clerks in relation to costs orders arising from the execution of their duties. Similar amendments have already been implemented in England, Wales and Northern Ireland, where general commissioners are appointed by the Lord Chancellor. Because Scottish ministers appoint general commissioners in Scotland, it is appropriate for them to implement changes here, once the necessary powers have been transferred by the order.

On the rehabilitation of offenders, the Rehabilitation of Offenders Act 1974 sets out to make life easier for people who have been convicted of a criminal offence but who have subsequently lived on the right side of the law. If a person does not receive a further conviction by the end of their prescribed rehabilitation period, their conviction becomes spent. In general, that means that they do not have to declare the conviction and cannot be prejudiced by it. Sections 4(4) and 7(4) of the Rehabilitation of Offenders Act 1974 allow subordinate legislation to be made that excludes or modifies the application of, or makes exceptions to, the regime for rehabilitation of offenders under the 1974 act.

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended, is made under sections 4(4) and 7(4) of the 1974 act. It sets out categories of employment that involve a particular level of trust to which the 1974 act does not apply and for the purposes of which convictions never become spent.

It is important that Scottish ministers have the power to amend all aspects of the exceptions order, even if an amendment might have an impact on a reserved area—financial services are particularly important in that respect. The Executive will continue to liaise with the Home Office to ensure consistency, but the order allows Scottish ministers to amend the exceptions order for Scottish purposes. I would be happy to respond to any comments from the committee on that matter.

I do not want to speak at length about the Transport Act 2000, because the transport section of the order has already been considered by the Transport and the Environment Committee. That committee's only query has been dealt with in correspondence from the Minister for Enterprise, Transport and Lifelong Learning. I understand that the Justice 1 Committee has received Mr Gray's response, which was copied to the Transport and the Environment Committee.

I hope that the committee will approve the transfer of functions to Scottish ministers that is set out in the order.

I move,

That the Justice 1 Committee, in consideration of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003, recommends that the Order be approved.

Lord James Douglas-Hamilton: On the rehabilitation of offenders, will the order have any effect on the sex offenders register?

Mr Wallace: No—the order is not related to the sex offenders register. As I said, the order might be most relevant to financial services, where issues of trust are self-evidently important. The order is important in respect of offences such as fraud.

Lord James Douglas-Hamilton: So we are speaking about relatively minor offences.

Mr Wallace: They might not be minor offences. The important point is that in occupations in financial services, for example, it is important for a

prospective employer to know about a previous conviction, albeit beyond the time by which in other circumstances the conviction would become spent. The person might still get the job, but the conviction would have to be disclosed.

Lord James Douglas-Hamilton: Will a list of offences be made available?

Mr Wallace: The purpose of the order is to transfer the function to ministers. A consultation paper on a new exemptions order was issued towards the end of last year—in fact, I have a copy of the paper with me—and the consultation is open until 24 January. Copies of the consultation paper are available. The consultation would be the subject matter of a subsequent order to be brought before the Parliament.

Lord James Douglas-Hamilton: On transport provisions and the transfer of functions relating to shipping services, what services did the draftsmen have in mind?

Mr Wallace: Mr Gray's letter to the convener of the Transport and the Environment Committee states:

"The transfer of this function under the Order will provide Scottish ministers with an expanded power to award Freight Facilities Grant (FFG) for short sea shipping movements and thus aid Ministers in the implementation of our policies relating to the carriage of freight by inland waterway or sea, and in general for developing an integrated and more sustainable transport system for Scotland by removing heavy goods vehicles from Scottish roads."

The Convener: How often did you practise saying "short sea shipping movements" before the meeting, minister? That is pretty much what it says in the letter.

Mr Wallace: Indeed.

The Convener: I have a question about the transfer of the function in relation to professions under the Rehabilitation of Offenders Act 1974. If the Scottish Executive is to regulate professions under the act, why should not it do so for all aspects of the professions in Scotland? It is my understanding that that could be done under sections 29(3) and 29(4) of the Scotland Act 1998.

14:45

Mr Wallace: I recall from many debates at Westminster on the Scotland Bill that the organisation and regulation of a number of professions are reserved under schedule 5. Westminster took that policy decision. The relevant provisions are contained in the act as passed. The policy point about the rehabilitation of offenders is limited.

The Convener: I appreciate that. The transfer of the function in relation to the rehabilitation of offenders raises an interesting ancillary question about whether the Scotland Act 1998, which includes discretionary parts, makes it possible for the professions in Scotland to be regulated wholly within Scotland under the Executive's auspices.

Mr Wallace: I think that a section 63 order could apply in theory, although I am speaking off the top of my head.

The Convener: I like it when you speak off the top of your head.

Mr Wallace: Yes, it is always much more entertaining. A section 63 order could be made in relation to the transfer of executive functions to Scottish ministers, although legislative matters would still be reserved to Westminster. That is a much wider topic than the issue that we are considering. Theoretically, what you suggest would be possible, but no such proposal has been made.

The Convener: That was an interesting answer.

Donald Gorrie: On the Transport Act 2000, the Scottish Executive note says that the function of providing grants

"for shipping services that start or finish or both outside Scotland … will be exercisable concurrently with the Minister of the Crown".

How will that work? In relation to a ferry from Argyll to Northern Ireland, for example, will that mean that the minister of the Crown pays half and that we pay half or will either party have the option of paying the whole lot?

Mr Wallace: That would be a matter for negotiation. At least Scottish ministers will be competent to enter into such an agreement.

The Convener: That would be more a matter for the Minister for Enterprise, Transport and Lifelong Learning.

Mr Wallace: The detail about who contributed what would be a matter for negotiation; it might vary from one case to another. The purpose of the order is to make Scottish ministers competent to enter into any such agreement.

Motion agreed to.

That the Justice 1 Committee, in consideration of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2003, recommends that the Order be approved.

The Convener: The committee is required to report to the Parliament on the affirmative instrument. The report need only be short and formulaic. I propose to circulate the report to members by e-mail, so that they can approve or object, as appropriate.

Title Conditions (Scotland) Bill: Stage 2

The Convener: We are privileged to have the minister with us for the next item, which is stage 2 consideration of the Title Conditions (Scotland) Bill.

Mr Wallace: How exciting. I have been looking forward to it for the whole recess.

The Convener: Your deputy managed to have something else on his agenda.

As the room is very warm and the meeting will be a long haul, I propose to have a short break at 3.30 pm, when the coffee arrives. Against all my usual rules, I will allow the coffee to be brought in, so that we can continue working without having a long formal break. I hope that members are content with that suggestion. I will interpret their silence as acceptance.

I welcome Ken Macintosh on his second visit to the committee—he must like us. Members should have a copy of the bill, the marshalled list of amendments and the groupings of amendments. Members should tell me if I move too quickly on some amendments. However, stage 2 consideration of the bill must be finished today in order to meet the deadline that was agreed with the Parliamentary Bureau.

Section 53—Duty of Keeper to enter on title sheet statement concerning enforcement rights

The Convener: Amendment 120, in the name of the minister, is grouped with amendments 121, 122, 192, 193, 194, 237 and 206.

Mr Wallace: Section 6(1)(e) of the Land Registration (Scotland) Act 1979 requires the Keeper of the Registers of Scotland to enter in the Land Register of Scotland any subsisting real burden or condition affecting any interest in land that is the subject of an application for registration. The choice of the word "subsisting" in the provision is deliberate, as it relieves the keeper of any duty to establish whether or not a burden is actually enforceable by anyone.

On reflection, that is an unreasonable duty to impose on the keeper because the enforceability of a burden might be a matter of controversy, which might require a determination in the courts or, under new provisions in the bill, by the Lands Tribunal. The enforceability of burdens is not therefore a matter that is appropriate for administrative decision by the keeper. The keeper does not therefore guarantee that the burdens shown in the land certificate of a registered interest are enforceable.

Amendments 120 and 121 will ensure that that position is followed in relation to a statement by the keeper under section 53 regarding burdens that fall within the terms of sections 48 to 51 of the bill, or maritime burdens under section 60 of the Abolition of Feudal Tenure etc (Scotland) Act 2000. The keeper will make a statement in relation to burdens that appear to him to subsist and he will not have to make any judgment on their enforceability. If he were required to be satisfied that a burden was enforceable, it is unlikely that he would ever be able to make a statement such as is envisaged in section 53.

Amendment 122 is intended to assist in fulfilling one of the objectives of the bill, which is to bring greater clarity and transparency to the property registers. The amendment is related to the desire to have dual registration of burdens as far as possible on the title sheets of the benefited property as well as the burdened property. The amendment will apply if the keeper has sufficient information for him to describe the benefited property, as envisaged by the existing section 53(b)(ii), and also to identify the title sheet under which the benefited property is registered in the Land Register.

Amendment 122 will require the keeper, in addition to entering a statement and information on the title sheet of the burdened property, to enter an equivalent statement and equivalent information on the title sheet of the benefited property. The keeper would enter on the title sheet of the benefited property the same statement as on that of the burdened property, and would enter on the title sheet of the benefited property a description of the burdened property or properties. It is obvious that that information's being available could be of considerable assistance and benefit.

Amendment 193 will impose a duty on the keeper to make consequential amendments to the Land Register when registering a deed that creates, varies, discharges, renews, reallots or preserves a title condition under certain mechanisms in the bill or the 2000 act. Those mechanisms deal with the realloting of feudal burdens, the preservation of certain implied rights of enforcement and the creation of burdens and positive servitudes. The duty extends both to cases where the keeper is registering documents in the Register of Sasines and the Land Register. It extends only to title conditions that are constituted or preserved by dual registered deeds. The aim of amendment 193 is to improve the transparency of the property registers. In particular, it should be apparent from the Land Register who has the right to enforce a burden and whose property is subject to a burden.

Amendments 192 and 194 are consequential on amendment 193. Amendment 194 takes account

of the terminology that is used in section 46 of the bill and in the Abolition of Feudal Tenure etc (Scotland) Act 2000.

Amendment 237 also aims to improve the transparency of the property registers. It will require the keeper to reflect in the title sheet of the burdened property the identity of a benefited proprietor or personal burden holder who has saved or created a right to a condition by sections 18, 18A, 18B, 19, 20, 27 or 27A of the 2000 act, or sections 4(5), 46 or 66 of the bill. The keeper will also be obliged to enter on the title sheet of the benefited property the details of the burdened property. Amendment 206 is consequential thereon.

I move amendment 120.

Amendment 120 agreed to.

Amendments 121 and 122 moved—[Mr Jim Wallace]—and agreed to.

Section 53, as amended, agreed to.

Sections 54 to 57 agreed to.

Section 58—Manager burdens

The Convener: Amendment 123, in the name of the minister, is grouped with amendments 124, 125, 26 and 126. Amendment 125 does not pre-empt amendment 26, so if amendment 125 is agreed to, amendment 26 will still be called, but it will become an amendment to leave out "five" and insert "three". Before I ask the minister to move amendment 123 and speak to the other amendments, I point out that I will call Ken Macintosh to speak to amendment 26, which is in the name of Sylvia Jackson.

Mr Wallace: The group of amendments deals with various aspects of manager burdens. In its stage 1 report, the committee recommended that the maximum period for the extinction of manager burdens in sheltered housing developments should be five or six years. It also invited the Executive to reconsider the 10-year period in other developments that do not cover social housing.

Amendment 125 will implement the committee's suggestion across the board and will reduce the 10-year period to five years. That means that any manager burden that was imposed more than five years ago will be extinguished when the bill is commenced. I accept that the choice of a time limit is a matter of judgment and I am happy to accede to the committee's suggestion to reduce the period from 10 years to five or six years; indeed, amendment 125 would reduce it specifically to five years.

However, Sylvia Jackson's amendment 26 would go further by reducing the period to three years. As I said, the choice of a time limit is a matter of judgment, but the Executive is now proposing that the relevant period be halved from its original length. That is in response to the views that were expressed by the committee in its report, which states:

"The Committee is aware of particular issues in sheltered housing developments regarding the appointment and dismissal of managers. The Committee believes that it is in the interests of the owners (other than the developer) of properties in developments to have the power to appoint a manager. Given that a manager appointed under a manager burden may not be dismissed under section 59, and the particular concerns in sheltered housing, the Committee recommends that the maximum time period for the extinction of manager burdens in sheltered housing developments should be five or six years.

In the context of other developments (excluding social housing), the Committee considers that the 10-year period for the developer to retain the power to appoint a manager may be too long and asks the Executive to reconsider the issue."

Against that background, I believe that we have a consensus around a figure of five years. That is why I will be inviting Ken Macintosh not to move amendment 26. It is possible that a three-year limit could be applied only to sheltered housing developments and I am willing to consider making such a change at stage 3. However, I think that three years would be too short a period to apply to all developments, especially commercial developments. Not all developments are substantially sold off within three years of first sale.

Amendment 124 is intended to address concerns that owners in sheltered housing complexes have expressed that it would be possible for a developer to reactivate a manager burden during its life span by reacquiring a property. The holder of the burden might then wish to appoint his choice as manager, perhaps upsetting a management arrangement that had been put in place by the rest of the owners in the interim. The amendment will have the effect of extinguishing the manager burden after a period of roughly three months after the holder of the burden sells his last related property. If the manager burden were extinguished on the sale of the last property, that could prevent its being assigned to another developer. The Executive believes that the option should be kept open, but only for a narrow period of 90 days.

Amendment 126 deals with a definitional point. Section 58(2) makes it clear that the power that is conferred by a manager burden is exercisable only if the person on whom the power is conferred is the owner of one of the related properties within a development. In other words, a manager will not be able to continue to exercise the manager burden once he has sold all his units.

15:00

Section 61(2) will continue to prevent a manager from artificially retaining the power to exercise a manager burden by retaining ownership of a road or some other facility once he has sold off all his units. In the context of sheltered housing, a warden's flat will not count as a related property, and will not therefore allow a developer to maintain a manager burden by that means. However, amendment 126 will make it clear that common facilities are not otherwise excluded from the definition of related properties. That is important, as in terms of section 58(1) a manager burden is a burden that confers on a person a power to act as, or to appoint, a manager of related properties. Clearly, it is desirable that the manager should act in respect of not only the units themselves, but the common facilities.

Amendment 123 is a technical amendment that seeks to adopt the bill's general rules on sending documents in situations where a developer is notifying owners that the right to a manager burden is being transferred. That should help to avoid disputes in determining when proper intimation is made.

I move amendment 123.

Mr Kenneth Macintosh (Eastwood) (Lab): Amendments 26, 27 and 28 are part of a continuing series of amendments, some of which the committee has already supported, for which I am grateful. I will not repeat the arguments behind all the amendments, but amendment 26 is designed to improve rights for owners in retirement complexes. Before I address the minister's welcome comments, I am pleased to say that the committee and the Executive have accepted that five years is a more reasonable and realistic time frame for a manager burden to be extinguished than 10 years. I ask the committee to take an even more realistic and reasonable attitude and to adopt three years as the cut-off point.

It is difficult to envisage a situation in which a developer's interest in the running of a retirement complex should outweigh the interests of the residents after a period of three years. However, with other developments it is easy to envisage a situation in which, after four or four and a half years, a developer wishes to alter the way in which a development is run in order to make the remaining properties more saleable.

I have no wish to alter the whole bill, other than to make the provisions of amendment 26 apply to sheltered and retirement complexes. Having heard the minister's reassurance that the Executive will consider lodging an amendment specific to retirement complexes, I am minded not to move amendment 26.

The Convener: We are getting fans brought in, minister, as we are all beginning to wilt because of all the bodies in this tiny room—[*Interruption.*] Is this a fan coming in? No, it is coming shortly. I do not know whether everybody feels the same way, but some of us are beginning to wilt.

Donald Gorrie: I will take the same line as Ken Macintosh if the minister will amend the bill to refer to three years for sheltered housing and five years for other developments. I accept the minister's argument that for some commercial developments five years is a more sensible figure. It would be helpful if he lodged in due course amendments for the five-year and three-year periods.

Mr Wallace: The five-year period would be affected by amendment 26. There is consensus on commercial developments, but I reiterate what I said when I moved amendment 123: with regard to sheltered housing—retirement complexes, as Ken Macintosh calls them—we are minded to lodge at stage 3 an amendment to reduce to three years the period of a management burden.

The Convener: Does "minded to" mean the same as "undertake"?

Mr Wallace: Yes, we will do it.

The Convener: I ask only to assist Ken Macintosh.

Amendment 123 agreed to.

Amendments 124 and 125 moved—[Mr Jim Wallace]—and agreed to.

Amendment 26 not moved.

Section 58, as amended, agreed to.

Section 59—Overriding power to dismiss and appoint manager

The Convener: Amendment 27 is grouped with amendment 28.

Mr Macintosh: I lodged amendment 27 with the idea that the appointment and dismissal of a manager should be agreed to by more than 50 per cent, or a simple majority, of the people in a retirement complex. However, my idea was based on a misunderstanding and, having spoken to the Executive bill team, I understand that sections 27(1)(a) and 27(1)(d) will apply and that, in normal conditions in a retirement complex—unless the deed of conditions say otherwise—50 per cent will be the rule. Given those provisions, I do not wish to amend the bill in line with amendments 27 and 28. The power in sections 27(1)(a) and 27(1)(d) is overriding and affects all properties, not just sheltered accommodation and I have no wish to amend it.

Amendment 28 was lodged to be consistent with amendments to section 50 that the committee

agreed to at a previous meeting. However, given the information that I have received from the Executive that a simple majority will be required to appoint or dismiss a manager in sheltered accommodation, I will not move amendment 28.

I move amendment 27.

Mr Wallace: I confirm that Kenneth Macintosh had useful and constructive discussions with officials on the bill team. The simple majority provisions in section 27 will apply in the case of sheltered accommodation. I do not need to elaborate further.

Amendment 27, by agreement, withdrawn.

Amendment 28 not moved.

Section 59 agreed to.

Section 60 agreed to.

Section 61—The expression "related properties"

Amendment 126 moved—[Mr Jim Wallace]—and agreed to.

Section 61, as amended, agreed to.

Sections 62 to 65 agreed to.

After section 65

Amendments 127 to 130 moved—[Mr Jim Wallace]—and agreed to.

The Convener: Amendment 252 is in a group on its own.

Michael Matheson: Amendment 252 is primarily a probing amendment to find out how development management schemes, which all members support, will operate.

The minister will be well aware that one of the most common problems in many older housing developments in Scotland is the lack of a development management scheme, which causes problems with the maintenance of communal areas. Organisations such as the Chartered Institute of Housing in Scotland have provided information about the level of back-dated repairs that has resulted from continuing problems with such work.

The primary purpose of amendment 252 is to find out what will happen if a developer chooses not to introduce a development management scheme. Given the problems that arise when such schemes are not available, is it likely that a backlog of repairs will build up if developers choose not to establish a scheme? If so, does the bill provide an opportunity to ensure that, when new properties are developed, some form of development scheme is mandatory to offset potential problems?

I move amendment 252.

Mr Wallace: I am grateful to Michael Matheson for lodging amendment 252, which is a probing amendment. I am aware of the body of opinion that believes that development management schemes should be compulsory, at least for new developments. However, I do not believe that amendment 252 is desirable or appropriate.

The committee will recall that it debated the development management scheme at its meeting on 17 December. The scheme provides rules for an owners association, an advisory committee, annual meetings and financial matters, and is applied to land by a deed of application.

One of my concerns is that the development management scheme that was debated is not designed to be imposed on all new related properties in the way envisaged by amendment 252. The intention of the Scottish Law Commission and the Executive was to create a model scheme. If we had planned to create a mandatory scheme, its terms would have been quite different from those of the development management scheme as drafted. That is not to belittle the reasoning that underlies amendment 252; it is simply not an appropriate scheme to be imposed across the board, and the bill is not the appropriate piece of legislation with which to impose a mandatory scheme.

I said that it is not appropriate to apply the development management scheme to all new related properties. "Related properties" is a broad term that includes not only housing estates but small tenements and even some semi-detached housing. The full complexities of the scheme would be inappropriate for the latter two categories. The scheme is intended to be used for larger and more complex developments. Its provisions are too sophisticated for ordinary tenements. For example, there is no need for a corporate owners association in a small tenement block, and an owners association would be completely unnecessary for two semi-detached houses.

It is worth recalling that the Scottish Law Commission, which devised the scheme, did not envisage that it would be used for all developments, irrespective of size. The scheme featured first in the commission's report on the law of the tenement alongside an alternative management scheme that would be much more suitable for general use. The commission recommended that that scheme apply to all tenements in Scotland, subject to existing provisions in title deeds. If there were any intention to impose a compulsory management scheme on all developments, it would have to be much more akin to the simple scheme for tenements.

That brings me to a more basic point. Michael Matheson's proposals in amendment 252 are an argument for another day. I agree with the committee's stage 1 report, which concluded that the proposed tenements bill would be a more appropriate vehicle to address the issue. The tenements bill, which I hope will be introduced in draft form at an early opportunity, will give members a chance to consider all those matters.

As members know, the housing improvement task force has also been considering a variety of matters to do with the management and maintenance of property, especially where there are issues of common maintenance. We expect the task force to publish its report in the early spring. We must assess its views and consider its recommendations along with the Scottish Law Commission's recommendations. It would be premature to take a decision until that process is complete.

In many cases, housing developments have their own schemes. Therefore, it is not open to have a completely default scheme. Against that background, I suggest that we revisit the subject in the context of other legislation. I hope that Michael Matheson is prepared to withdraw amendment 252.

Michael Matheson: The minister has confirmed that the issue could be addressed by another piece of legislation and his comments have been very helpful.

Amendment 252, by agreement, withdrawn.

Sections 66 to 71 agreed to.

Schedule 8 agreed to.

Sections 72 and 73 agreed to.

Section 74—Extinction following pre-sale undertaking

The Convener: Amendment 131 is grouped with amendment 132.

Mr Wallace: Section 74 allows the holder of a right of pre-emption to make a pre-sale undertaking that they will not exercise the pre-emption for a specified period. The import of the amendments is that the undertaking would be binding on subsequent holders of the pre-emption right only if the undertaking were registered. If the undertaking were not registered, only the existing holder of the pre-emption would be bound by it.

I move amendment 131.

Amendment 131 agreed to.

Amendment 132 moved—[Mr Jim Wallace]—and agreed to.

Section 74, as amended, agreed to.

Schedule 9 agreed to.

Sections 75 and 76 agreed to.

Section 77—Reversions under School Sites Act 1841

15:15

The Convener: Amendment 133 is grouped with amendments 134, 135, 248, 249, 137, 138, 139, 140, 250, 141, 142, 244 and 144 to 149.

Mr Wallace: I know that in the course of its deliberations on the bill, the committee has been waiting for the section on the School Sites Act 1841.

The Convener: Blind us with science, minister.

Mr Wallace: The amendments in the group would make a number of detailed changes to the provisions affecting the School Sites Act 1841 and the Entail Sites Act 1840.

The Convener: We knew about that.

Mr Wallace: As the committee knows, the bill provides that a right of reversion over a school site, which entitles the holder to ownership of the property, will be converted into a claim under section 77.

The purpose of amendments 133 and 134 is to ensure that every right of reversion would be converted into a claim for compensation, even if the cessation of use has already occurred or the reversion holder has already made a claim before the bill comes into effect. However, the provision would not apply where the holder has already completed title or accepted compensation.

Amendment 135 would ensure that titles to school sites are put beyond challenge on the ground that the land may have reverted under section 2 of the School Sites Act 1841 before section 77 comes into force.

Amendments 248, 249, 137, 141 and 250 are consequential to those changes.

Amendments 138 and 139 would provide for the date of the valuation of the land for the purposes of compensation payments to be made under section 77. They would distinguish between cases, depending on whether the reversion was triggered before or after the bill comes into force. For claims triggered after the bill comes into force, education authorities would be able to deduct the value attributable to buildings on the site if they were not erected by the original granter or his predecessors.

Amendments 140, 142, 244 and 144 are consequential to those changes

Amendment 145 would ensure that if the right to the land has passed to another authority or body

under statutory provisions, that party would be responsible for payment of the compensation.

Amendment 146 would provide that where the reversion holder has not completed title to the land or accepted an offer of compensation, any proceedings that were commenced to claim the reversion would be deemed abandoned. Instead, the reversion holder would be eligible for compensation under the bill.

The bill provides that a right to petition for the forfeiture of land under the Entail Sites Act 1840 will be replaced by a compensation regime adopted from section 77, which deals with reversions under the School Sites Act 1841. Amendment 147 would ensure that a third party who purchased the land for value would not be obliged to pay compensation. It would be fair that that should be paid by the body that originally received the land or its successors—typically, an education authority. If the body has already received payment for the site, it would be unjust for the purchaser to have to pay compensation; he would, in effect, be paying for the property twice.

Amendments 148 and 149 would modify the language of section 77 when it is being used in the context of cases under the Entail Sites Act 1840. Properties subject to the 1840 act do not revert upon the stipulated use ceasing: they are forfeited on petition to the sheriff court. That is the reason for amendment 148. Amendment 149 is a technical amendment to correct an error in a cross-reference to section 77.

I move amendment 133.

The Convener: I think that members all noticed the error.

Donald Gorrie: Section 77(5) states that the Lands Tribunal for Scotland would determine a dispute about the value of land. I was wondering whether the general thrust of the bill is that the value of the site would take account of its development potential. That issue has been raised by the Church of Scotland in relation to a later group of amendments. Some of the complications that arise in getting rid of churches may be the same as those that arise in getting rid of schools. Although the land would not valuable as it stands, it could be quite valuable if planning permission was secured to build houses on it. I wondered what the bill presupposes about development value.

Mr Wallace: The presupposition, or intent, would be the open market value of the land.

Donald Gorrie: Is that the value of the land as it stands or its development value? Does its sale depend on somebody being willing to take a chance?

Mr Wallace: If the land has been zoned for housing with planning permission, its open market value will be greater than if planning permission has not been secured. Otherwise, it would be a matter for people's judgment whether the land would be likely to secure planning permission in the future.

Lord James Douglas-Hamilton: The minister mentioned open market value. Would that be determined by the district valuer?

Mr Wallace: It would be determined by the Lands Tribunal in the event of any dispute, as stated in section 77(5).

Amendment 133 agreed to.

Amendments 134, 135, 248, 249, 137 to 140, 250, 141, 142, 244 and 144 to 146 moved—[Mr Jim Wallace]—and agreed to.

Section 77, as amended, agreed to.

Section 78—Right to petition under section 7 of Entail Sites Act 1840

Amendments 147 to 149 moved—[Mr Jim Wallace]—and agreed to.

Section 78, as amended, agreed to.

Sections 79 and 80 agreed to.

Section 81—Powers of Lands Tribunal as respects title conditions

The Convener: Amendment 232 is grouped with amendments 150, 152, 154, 156, 161, 162, 163 and 164.

Mr Wallace: These are technical but nevertheless important amendments that relate to the Lands Tribunal for Scotland. The Lands Tribunal is responsible for hearing applications for the variation or discharge of title conditions. Its powers are set out in the Conveyancing and Feudal Reform (Scotland) Act 1970. The purpose of section 81 is to restate the powers and jurisdiction of the Lands Tribunal with some additions. This group of amendments makes further provisions on the Lands Tribunal's powers.

Under the definition in section 110, variation of a burden will include the imposition of a new obligation. Under section 1(3) of the 1970 act, it is possible to apply to the Lands Tribunal to vary a land obligation. However, the bill allows only for partial discharge as opposed to variation, as non-owners such as tenants can apply. It was felt that non-owners should not be able to apply for the imposition of a new obligation.

Under section 81(6), the Lands Tribunal can, at its own hand, vary a burden subject to the owner's consent. It seems perverse that an applicant who might want a variation would have to apply for discharge or renewal, thus provoking opposition, in the hope that the Lands Tribunal would grant a

variation. Therefore, amendment 150 will allow an applicant who is an owner of a burdened property to apply to vary as well as to discharge a title condition. Amendment 152 will allow an owner of a benefited property to apply to vary as well as to renew a title condition when it is threatened by termination under the sunset rule or extinction where land that would have been compulsorily purchased is acquired by agreement.

Where a majority in a community has signed a deed of variation or discharge, section 81(1)(c) will allow an owner from among the non-consenting minority to apply to the tribunal to preserve the community burden. If successful, the application will preserve the burden for the rest of the minority. There is no intention that the minority owner should be able to vary the community burden or to impose a new obligation on the minority.

Amendment 154 will amend the last part of subsection (1) to make it clear that there is no intention to allow part preservation where an application under subsection (1)(c) is refused. Minority owners will not have the opportunity to be notified of the terms of a part preservation and they might object to the terms of a partial discharge.

Personal pre-emption, personal redemption burdens and economic development burdens are to be subject to the sunset rule for the termination of burdens. The amendment provides that the person in whose favour the burden is constituted shall be entitled to apply for renewal of the burden.

Amendment 161 prevents a new obligation on a property from being imposed by an order of the Lands Tribunal under section 81(1)(a) or 81(1)(b) without the owner's consent. Without the amendment, the changes made by amendment 150 would allow the tenant of a property to impose a new obligation on the owner without the owner's consent. Amendment 161 removes that possibility. The amendment will also, for similar reasons, prevent a property that is not already the benefited property from becoming a benefited property. Amendment 232 is consequential on amendment 161.

Under section 81, a benefited proprietor may apply to the Lands Tribunal to renew a title condition threatened with extinction when land that could have been compulsory purchased is being acquired by agreement.

Amendment 164 ensures that where an application is refused, only a person who is trying to save a personal burden will be entitled to be awarded compensation by the tribunal. The entitlement of owners of properties that benefit from other types of burden to compensation is covered under the existing law. The bill does not alter their position. However, as personal burdens are a new category of burden created by the bill, and so will not be covered by the existing law, it is necessary to make express provision for them in the bill. Amendment 162 is consequential on amendment 161.

Since applicants are to be allowed to apply to vary a burden at the same time as applying for its renewal, amendment 163 will give an equivalent power to the tribunal to vary a burden on renewal, should it see fit.

Amendment 232 moved—[Mr Jim Wallace]—and agreed to.

Amendments 150 to 164 moved—[Mr Jim Wallace]—and agreed to.

Section 81, as amended, agreed to.

Schedule 10 agreed to.

Section 82—Special provision as to variation or discharge of community burdens

The Convener: Amendment 165 is grouped with amendments 166, 167 and 168.

Mr Wallace: Amendment 165 seeks to leave out the first "the" in section 82, page 37 at line 40.

The Convener: Are you trying to vary it for us or for yourself? [*Laughter.*]

Mr Wallace: Section 82 allows the owners of 25 per cent of the units in a community to apply to the Lands Tribunal for variation or discharge of community burdens. Amendments 165 and 167 ensure that, where several people own a unit, any one owner can commit the unit to be included in the one quarter calculation. Without those amendments, the section might be interpreted to mean that all the owners of a jointly owned unit would have to apply for that unit to count towards the 25 per cent. That would mean that where, for example, the developer owned a 10 per cent share of each property, section 82 could not be used without the developer's consent.

Amendment 166 ensures that a variation under section 82 will allow the imposition of an entirely new obligation. Clearly, communities may sometimes want to update or modernise the burdens affecting the community or correct mistakes in the current position. That may require that they impose new burdens on themselves. We intend that the bill will allow owners to make changes of that kind, but the present wording of section 82 seems to imply that there must be a pre-existing burden to be varied.

Amendment 168 is a technical amendment to correct the language used in subsection (3).

I move amendment 165.

The Convener: No member has indicated that they wish to challenge the amendment, so I take it that the minister will waive his right to wind up.

Mr Wallace: Yes.

Amendment 165 agreed to.

Amendments 166 to 168 moved—[Mr Jim Wallace]—and agreed to.

Section 82, as amended, agreed to.

Section 83 agreed to.

Section 84—Notification of application

Amendments 169 to 171 moved—[Mr Jim Wallace]—and agreed to.

Section 84, as amended, agreed to.

Section 85—Content of notice

Amendment 172 moved—[Mr Jim Wallace]—and agreed to.

Section 85, as amended, agreed to.

The Convener: I shall suspend the meeting before we continue.

Lord James Douglas-Hamilton: Strictly speaking, I should have made a declaration of interests. My interests are laid out in the register of members' interests.

The Convener: Thank you. I suspend proceedings for five minutes. I have to leave at five to 4, so Maureen Macmillan will have the delights of taking over after that.

15:31

Meeting suspended.

15:38

On resuming—

Section 86—Persons entitled to make representations

Amendments 240 and 173 moved—[Mr Jim Wallace]—and agreed to.

Section 86, as amended, agreed to.

Section 87—Representations

The Convener: Amendment 174 is in a group on its own.

Mr Wallace: Section 87 explains how objectors to an application to vary or discharge a title condition may make representations to the Lands Tribunal. Amendment 174 changes the time at which representations are considered to have been made from when they were sent to when they were received. That is intended to assist the tribunal in administering applications. However, the tribunal will have discretion to accept late representations.

I move amendment 174.

The Convener: The amendment is eminently sensible.

Amendment 174 agreed to.

Section 87, as amended, agreed to.

Section 88—Granting unopposed application for discharge or renewal of real burden

The Convener: Amendment 175 is grouped with amendments 176 to 181.

Mr Wallace: Section 88 provides a procedure for granting some applications to the Lands Tribunal as of right, if they are unopposed. Such applications will be granted without further inquiry and without consideration of their merits.

Amendments 175 to 177 reflect other changes that have been made to the bill to allow for applications to the Lands Tribunal for the variation of burdens, as well as their discharge, renewal or preservation. Such applications will be granted as of right, if they are unopposed.

Amendments 178 to 180 make it clear that the provision for granting unopposed applications does not apply to applications for the variation or discharge of facility and service burdens. That is to ensure extra protection for those burdens. Any such application for variation or discharge will not be granted automatically and should be subject to scrutiny by the Lands Tribunal.

Similarly, amendment 181 ensures that an application under section 82(1) for the discharge or variation of a community burden by owners of 25 per cent or more of the units in a community cannot be granted as of right if that application relates to a burden that is imposed on a sheltered housing development.

Amendments 178 to 181 will allow unopposed applications for renewal or preservation to be granted as of right, even when they affect facility or service burdens or applications under section 82(1). The justification for that change is that when an application is for the renewal or preservation of a burden under paragraphs (b) or (c) of section 88(1), the burden is not lost, even if the application is unopposed.

I move amendment 175.

Amendment 175 agreed to.

Amendments 176 to 182 moved—[Mr Jim Wallace]—and agreed to.

Section 88, as amended, agreed to.

Section 89—Granting other applications for variation, discharge, renewal or preservation of title condition

The Convener: Amendment 183 is grouped with amendments 184, 185, 187, 188 and 251.

Mr Wallace: Section 89 provides two tests for the granting by the Lands Tribunal of an application for the variation, discharge, renewal or preservation of a title condition. The first test, in paragraph (a), requires the tribunal to have regard to the factors that are listed in section 90 when determining whether it is reasonable to discharge, vary or renew a title condition. Those factors include any factor that the tribunal considers material.

The second test, in paragraph (b), is for granting an order for the preservation of a burden when the majority of owners in a community have signed a deed that grants a variation or discharge under section 32, or when the owners of the neighbouring benefited properties have signed such a deed under section 34. In that case, the tribunal must consider whether the variation or discharge is

"in the best interests of the owners of all the units"

or

"is unfairly prejudicial to one or more"

of the owners. A more stringent test than the test of whether the application is reasonable in the light of relevant factors is appropriate in the second case, since close neighbours or a majority have agreed to the proposal by signing the deed.

Amendment 183 will ensure that, in applying the second test, the Lands Tribunal may take into account the factors that are in section 90, including the willingness of the burdened proprietors to pay compensation. That will give the tribunal greater flexibility. For example, in the case of a section 34 discharge, the tribunal could refuse an application for preservation by a near but not immediate neighbour on condition of payment of compensation by the burdened proprietor. Otherwise, the tribunal might have no option but to preserve the burden, even if a compensation payment would have been a satisfactory means of adjusting the balance between the parties.

Amendments 185 and 187 are consequential on amendment 183.

On amendment 184, I have already indicated that section 34 allows an owner to attempt to vary or discharge a burden where he or she has obtained the agreement of all of the near neighbours. In some cases, it is possible that because of the geography of an estate there will be no near neighbours. As a result, only the owner's signature would be required. In either case, the other benefited proprietors will be able to apply to the Lands Tribunal to stop the change.

15:45

Amendment 184 ensures that the Lands Tribunal will use a different test depending on whether or not there are immediate neighbours who have agreed to the change. Where immediate neighbours have so agreed, the tribunal will have to be satisfied that the change will not be in the community's interests or will be unfairly prejudiced. Where there are no immediate neighbours, the tribunal's usual test of reasonableness will be applied. The reason for that is that, where the immediate and therefore most affected neighbours have agreed, the change would have to damage the community or a particular property in order to be rejected. The agreement of the closest properties means that some powerful reason, such as particular prejudice to an owner or to the wider interests of the community, is required for a more distant owner to stop the change.

Amendments 188 and 251 make it clear that the Lands Tribunal will be able to consider both the purpose of the title condition and the willingness of the burdened proprietor to pay compensation when deciding upon an application for discharge, variation, preservation or renewal. As a result, if a burdened proprietor refuses to pay compensation, the tribunal might deem it reasonable not to grant a discharge. Amendment 251 provides that, where a local authority acquires land by agreement in the shadow of its compulsory purchase powers, the tribunal may consider the purpose for which land is being acquired when deciding whether a condition threatened with extinction should survive.

I move amendment 183.

Amendment 183 agreed to.

Amendments 184 and 185 moved—[Mr Jim Wallace]—and agreed to.

Section 89, as amended, agreed to.

After section 89

Amendment 186 moved—[Mr Jim Wallace] and agreed to.

Section 90—Factors to which the Lands Tribunal are to have regard in determining applications etc

Amendments 187, 188 and 251 moved—[Mr Jim Wallace]—and agreed to.

Section 90, as amended, agreed to.

Sections 91 and 92 agreed to.

Section 93—Taking effect of orders of Lands Tribunal etc

The Convener: Amendment 190 is in a group on its own.

Mr Wallace: After obtaining an order from the Lands Tribunal, the successful applicant will usually want to register the order in the property registers to ensure that the relevant title condition is extinguished, renewed, imposed, preserved or varied according to the terms of the order. However, in some cases, the applicant might not wish to register. For example, after an unopposed application for partial renewal of a title condition, the applicant, who will be a benefited proprietor, would be better off not registering the order as the condition could not then be even partially extinguished. In a case where the application was unopposed, there would be no other "party to the application" under section 93(2) who could register the order.

Therefore, amendment 190 provides for registration of the order at the instance of any person who made representations about the application or was entitled to make representations. Section 86 lists the people who are entitled to make representations.

I move amendment 190.

Amendment 190 agreed to.

Amendment 191 moved—[Mr Jim Wallace]—and agreed to.

Section 93, as amended, agreed to.

Section 94—Alterations to Land Register consequential upon registering certain deeds

Amendments 192 to 194 moved—[Mr Jim Wallace]—and agreed to.

Section 94, as amended, agreed to.

Section 95—Extinction of real burdens and servitudes etc on compulsory acquisition of land

Amendments 195 to 197 moved—[Mr Jim Wallace]—and agreed to.

Section 95, as amended, agreed to.

Section 96—Extinction of real burdens and servitudes where land acquired by agreement

Amendments 198 to 203, 29, 204 and 30 to 32 moved—[Mr Jim Wallace]—and agreed to.

Section 96, as amended, agreed to.

Schedule 11

FORM OF APPLICATION FOR RELEVANT CERTIFICATE

Amendments 33 and 34 moved—[Mr Jim Wallace]—and agreed to.

Schedule 11, as amended, agreed to.

Before section 97

The Convener: Amendment 35 is grouped with amendments 241 and 242. I ask the minister to speak to and move amendment 35 and to speak to the other amendments in the group. Maureen Macmillan will speak to amendment 241 and the other amendments in the group, after which Donald Gorrie will speak to amendment 242 and the other amendments in the group.

Mr Wallace: Section 9(3) of the Church of Scotland (Property and Endowments) (Amendment) Act 1933 created a right of pre-emption in respect of what were known as parliamentary churches and manses. The holder would have the right of first refusal in the event of a church affected by the act coming up for sale. The right of pre-emption was created in favour of the person who originally gave the land to the church, provided that no payment was made and that the granter owned land adjoining the church. The land next to the church, which was owned by the granter, would benefit from the pre-emption.

The amendments in the group seek to resolve problems that have arisen where adjoining land that has the pre-emption right has been divided. The owner of each property that has been sold off from the original piece of adjoining land has to be given the opportunity to purchase the church or manse.

We do not think that it is possible to interfere in cases in which the land has already been divided. In those circumstances, the owner of each property that makes up the original land could have the right of pre-emption. To remove the right by deciding that only one of them can exercise it seems unfair. That would be the effect of Maureen Macmillan's amendment 241 and Donald Gorrie's amendment 242. There is also the potential for a challenge to be made under the European convention on human rights.

Executive amendment 35 will prevent the problem from being perpetuated by future subdivision of the benefited land. In future, only one part of a property that is being divided up will retain the right to pre-emption. The default position will be that the property that is retained by the seller will keep the right to the pre-emption, but it will be possible to provide for the seller to lose the right and for the buyer to receive it instead. The right will attach only to the retained or conveyed property.

I accept and understand that that does not answer the problem of existing rights to the pre-emption being shared between several different properties. Amendments 241 and 242 propose stepping in and removing the right to use the pre-emption from everyone apart from the adjoining owner with the longest boundary. I understand and recognise the aim behind amendments 241 and 242, but the proposed solution seems somewhat arbitrary. It also has the potential to amount to confiscation of a valuable property right without compensation. We do not think that a statutory extinction of those rights is the correct way forward.

I would like to give an indication of the scale of the problem. There are only a limited number of sites to which section 9 of the 1933 act applies. Those are parliamentary churches, and the Church of Scotland has informed us of 43 churches, of which 28 remain unsold. Of 42 manses only 6 remain unsold. In addition, the pre-emption right was only created in cases where the granter had land adjoining the church.

Therefore, a limited number of cases remain outstanding. It appears that the pre-emption issue has been dealt with in sales that have already been made. That said, I do not in any way wish to belittle the concerns that have been raised by the Church of Scotland, albeit that we are talking about a small number of cases. I understand that there have been problems in one of those cases.

It is possible for the church to seek from each holder of the opportunity to purchase an undertaking that they will not exercise their right. That is what proposed subsection (6) in amendment 241 seeks to achieve. I do not think that that part of the amendment is necessary since no formal offer is required anyway.

Issues have also been raised about the valuation of property. Maureen Macmillan's amendment 241 and Donald Gorrie's amendment 242 propose mechanisms for identifying the value of the property, although the original act provides for arbitration, which is usually the best way of dealing with disputes. However, I am certainly happy to consider further the issue of valuation before stage 3.

I have had the opportunity to discuss the matter with Maureen Macmillan and Donald Gorrie. I understand their particular concerns, but I will allow them to expand on them. With the convener's permission, I will respond once they have had the opportunity to lay out their particular concerns.

I move amendment 35.

The Convener: I am happy to let the minister respond when he winds up.

Maureen Macmillan: As the minister knows but the committee might not, parliamentary churches, manses and glebes were provided out of public funds as a result of two acts of Parliament passed back in the reign of George IV. Title to the land was originally taken in the name of parliamentary commissioners and it is unclear what compensation, if any, was received by the landowners from whose estates the land on which the buildings were erected came. The position was complicated by the fact that they would possibly be the sole heritor and would therefore have had considerable financial obligations in connection with provision of places of worship and so on under other legislation then in force.

All the parliamentary buildings were erected prior to 1830 in accordance with plans drawn up by Thomas Telford. Parliamentary churches and manses proliferate in rural areas and we have many of them in the Highlands. The buildings are of considerable historical merit and architectural interest. Title to them was transferred to the Church of Scotland general trustees under the Church of Scotland (Property and Endowments) Act 1925 and some additional properties were added by the Church of Scotland (Property and Endowments) (Amendment) Act 1933, which also contained provisions enabling the properties to be sold, subject to the right of pre-emption that is contained in section 9(3). That subsection reads:

"Before selling or otherwise disposing of the ground or any part thereof on which any Church or Manse included in the Tenth Schedule"

to the 1925 act, as extended by section 15 of the 1933 act,

"has been erected, the General Trustees shall give to any heritor whose lands adjoin such ground or part and by whose predecessor in title such ground or part was originally granted or disponed without valuable consideration for the erection of the Church or Manse, an opportunity to purchase or take in feu such ground or part at such price and on such terms as may be agreed upon between the General Trustees and such heritor, all, as failing agreement, may be determined by an Arbiter appointed by the Sheriff on application of either party".

Usually, if there is a pre-emption clause in a title, the person selling the property can at least put the property on the market to find out what the market price is. In this instance, however, the church is not able to do that but must go directly to the adjoining proprietor and negotiate with them to get a price that might not end up being a fair price.

Amendment 241 seeks to change the title conditions governing the sale of parliamentary churches that make it difficult for the Church of Scotland to sell them for a realistic price within a realistic time scale when the churches, most of which are in rural areas, become redundant.

In many cases, the lands owned by the original heritors have been sold off, as the Minister for

Justice has said. There might now be several owners whose land adjoins the church and amendment 241 therefore seeks to limit the right of pre-emption to the owner of the longest adjoining stretch of land. That should ensure that negotiations are not as protracted as they are at the moment.

As I mentioned, valuation of the redundant parliamentary churches is a problem. At present, there is no requirement for the person with the right of pre-emption to pay market value. The church cannot be put on the market in an attempt to find out what another purchaser would be prepared to pay. That can lead to protracted negotiations in which a landowner wants the church for next to nothing or in which an uninterested landowner will not come to a decision and the empty church falls into disrepair. My amendment seeks to give the Church of Scotland the right to put the property on the market and then to offer it to the landowner with the right of pre-emption under the same terms as the prospective purchaser. That is the normal practice in relation to a right of pre-emption on a property.

To avoid a protracted wait for a decision from the adjoining landowner that, in some cases, as the minister said, can take years, proposed subsection (5)(b) would set a time limit of 21 days for the landowner to decide to buy the church at the price offered by another prospective purchaser. Proposed subsection (6) would provide that, when the sale to a third party is completed, the right of pre-emption by the adjoining proprietor will be extinguished.

I realise that this is not a perfect amendment and that there might be implications in relation to the European convention on human rights. I would like the minister to indicate—and I believe that he has already done this—that he is willing to undertake to discuss the matter with the Church of Scotland to see how those anachronistic conditions currently governing the sale of parliamentary churches can be brought into the 21st century.

16:00

Donald Gorrie: Amendment 242 was also drafted by the Church of Scotland, but I am happy to put my name to it.

The Church of Scotland preferred Maureen Macmillan's amendment 241 but, if that was thought to be too far reaching, it would be content with amendment 242. Maureen Macmillan has covered the main issues, but there are still a number of points to cover. First, who has the benefit of the statutory right to the property? Secondly, how is the price fixed? Thirdly, there is a question about the time scale.

On the question about the benefit of the statutory right to the property, I do not see why a fair judgment cannot be made and the benefit allocated to the person with the longest boundary. The property cannot be divided up; it is rather like King Solomon and the baby. On the whole, it is a good thing for someone to keep the baby. An arbitrary decision has to be made about who gets the right to the benefit from the ground.

My second point is about how the price is fixed. The Church of Scotland gave us an example of one case where the proprietor of the land said he would never give his approval for drains, roads, electricity or anything of that sort, so no development would be allowed and therefore the ground would not be worth anything. The question of valuation is therefore quite difficult because there might be properties that would have considerable value if they could be developed but, if the other proprietor can prevent that development, the price is affected.

Thirdly, there seem to be instances where the person with whom the church is negotiating keeps on faffing about—I am not sure whether that is a parliamentary expression.

The Convener: We all know what it means.

Donald Gorrie: I mean delaying unduly.

Like Maureen Macmillan, I would be happy if the minister would discuss the issue with the Church of Scotland. I gather that there have been misunderstandings in the past as to the concerns of the church. If anything can be agreed between the minister and the church, he could make further proposals at stage 3.

Mr Wallace: It has been useful that Maureen Macmillan and Donald Gorrie have been able to raise the difficulties experienced by the church. The Executive's amendment 35 is intended to address part of the issue and to stop the problem getting any worse.

I am not unsympathetic to the difficulties that have been described. However, it is important to be clear about what we can and cannot do to help. I will make it clear at the outset what we cannot do. Donald Gorrie's first question was about who would benefit and who has rights of pre-emption. Section 9(3) of the Church of Scotland (Property and Endowments) (Amendment) Act 1933 is very clear that it is

"any heritor whose lands adjoin such ground or part and by whose predecessor in title such ground or part was originally granted or disponed without valuable consideration for the erection of the Church or Manse".

It is therefore anyone who owns adjoining ground. That then leads to a problem because that right has a value.

The church recognises that there are ECHR issues in this area. Regrettably, neither of the

amendments that have been spoken to gets round those problems. They both would remove the pre-emption right from all the owners of the relevant land, apart from the one who has the longest boundary. That would extinguish the rights of a number of heritors without compensation, which is likely to be contrary to article 1 of protocol 1 of the ECHR and therefore not within the Parliament's competence. I doubt that the church is prepared to consider paying compensation, although it might be. At most, we might be able to set down a procedure to regulate between the competing claims to pre-emption. However, I do not believe that we can simply abolish those claims.

I turn to what we might be able to do to help. From what has been said, it seems that the Church of Scotland would be happier if there were a prescribed method of calculating or arriving at the value of the property. I am sure that we could devise an amendment to meet that point. Arbitration proceedings are set out in the 1933 act, but it might help if we were to set out in statute that the arbiter is obliged to set the figure at the open-market value.

The existing statute does not put a time limit on the decision, which, as Donald Gorrie and Maureen Macmillan said, means that the church might become frustrated if the pre-emption holder plays for time. In another section, the bill limits the time for decision on ordinary pre-emptions, and we will consider whether we can create a similar provision for the circumstances that we are discussing, to benefit the church.

Given that the Executive is willing to lodge amendments at stage 3 on the basis for valuation and the time scale for pre-emption, I hope that Maureen Macmillan and Donald Gorrie will not move their amendments.

Amendment 35 agreed to.

The Convener: Amendment 241 has already been debated with amendment 35.

Maureen Macmillan: I hope that the minister will meet with the Church of Scotland to discuss the issues involved with amendment 241.

Mr Wallace: We will enter into dialogue, but I am not sure whether I will meet representatives of the church personally.

Maureen Macmillan: Given that, and given what the minister said in his summing up, I will not move amendment 241.

Amendments 241 and 242 not moved.

The Convener: I apologise to the minister, but I will have to leave, as the Conveners Group is meeting now and will discuss matters of relevance to the Justice 1 Committee. Maureen Macmillan will take over from me.

Section 97—Amendment of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

Amendments 36, 233 and 37 to 47 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Convener (Maureen Macmillan): Amendment 245 is grouped with amendments 246, 247, 76 to 79, 217, 81 and 83 to 86.

Mr Wallace: The key amendment in the group is amendment 76; the others are consequential and of a minor technical nature.

Amendments 76 and 77 will apply provisions—which are similar to those that section 6 applies to real burdens—to assignations that are granted under the Registration of Leases (Scotland) Act 1857. Those provisions will allow conditions to be imported from a deed of condition that is registered before the appointed day.

Amendment 83 will remove servitudes that are created under section 66 from the category of overriding interests under the land registration system. Amendment 217 will provide that such servitudes are instead to be entered on the register of conditions.

Amendment 84 will change the Mortgage Rights (Scotland) Act 2001 to bring it into line with changes made by the bill to the Conveyancing and Feudal Reform (Scotland) Act 1970.

I move amendment 245.

Amendment 245 agreed to.

Amendments 48 and 234 moved—[Mr Jim Wallace]—and agreed to.

Section 97, as amended, agreed to.

Section 98—Amendment of Forestry Act 1967

Amendments 235, 50 to 55, 246, 56, 57, 247, 58 to 62 and 236 moved—[Mr Jim Wallace]—and agreed to.

Section 98, as amended, agreed to.

Section 99 agreed to.

Section 100—Amendment of Land Registration (Scotland) Act 1979

Amendments 237 and 206 moved—[Mr Jim Wallace]—and agreed to.

Section 100, as amended, agreed to.

Section 101 agreed to.

Section 102—Amendment of Enterprise and New Towns (Scotland) Act 1990

The Deputy Convener: Amendment 207 is grouped with amendments 68 and 74.

Mr Wallace: Amendments 207, 68 and 74 make minor changes to the arrangements for the abolition of feudal tenure and the transition to the new system of land tenure.

Amendment 207 is a minor drafting alteration to ensure that the provisions of sections 18A and 18B relating to counter-obligation due to a feudal superior are couched in the same terms. It does not alter the substance of the existing provisions.

Amendments 68 and 74 make changes to the deadlines by which superiors have to take action to preserve feudal rights. Superiors will now be able to take action when part 4 of the Abolition of Feudal Tenure etc (Scotland) 2000 is commenced. The amendments are a consequence of the changed arrangements for the commencement and implementation of the two acts, on which I have already written to the convener.

I move amendment 207.

Amendment 207 agreed to.

Amendment 208 moved—[Mr Jim Wallace]—and agreed to.

Section 102, as amended, agreed to.

Schedule 12

AMENDMENT OF ABOLITION OF FEUDAL TENURE ETC. (SCOTLAND) ACT 2000

Amendments 64 and 65 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Convener: Amendment 66 is in a group on its own.

Mr Wallace: Amendment 66 is a technical amendment that makes it clear that a person who would be perfectly entitled to enforce a burden is not to be prevented from doing do simply because he or she was formally the feudal superior with the right to enforce the burden.

I move amendment 66.

Amendment 66 agreed to.

Amendments 67 to 72 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Convener: Amendment 243 is in a group on its own.

16:15

Mr Wallace: Amendment 243 is a technical amendment that is consequential to amendments 106 and 208, which the committee discussed and accepted on the first day of its stage 2 consideration. The amendment simply adds the definitions of "economic development burden" and "local authority" to section 49 of the Abolition of Feudal Tenure etc (Scotland) Act 2000, which relates to the interpretation of part 4 of that act.

I move amendment 243.

Amendment 243 agreed to.

Amendments 238, 239 and 73 to 75 moved—[Mr Jim Wallace]—and agreed to.

Schedule 12, as amended, agreed to.

Sections 103 to 109 agreed to.

Section 110—Interpretation

Amendments 209 and 210 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Convener: Amendment 211 is grouped with amendments 212 and 213.

Mr Wallace: Amendment 211 is a consequential amendment that follows from the introduction into the bill of the development management scheme and economic development burdens.

Amendments 212 and 213 tighten up definitions in the bill. Amendment 212 is designed to ensure that existing feudal burdens will be treated as real burdens under the bill. That is of particular importance for the transitional provisions that are contained in part 4 of the bill. Of course, it will not be possible to create feudal burdens after the appointed day and, following that day, the estate of dominium directum will cease to exist.

Amendment 213 is a technical amendment that is designed to clarify the meaning of "owner" in relation to the definition of "real burden" in section 1. If no change were made, an "owner" could include a heritable creditor who happened to be in possession of the property at the time when a burden was being created. We do not think that it would be desirable for a burden to be created in favour of a body—or person—that had only a very temporary interest in the property.

I move amendment 211.

Amendment 211 agreed to.

Amendment 12 not moved.

Amendment 212 moved—[Mr Jim Wallace]—and agreed to.

Section 110, as amended, agreed to.

Section 111—The expression "owner"

Amendment 213 moved—[Mr Jim Wallace]—and agreed to.

Section 111, as amended, agreed to.

Sections 112 to 114 agreed to.

Section 115—Orders, regulations and rules

The Deputy Convener: Amendment 214 is grouped with amendments 215 and 216.

Mr Wallace: Committee members may recall that I wrote to the convener in October, indicating that the Executive intended to lodge what are now amendments 214 to 216. The 2000 act gives Scottish ministers the power—subject to affirmative resolution—to make consequential amendments or repeals to existing legislation. Parliament recognised that it was impossible to guarantee that the act caught all provisions containing feudal terminology or concepts. Indeed, some of the detail that we have gone into today underlines the tremendous job of the draftsmen, although no one could put hand on heart and say that they have definitely caught everything.

Once enacted, the Title Conditions (Scotland) Bill will have a similar wide-ranging effect on a number of statutes, so it seems a sensible precaution to take a power to make adjustments to the law without recourse to primary legislation. I re-emphasise the fact that Parliament would have to give specific approval before any changes could be made. The three amendments together give Scottish ministers the necessary powers to make any such adjustments.

I move amendment 214.

The Deputy Convener: No members have indicated that they wish to comment on this group of amendments. I take it that you do not wish to add anything, minister.

Mr Wallace: As this is the final group of amendments, I would like to take this opportunity to thank you, deputy convener, and the convener, Christine Grahame, as well as all the other members of the Justice 1 Committee for their co-operative and constructive work during stage 2 consideration of the Title Conditions (Scotland) Bill. The bill is a complex but important piece of legislation. There has been some useful discussion on sheltered housing in particular and I believe that the bill is the better for the committee's work on it. Once again, I thank you, deputy convener, committee members and officials.

The Deputy Convener: Thank you very much, minister. We appreciate your comments. We did not find dealing with the bill an easy task. As you say, the bill is complicated and technical, but, as we got into the detail of it, we found our work very rewarding.

Lord James Douglas-Hamilton: I thank the minister for his offer to meet representatives of the Law Society of Scotland. I hope that that will be a fruitful meeting.

Amendment 214 agreed to.

Amendment 215 moved—[Mr Jim Wallace]—and agreed to.

Section 115, as amended, agreed to.

Section 116—Minor and consequential amendments, repeals and power to amend forms

Amendment 216 moved—[Mr Jim Wallace]—and agreed to.

Section 116, as amended, agreed to.

Schedule 13

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendments 76 to 79, 217 and 81 to 84 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Convener: We are almost there now.

Schedule 13, as amended, agreed to.

Schedule 14

REPEALS

Amendments 85 and 86 moved—[Mr Jim Wallace]—and agreed to.

Schedule 14, as amended, agreed to.

Section 117—Short title and commencement

Amendments 218 to 221 moved—[Mr Jim Wallace]—and agreed to.

Section 117, as amended, agreed to.

Long title agreed to.

The Deputy Convener: That ends stage 2 consideration of the Title Conditions (Scotland) Bill. I feel that we should all cheer at this point. Well done, everybody.

The committee will continue its meeting in private for the last two agenda items, which concern our draft report on the Prostitution Tolerance Zones (Scotland) Bill and witness expenses in relation to the committee's inquiry into alternatives to custody. The committee agreed earlier to discuss those matters in private. I therefore ask members of the public to leave.

16:24

Meeting continued in private until 17:00.

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