JUSTICE 1 COMMITTEE

Wednesday 26 November 2003
(*Morning*)

Session 2

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JUSTICE 1 COMMITTEE
14th Meeting 2003, Session 2

CONVENER

*Ms Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mr Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Marlyn Glen (North East Scotland) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

THE FOLLOWING ALSO ATTENDED:

Paul Burns (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Wilma Dickson (Scottish Executive Justice Department)
Tom Fyffe (Scottish Executive Justice Department)
Bill Gilchrist (Crown Office and Procurator Fiscal Service)
Sharon Grant (Scottish Executive Justice Department)
Morag McLaughlin (Crown Office and Procurator Fiscal Service)
Moira Ramage (Scottish Executive Justice Department)
Elaine Samuel (University of Edinburgh)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Douglas Thornton

LOCATION

The Chamber

Scottish Parliament

Justice 1 Committee

Wednesday 26 November 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:13*]

Criminal Procedure (Amendment) (Scotland) Bill: Stage 1

The Convener (Ms Pauline McNeill): I welcome everyone to the 14th meeting in this session of the Justice 1 Committee. As usual, members should switch off their mobile phones and pagers. I have received no apologies. Our adviser, Paul Burns, will be joining us at around 10.30 am.

Item 1 is our stage 1 consideration of the Criminal Procedure (Amendment) (Scotland) Bill. I refer members to the papers associated with this item of business. I should point out that, in paper J1/S2/03/14/7, which is a diagram showing High Court time limits, there is a typo—I am sure that members have spotted it. In the part showing the proposed time limits for all cases, the yellow bar correctly shows 11 months as the time limit for preliminary hearings and the box with arrows pointing at that bar should also state 11 months rather than 12 months—but you all knew that.

I begin by welcoming the Scottish Executive bill team. Wilma Dickson is head of the criminal procedure division in the Scottish Executive Justice Department. Moira Ramage is the Scottish Executive Justice Department's bill team leader and senior principal procurator fiscal. Tom Fyffe is one of the bill team members and Sharon Grant is from the community justice services division of the Scottish Executive Justice Department. Welcome to you all. We have a number of questions for you this morning, as we felt that it was important to get a lot of information on the record so that we can refer to it in the coming weeks. Margaret Mitchell has the first question.

Margaret Mitchell (Central Scotland) (Con): In drawing up the proposals for the new preliminary hearings in the High Court, was consideration given to the experience of the comparable procedures for summary criminal proceedings—the intermediate diets?

Moira Ramage (Scottish Executive Justice Department): In considering the overall model for the preliminary hearing, the available models in the sheriff court were examined. In summary procedure, there is an intermediate diet, which calls before the trial diet. In sheriff and jury procedure—the solemn procedure—in the sheriff court, there is a first diet. Both those diets occur before the trial diet and both require the Crown, at the point of service either of a complaint in the summary court or of an indictment in the solemn court, to have prepared and cited witnesses for trial.

Those models were rejected, if I can put it that way, because it was considered that the most appropriate model for the High Court was one with a strong element of judicial management, in particular management at the point of setting the trial diet. The reason for that was the perceived need for introducing certainty into the High Court, because at the moment there is no certainty. Such a model would also enable the court to fix a diet when the witnesses were available and when parties were ready to proceed to trial.

At the moment, in the solemn court—on the sheriff and jury side—and in the summary courts, the trial diet is fixed before it is known whether parties are ready and many witnesses are cited to give evidence. That is something that we wanted to avoid in the model for the High Court. The fact that victims and witnesses were coming along time and again to be told that the trial would not proceed was seen as a specific problem.

Margaret Mitchell: Is there anything else that you would like to add, given the view that the comparable procedures met with only limited success?

Moira Ramage: Do you mean—

Margaret Mitchell: I am thinking of how the procedures were operating and how they were seen to improve things.

Moira Ramage: We did not look specifically at the summary side in any great detail, because that was not an area in which we were particularly interested, but we were aware of the model for the intermediate diet. From our consultations, we had understood that the first diet system was working well enough, particularly in Glasgow, where it had bedded in and everyone knew what was expected of them in terms of preparation.

However, we recognised that, because of the types of cases that the High Court deals with and the types of lawyers who work there—advocates and solicitor advocates, who have rights of audience in the High Court—the practice of the High Court is different from that of the sheriff and jury courts. The other systems did not provide a model that met the needs of what we were hoping to achieve in the High Court, which was certainty for all concerned—victims, witnesses, accused and counsel. That was one of the main objectives of our bill. In our consultation exercise, everyone

without exception welcomed the fact that that certainty would occur as a result of the introduction of our model of preliminary hearings.

Michael Matheson (Central Scotland) (SNP): Given that you considered the different models that have been used in the sheriff court system before choosing the model for the High Court, are you confident that the problems that have been encountered in the sheriff court system will not occur in the model that you have chosen for the High Court?

Moira Ramage: We are confident that the model that we are proposing for the High Court will introduce certainty of trial diets. It will also avoid the need for witnesses to be repeatedly told that they are no longer required to give evidence. That is something that the High Court will have that the sheriff and jury courts will not have.

Mr Stewart Maxwell (West of Scotland) (SNP): I am interested in what you are saying about fixed dates and your view that they can be a certainty. Is it realistic to expect that there would be a fixed trial date rather than a diet?

Moira Ramage: I can answer that only in the context of how things operate at the moment. In a solemn case, an accused person is cited to a sitting. That case will be one of a number of cases in a sitting and all those cases will be competing for time. The cases are prioritised by their time bar. That means that someone might be cited to a sitting but their case might not proceed because of other priorities.

There is a raft of reasons for that. For example, in the High Court, more time might be needed to prepare because counsel has been instructed at short notice. We envisage that the certainty, insofar as that is possible, of a trial diet can come about because, at the preliminary hearing, counsel advise the trial judge of their availability, the Crown will be a position to advise of the situation with witnesses and all the preparatory work required for a High Court case should have been addressed. The judge who is managing the new diet should not fix a diet of trial until all those preliminary matters have been resolved. Therefore, when the diet is fixed, it will be as certain as it can be—it will be much more certain than it is under the current system.

Mr Maxwell: I hear what you are saying about certainty in relation to witnesses. However, in the discussions that we had when we visited the High Court in Glasgow and Edinburgh, some disbelief was expressed that those dates could be fixed with such certainty. During one of our visits, someone commented to me that the estimate of how long a trial will take is always four days and asked how on earth they could fix a future point in their diaries when a trial would start. The certainty that you seem to be suggesting is not possible in reality.

Moira Ramage: The idea of a preliminary hearing is that, if experienced counsel are fully prepared, they should have an idea of how long a trial will take. Clearly, trials will be of varying lengths. There is no mathematical solution to how long a trial will take, but experience counts for a lot. One of the questions that the court should ask counsel at the preliminary hearing is how long they think that the trial will last. Counsel will base their answer on their preparation for the case and their experience. There is anecdotal evidence that counsel are often not far off the mark. The period of the trial diet will therefore be based on counsel's views as to how lengthy or otherwise a trial will be. We are not proposing that the judge will fix a diet of trial and stipulate that the trial must conclude within four days. That is not what we think should happen.

The Convener: How long do you expect a preliminary hearing to last?

Moira Ramage: The preliminary hearing is a major element of the package of proposals that seek to address the problems in the High Court. We do not want lip service to be paid to the idea. Preliminary hearings would be fairly lengthy in terms of court procedure, depending on what is happening. For example, if it is known that there is going to be a plea because the Crown and the defence have met and discussed that, the preliminary hearing might not take a huge amount of court time. However, if the court goes through all the aspects of the preliminary hearing that we expect it to go through to ensure that parties are prepared, the hearing could take anything up to an hour, or longer, depending on the case.

In parallel with the work going on for the bill, we are in close discussion with the people who programme court business to tease out the issues and to ensure that appropriate time is available and that training will be in place for judges who will deal with preliminary hearings.

The Convener: Will that hour include time for fixing the trial diet?

Moira Ramage: Yes, I would say so.

The Convener: I want to get the matter right. In a case involving custody, the preliminary hearing will have to take place within 110 days, which means that the trial will have to start within 140 days. That means that there will be a 30-day window. Is that correct?

Moira Ramage: Yes.

The Convener: How will the judge pick the trial date during that hour or hour and a bit?

Moira Ramage: The parties will go through a list of issues that the judge will want to know about, such as how well prepared they are, whether all their witnesses are available and other preliminary matters, including points of relevancy or competency. The bill sets out a huge list of matters that the judge will be expected to discuss with counsel and receive an answer on. If a trial diet has been fixed, one of those matters will be dates. The clerk of court will have a diary—I understand that the Scottish Court Service is moving towards an electronic diary system—and he will provide dates to counsel. Both the Crown and the defence will say which dates suit them and a date will be fixed. That will ensure that the parties are ready and available.

That is an important feature, because one of the problems in the High Court is the lack of availability of counsel. Counsel can be expected to be in any one of a number of places. The diary system will be used to programme the trial, which the judge will fix at the preliminary hearing, and should ensure that the parties that are necessary for the trial to proceed are present on a suitable date.

The Convener: Are you saying that, perhaps using an electronic diary system, counsel will sort out their availability before the preliminary hearing or at it?

Moira Ramage: We expect that counsel, both before and at the hearing, will know about their availability because they will know what is in their diaries. The Crown will know—

The Convener: I am just trying to establish when the date will be fixed, which is crucial. As you say, the preliminary hearing is short and will be used to sort out a number of matters. Given that there will be only 30 days within which to have the trial, I presume that the judge will have to establish the trial date during the preliminary hearing. I am trying to work out whether everybody will simply bring along their diaries to find out whether everyone else is available.

Moira Ramage: One would expect professional people to know about their availability.

The Convener: I am trying to establish what you expect to happen on the day of the preliminary hearing. Do you expect everyone to bring their diaries and to fix a date there and then, will that be done beforehand, or are you not concerned about how it is done?

Moira Ramage: I expect that the court will offer dates and that the parties will consider them in the light of what they know about their movements and say whether the dates suit. There will then be an agreement about the date. My colleague Tom Fyffe knows more about the electronic diary system, but that is how we envisage that the system will work.

Tom Fyffe (Scottish Executive Justice Department): The Scottish Court Service is considering the electronic diary system, but the expectation is that the whole culture will change through the implementation process. We have worked out the operational matters with the deputy principal clerk of justiciary and members of the Faculty of Advocates and the Crown Office. We expect that, for normal two or three-day trials, the court will be informed of availability at the preliminary hearing, but that in cases for which it is considered that more time will be necessary than is required for run-of-the-mill trials, the dates will be worked out beforehand. In fact, that is what happens at the moment when longer trials are anticipated.

Mr Maxwell: I am still concerned about the issue of a fixed date versus a diet. Many variables are involved, such as the exact length of the trial—it may be two or four days, we do not know—and whether it will go ahead on a certain day. The reason for a diet is that it at least allows us to say that the trial will happen within a certain period. I am not sure how any of the measures that you have mentioned—whether that is an electronic or a paper diary or whether all the parties bring along their Filofaxes—will change that uncertainty. It does not seem to me that you have answered that question.

Moira Ramage: I am sorry if I have not answered your question. The difference is that the current system does not have fixed trials in the High Court. All trials that are indicted to a sitting may or may not call for trial within a fortnight of court time. The time bar and how the business of the sitting runs will determine when a case may or may not call for trial. Fundamental to our proposal is a move away from the sitting system, with all the uncertainty to which I referred, to a system under which everyone knows when the trial diet is and that it is a certain event—a date has been fixed.

10:30

Mr Maxwell: I do not understand why you say that the event is certain. That is the crux of the matter and I agree that it is a critical point. Even if a date is set, how can it be said with certainty that the trial will occur on that date? I do not think that that can be said.

Wilma Dickson (Scottish Executive Justice Department): Is it your concern that the system involves many imponderable events? For example, even if at the preliminary hearing everybody's diaries appeared to be clear, the witnesses appeared to be available and everything

was in place, a critical witness might become ill before the trial diet. Is that your concern?

Mr Maxwell: Yes. The number of imponderables makes it difficult to set a fixed date for a trial with certainty, but it has been suggested that that can be done. I am not sure where that confidence comes from.

Wilma Dickson: It is fair to say that no system can provide 100 per cent certainty, because witnesses may become ill, for example. At a preliminary hearing, nobody can know that. However, if such events occur, the bill will make it easier to adjust the trial diet without calling everybody together and without turning the trial diet into a procedural diet.

Our proposals for the trial diet will add a great deal more certainty than we have at present, especially if a functioning electronic diary can show that a trial can start on Monday and have three or four days. That is a long way from the present situation, which is random.

It is accepted that something unforeseen and unpreventable can occasionally happen, so the bill makes it easier for parties to adjourn a trial diet without calling everybody together at a trial diet to do so. That is part of the answer to your question. It is accepted that we will never have 100 per cent certainty—life is not like that—so we are creating a more robust system for fixing the trial, which should eliminate all but the genuinely imponderable things that can go wrong; we are providing a good deal more flexibility in the fine print for coping with a key witness falling under a bus, for example, when it is nobody's fault that the trial cannot proceed. At the moment, everything tends to happen in a rush and everyone is sitting there at the trial diet when the trial has to adjourn.

The bill also provides a great deal more flexibility to return to the court without a formal hearing to say that there is a good reason for postponing the trial. Does that partly answer your concerns?

Mr Maxwell: Yes.

The Convener: I will allow one more question on the subject.

Michael Matheson: I want to be clear about the procedure. If an imponderable occurs—for example, counsel is double booked, which occasionally happens—how is that dealt with? Does counsel contact the presiding judge who set the trial date to say, "Look, I've made a mistake"?

Wilma Dickson: Section 6 of the bill says that in any case that is to be tried, a party may apply for acceleration or postponement at any time before the trial starts. That application is heard by a single judge of the High Court. If the application is a joint one—which, almost inevitably, it would be—there is no need for a hearing and a fresh trial diet can be set.

Bill Butler (Glasgow Anniesland) (Lab): Will additional training be given to High Court judges on case management, which is part of the philosophy that underpins Lord Bonomy's report?

Wilma Dickson: Yes. Training for judges is under the management of the Judicial Studies Committee, which is chaired by a judge. We have already had discussions with the committee, which is thinking about how that training might be delivered and what the content might be. The answer is that that is a matter for the Judicial Studies Committee, not the Executive, but we have already talked to it and it is already thinking about the issue.

Bill Butler: Is the committee keen?

Wilma Dickson: Yes. A useful analogy on judicial management is to look at what has recently been done in relation to criminal appeals, in a process that was initiated by the judges themselves. They introduced through act of adjournal a system in relation to appeals in which something is done that is not dissimilar to the procedural hearing under the bill. One calls the parties in and says, "Look, is this going to go ahead when we have the formal hearing of this appeal?" I understand that that has greatly increased the success rate of formal appeal discussions. The judges have done something not too dissimilar to what we are seeking to do. It is not for me to say what is in every judge's mind—

Bill Butler: I would think that that is impossible.

Wilma Dickson: Yes.

Bill Butler: Would you say that the judges are willing?

Wilma Dickson: Yes, very much so.

Bill Butler: Section 2 provides for a new written record of the state of preparation, which is an important part of the new procedures. What will happen if the prosecution and defence fail to provide the record within the proposed limits?

Moira Ramage: If they do not provide it to the court within the proposed limits, the judge will raise the matter with the parties at the preliminary hearing. The purpose of the record is twofold. First, it is a record of what the parties discussed at meetings or during some other form of communication on the case—for example, the evidence that can be agreed, whether there will be a plea and whether there is a preliminary issue to be dealt with. It is a note for the court that will be kept on record. If the record is not produced, the judge will want to explore the matter carefully, because the parties are required to meet that commitment. Furthermore, it is a piece of paper

that the court requires for its records. Although I do not know what the judge's sanction would be—

Bill Butler: That is my next question. Are any sanctions available?

Moira Ramage: Not built into the bill, no. However, I assure you that there cannot be anything more humiliating than to be publicly dressed down by a judge because one has failed to comply with what effectively is a statutory duty. We are all human and such things can happen, but I would be surprised if counsel in the High Court failed to meet those obligations.

Bill Butler: So there are no statutory sanctions. You are saying that the judge will exercise his or her judgment.

Moira Ramage: One possibility is that if there was a particular difficulty—not just a reluctance, which would be totally unprofessional—with ensuring that the record was lodged timeously and that was explained to the judge, the judge could allow the parties a little more time to provide a record to the court. However, clearly, he would be anxious to find out what the difficulty was and to ensure that it did not recur.

Bill Butler: What would happen if one party was able to comply but the other was not?

Moira Ramage: I assume that the same principles would apply. The party that did not comply would have to appear at the preliminary hearing—which is where they physically appear before the court—and explain to the judge publicly the reasons why the duty could not be complied with.

Bill Butler: Will that scenario be highly unlikely to happen?

Moira Ramage: Yes. From my work on the bill and my experience as a prosecutor in the courtroom I can say that counsel do not like it when they have not met the requirements that they should have met and have to explain that in public in open court—often in front of their client. It can look very bad when someone has not complied with something with which they were expected to comply. That experience represents a form of sanction in a professional sense, even though there is no sanction in the bill.

Wilma Dickson: It might also be worth saying that counsel would not welcome a situation in which a client felt that counsel had not best served their interests in not producing timeous evidence to the courts, because the accused has recourse to various methods to express the fact that they are not happy with counsel. Moreover, at a preliminary hearing where, for example, someone who was in custody wanted bail, a judge might take into account counsel's failure to produce the work that was required for the hearing.

The Convener: I have a couple of brief questions about managed meetings. When would such a meeting take place?

Moira Ramage: The managed meeting is not provided for in the bill, but it is an important part of the package that is being proposed. Lord Bonomy recommended managed meetings and, after further discussion with stakeholders, we considered that we should leave the matter with as much flexibility as possible. Clearly, if the law were to provide that there must be a managed meeting, a structure would have to be put in place around that. The circumstances that lead up to a hearing in court, whether that is a trial hearing or a preliminary hearing that is concerned with procedural matters, can be dynamic as the date in question approaches. We thought that the best approach would be for the parties involved to decide when the meeting should take place.

The managed meeting would not have to be a formal, face-to-face meeting; it could be fairly informal and take place through electronic communication or a lengthy telephone conversation, for example. One difficulty is the number of parties that are involved in the prosecution and the defence in the High Court. On the prosecution side, there could be a procurator fiscal, an advocate depute and a member of the High Court unit that prepared the indictment, while on the defence side there could be the solicitor who instructed an advocate, senior counsel and junior counsel. That represents a lot of parties to pin down in order to decide who should take part in the meeting, so we supported a flexible approach, which would allow the parties to make their own arrangements, provided that it is understood that the communication must give rise to a written record, so that the fundamentals of what was agreed would be on the record.

The Convener: Could that meeting happen at any time as long as it took place at least two days before the hearing?

Moira Ramage: Yes.

The Convener: Do you envisage that the new system will lead to an increased work load for judges?

Moira Ramage: I anticipate that judges, who, under the provisions of the bill, would have a managerial role that they do not currently have, would want to ensure that they were fully prepared—as would all professional people. Judges would want to read the record of evidence and have some information about the case. In Scots law, judges are not given copies of, for example, witness statements; they work from a blank sheet. We certainly anticipate that judges would require preparation time and, again, we are discussing that with people who are programming

business in advance of the legislation. The issue will also be raised with the judicial training group to which Wilma Dickson referred. Tom Fyffe might have something to contribute on the matter, as his background is with the Scottish Court Service.

The Convener: The Crown has to submit papers 10 days before a trial, but under the bill it would have to do so seven days before the preliminary hearing.

Moira Ramage: That is a notice. If the Crown is adding extra evidence, it has up to two days before the start of the trial to prepare a notice and serve it. Under the bill, the Crown will have up to seven days before the trial diet.

The Convener: Is that a shorter time scale—three days less—than is currently the case?

Wilma Dickson: At present, the provision in section 67 of the Criminal Procedure (Scotland) Act 1995 is that the prosecutor can bring a witness into examination or put in evidence anything that is not in the lists that have been lodged previously as long as the accused gets notice of that not less than two days before the trial. It is not massively obvious what the bill does, because the relevant provision is in paragraph 9 of the schedule, which amends the provision in section 67 of the 1995 act in relation to High Court cases. Notice of additional witnesses or evidence must be given to the accused

"not less than seven clear days before the preliminary hearing"

or at

"such later time, not less than seven clear days before the trial diet, as the court may in special circumstances allow".

The Crown has an unfettered right to put additional witnesses or evidence before the court up to seven days before the preliminary hearing. Between then and up to seven days before the trial, there is scope for the court to decide that special circumstances apply. That represents quite a significant tightening up for the Crown.

10:45

The Convener: How much less time will the Crown have than it had before?

Wilma Dickson: That depends. Under the bill, the latest time at which the Crown will be able put additional witnesses or evidence before the court will be seven days before the trial, if the court concludes that there are special circumstances. At the moment, the latest time at which the Crown can do that is two days before the trial, with leave of the court, which is a less rigorous test.

The Convener: You concede that the Crown will have less time under the bill.

Wilma Dickson: A point that was raised in Lord Bonomy's consultation and which has been raised since—I think that it appears in the evidence that Mr Gebbie has submitted to the committee—is that, although most motions to adjourn come from the defence, some of them arise because of a very late submission of evidence by the Crown. I think that there is recognition that there has to be a partnership approach, which means that, if the procedure will be tighter for the defence—as it will be in some ways—it will also have to be tighter for the Crown. You might want to come back on that, but the bill says—

The Convener: I just want to establish that you accepted that, under the bill, the Crown will have less time.

Wilma Dickson: Yes.

The Convener: We have not heard from the Crown yet, but it may take the view that it will still have to stick to the 110 days. We have not yet reached the point about the extension to 140 days being to help the defence. I just wanted to establish that point, although I understand the logic of what you are saying.

Margaret Smith (Edinburgh West) (LD): Part 2 proposes changes to key principles that provide major protections for accused persons, such as the 110-day rule and the existing procedures on the trial of an accused in absence. Does the bill not significantly water down such protections?

Wilma Dickson: It might be helpful to say that one of the principles that the Executive very much accepts is that there must be clear and definite time limits, particularly where someone is being kept in custody. The bill will not erode that principle; there will still be clarity about the length of time for which the accused can be kept in custody. It will also still be the case that an accused must be brought to court within 110 days but, to give the defence more preparation time and to make the preliminary hearing work better, there is a proposal to extend the time for which someone can be kept in custody without a formal court extension being sought.

It is also fair to say that although the principle of clear time limits has been in place for a long time, the exact time limits have varied over time with the pressures of business and the complexity of cases. I do not think that the Executive believes that it is breaching the principle of having clear time limits; it is making an adjustment to reflect the increasing complexity of cases before the High Court today. We could give you examples of why cases are so complex if that would be helpful. For example, there could be a case with hundreds of witnesses—[*Interruption.*] I am sorry, I cannot find the examples at the moment.

Moira Ramage: In the High Court, cases tend to be more complex than those that other courts deal with, and that is perhaps how we would expect it to be as the High Court deals with the more serious cases.

Sometimes High Court cases have anything up to 50 or 100 witnesses. Not all witnesses reside in the locality of the crime; they could be in England, Holland or anywhere, and we have to ensure that all the strands of evidence are available so that we can understand what those witnesses are saying.

The detection of crime has also become a bit more sophisticated. For example, I refer to the work of the Scottish Drug Enforcement Agency and the surveillance of those who traffic in drugs. Huge inroads have been made into the overall sophistication of forensic science. In many cases of murder and rape, for example, several forensic science reports are required and—usually—produced. One will be a biology report that explains where certain bodily fluids have been found, and that will be followed by a DNA report. The investigation of crime in the High Court is a much more sophisticated affair than it was in the past, and it is certainly more sophisticated than in the other comparable court, which is the sheriff and jury court.

It is also fair to point out that although I cannot speak for the defence, the Law Society of Scotland will have a view, as will the Faculty of Advocates. The spirit of the bill is such that we hope to achieve the early disclosure to the defence of as much information as it needs to make headway with its preparation. However, in many ways, the real starting point is the service of the indictment because that is the point at which the defence knows precisely what charges an accused is going to face, what witnesses the Crown is bringing, what items the Crown might bring to be examined in evidence, and what documents it will rely on. We hope that the defence will get ahead of the game and be able to review as much information as it can, but the indictment is really the starting point for the defence.

At the moment in a custody case, that starting point allows 29 days for the defence to investigate the case. Therefore, there is a heavy burden on the defence to ensure that it covers every aspect of the Crown case. It does not just accept the Crown case at face value; it does its own investigations into the Crown case and instructs its own experts into whatever the Crown says are the results of the DNA and biology reports.

A range of experts now appears in High Court cases. For example, a video expert might review videotape to see whether they can identify the person who has been accused of the crime. Such experts are commonplace in many cases.

Wilma Dickson: As I have managed to find my examples, would it be helpful if I were to give the committee a few of them now?

The Convener: Yes.

Wilma Dickson: This is a small sample of recent cases in Glasgow. In one case, there were three accused facing 20 charges, including murder and torture, 149 witnesses and 180 documents or other pieces of evidence. In a drug trafficking case involving two charges, there were 212 witnesses, more than 50 per cent of whom were not resident in Scotland, and 332 items of evidence. In a case in which one person was accused of 12 charges including several charges of rape of children, there were 67 witnesses and 143 items. Those are, obviously, fairly extreme examples, but in murder cases in Glasgow, the average number of witnesses is more than 50, for example.

Michael Matheson: If one of the main reasons for extending the time limits relates to the pressure that the High Court is under just now and the complexity of the cases that are being presented, would it be reasonable to say that we will have to revisit the time limits at some point and extend them yet again?

Wilma Dickson: It is difficult to look that far forward. You will appreciate that part of the package—although this is not technically in the bill—relates to increasing the sentencing power of the sheriff court and passing to the sheriff court a number of cases that are similar to those that the High Court currently deals with.

The goal is to create greater certainty and to come up with a procedure that eliminates a lot of the side issues, side tracks and confusion that currently exist. While it would be impossible to say that the time limits will never have to be revisited—it is impossible to say absolutely definitely what will happen with trends, pressure of business and so on—we do not envisage that being done in our lifetime.

Michael Matheson: You have mentioned the scientific advances that have been made, particularly with regard to police investigations and forensic medicine. I presume that, within a fairly reasonable time scale—perhaps the next five to 10 years—there will probably be further significant scientific advances. You say that more cases will go to the sheriff court, but I suspect that those advances will have an impact at the sheriff court level, as the cases before that court will become more complex. Obviously, whether the issue is revisited in one's lifetime depends on how old one is. For some of us, it might be revisited sooner rather than later.

Wilma Dickson: On the whole, technological advances tend to make things faster rather than slower. One would hope that that would apply to

technological advances in the forensic field, although I appreciate that I cannot guarantee that.

Mr Maxwell: It has been stated a few times that the complexity of cases—the number of witnesses, the forensic and DNA tests and so on—leads to the conclusion that the time limit must be extended. However, we seem to be basing the need for the change on the exception rather than the rule—you said yourself that you gave us extreme examples. I accept that the High Court tends to deal with more complex cases than the sheriff court does, but do you accept that the cases that are extremely convoluted and have 100-odd witnesses will not be affected by the 140-day limit because they are so complex that they will come to trial only when all the evidence is ready? If so, do you accept that the cases that could easily be dealt with within the 110-day period will be extended for no reason other than to allow the extreme cases to be dealt with?

Wilma Dickson: The cases that I mentioned are extreme, but they illustrate the fact that the average case is also more complex and has more witnesses. Although there are extreme examples, cases are spread out across a spectrum. It is not that some cases are at the extreme end of the spectrum and the rest are clustered at the other end, are pretty simple and can be got through rapidly. I understand what you are saying, but there is a general shift towards greater complexity and more witnesses, not only in isolated, extreme cases but in the court loading as a whole.

11:00

Margaret Mitchell: I share the concern about the time limits; once we start moving them, we will keep on moving them. I understood you to say that the proposal is in the interests of the defence, but is it not the case that we already have more early disclosure and a system in which, on an ad hoc basis, extra time is given if there are good reasons to do so? Should we not rely more on disclosure, as opposed to setting things in tablets of stone by giving the extension?

Wilma Dickson: I understand that point of view. Lord Bonomy thought carefully about the matter and he came to the conclusion that it is not an either/or question and that we need both measures. Moira Ramage's remarks underlined the point that although early disclosure will be of assistance, there is a lot that the defence cannot do until it sees the final form of the charges in the indictment. Lord Bonomy also thought about the alternative of serving the indictment earlier, and concluded that it is not realistic to set in statute a deadline of less than 80 days for serving the indictment in custody cases. I think that he is correct and the Scottish Executive supports his conclusion. His view was that, to make things better, we need both early disclosure and extra time for the defence post indictment. That is the Executive's approach; early disclosure is important and the committee might want to talk more about that, but we need extra time for the defence post indictment, which is the point at which it sees the final form of the charges.

Margaret Mitchell: The Howard League for Penal Reform in Scotland, with which I do not always agree, has made the suggestion that, rather than formalise procedures now, you should see how the proposals bed down and then assess whether there is a need to extend the rule. Is that a reasonable way in which to proceed?

Moira Ramage: The proposals form a package, and each proposal is dependant on the others. I appreciate that it might seem attractive to try something out a bit to begin with and see how it goes. However, the ethos of Lord Bonomy's vision for the High Court is that a system should be in place to ensure that there is early disclosure by the Crown and that the defence and the Crown come together to meet and discuss matters related to the case, including whether there will be a plea. There should be a preliminary hearing to deal with all the issues that might prevent a trial from starting, so that if a case is proceeding to trial, the trial diet is as certain as it can be. The consequence of that is that witnesses and victims will be given as much certainty as possible about when a trial will start.

Lord Bonomy considered how all that could be achieved within the current system of an indictment at 80 days and a trial by the 110th day. That was considered unfeasible because it would be difficult to say on the 110th day that all aspects of a case had been dealt with and all the preparation concluded—realistically, the true window of time for the defence is 29 days.

The evidence that Lord Bonomy used to support his view came from research on how often the 110-day period is extended. From that research, it was discovered that in quite a high percentage of cases, the period was extended not just once, but twice—and sometimes even more. Having looked at the body of evidence, Lord Bonomy concluded that if the 110-day period was often extended anyway to meet the need for preparation—for the benefit of whichever side—a system that included a preliminary hearing by the 110th day could address the problem. In such a system, someone in custody would appear in court within 110 days. If the case were going to trial, there would be a window of time—the 30 days—within which that trial should be fixed. That window of time would ensure that everyone—those on the prosecution side and those who are representing an accused person in custody—is prepared.

Margaret Mitchell: You are arguing about procedures here, but the essential point is to do with the rights of the accused, who will be in custody for an extra 30 days. You are not telling me with any certainty that you know why cases are postponed at present, although you mentioned some difficulties with forensic evidence. Would it not be much better if the reasons why the cases are not going ahead were examined fully before you tinker around with the rights of an accused person awaiting trial, who has not yet been proved guilty? Such rights are fundamental to our criminal justice system.

Moira Ramage: I agree that the accused's right to his liberty is fundamental to most civilised systems. I mentioned forensic science in relation to the complexity of not only preparation for a trial but, in particular, the evidence to be laid before the court.

On the overall balance of what we are trying to achieve, at present many cases are adjourned for a variety of reasons. Research contained in the Bonomy review outlines how many adjournments there have been and the reasons for them. The reasons vary. Adjournments can take place because the defence is not prepared, and there may be reasons why that is so, or because a late notice was given to the defence by the Crown. The point is that the trial is not proceeding. Counsel might not be available because they are doing another trial in another court or because they have been instructed only recently but, again, the point is that the trial is not proceeding. For every time that a trial does not proceed in the High Court, there will be a huge number of people, including witnesses and victims, who are cited—

The Convener: I am sorry to interrupt—I think that we have that point on the record now. Is the point that you are driving at that, if a trial is continually delayed or adjourned, the accused will remain in custody as long as the trial has started beyond the 110-day period?

Tom Fyffe: One of the provisions in the bill is that the accused can apply for bail if the 110-day limit is breached, whereas he cannot do so at the moment. You have to consider the fact that, if someone is detained in custody, the chances are that, pending his trial, he will have appeared before at least two judges: a sheriff and a High Court judge. They will probably have taken into account more than the circumstances of the offence itself. It is likely that they will have also considered the circumstances of the accused, including whether he is a danger to the public, before deciding that his liberty should not be extended to him pending his trial.

The Convener: Let me put this to you again. Some committee members have expressed concern about the fundamental right that is enshrined in Scots law that an accused person should not be in custody for more than 110 days. You have addressed the question of the continual adjournment of trials. Does that mean that the person in custody will, in many cases, have reached the 110th day, but that things continue well beyond 110 days? Are you saying that, because of the adjournment culture, someone who is entitled to a limit of 110 days in custody is in reality serving longer than that?

Moira Ramage: Yes.

The Convener: Once the trial has started, the 110-day rule effectively disappears. Is that right?

Moira Ramage: Yes.

The Convener: Can you also provide the committee with statistics on the average length of time that a person in such a situation is held in custody? Presumably it would be a long time.

Tom Fyffe: We could supply the committee with statistics based on some research that was carried out into the 2002 records in the book of adjournal. We found that, for the 40 per cent or so of people who were detained in custody, there were 149 applications to extend the 110 days on at least one occasion, and 64 applications to extend the limit on more than one occasion. The average length of time spent in custody was approximately 34 days. In some cases, the person concerned spent two or three days in custody, while in one case that is on record a person spent more than 200 days in custody.

The Convener: That is helpful.

Mr Maxwell: I want to turn to the issue of bail, which I think we had begun to creep into. Under section 9(9) of the bill, failure to meet the 140-day time limit will mean that the accused will be entitled to bail. If that person is not admitted to bail, how long can he be held in custody?

Tom Fyffe: He can be held in custody for the length of time prescribed in the extension that the court grants and until his trial is ready to proceed.

Mr Maxwell: In other words, indefinitely.

Tom Fyffe: There will be no change in that regard; we are simply seeking to extend the limit to 140 days. At the moment, a person can be detained in custody pending their trial until parties are ready to proceed, and that situation will remain the same.

Mr Maxwell: Okay.

In the case of a person who has not received bail because of previous circumstances—for example, as you have already pointed out, they might be a danger to the public and so on—if their time in custody breaches the limit and they

succeed in being admitted to bail, would normal bail provisions apply?

Wilma Dickson: Are you asking whether bail conditions can be imposed?

Mr Maxwell: Yes.

Wilma Dickson: Yes, they can.

Mr Maxwell: Can you give us an example?

Moira Ramage: They are not allowed to contact the complainer, go to certain locations and so on. A judge can choose from a range of bail conditions. I do not know whether that answers your question.

Mr Maxwell: If a person has been in custody for a reasonably long time, will there be a pressure to grant him bail if the 140-day limit is breached?

Moira Ramage: The court would look very carefully at any request to detain someone in custody for more than 140 days. Obviously, there would be arguments for and against granting bail. I expect that the court would be interested if the Crown were to argue that the person in question posed a danger to the public—that issue was raised when we began to examine the question of bail. The court would then consider all the facts and circumstances on their merits and make a decision on that basis. It is very difficult to say what the court would do in that situation; however, it would certainly seek a full explanation as to why someone was being detained beyond the 140-day limit if an application for an extension had been refused.

Mr Maxwell: I am concerned that the pressure not to keep a person in custody beyond a reasonable length of time does not mesh easily with the fact that there must have been a reason why they were not granted bail in the first place. There is obviously a problem in that respect.

I am also concerned about the culture of continual extensions. If we enshrine in law a 140-day limit that I have no doubt will still be breached, people who at that point are only accused and are not guilty of anything will be held for an overly long time in custody, while people who have been kept in custody because they pose a danger to the public or for some other reason could be released because of the length of time that they have spent there. Where do we strike the balance in that respect? How will the courts react to that particular pressure?

Wilma Dickson: The provision provides for the prosecutor to apply for an extension and, obviously, the court will carefully consider that application. The accused would be admitted to bail only where an application is not made, or is made, considered by the court and refused. A balance must be struck. We recognise that the extension of time limits is a sensitive issue. Therefore, rather than the Executive build in further delay provisions, there seems to be something to be said for a fairly clear proposal in the bill that, where a time limit has been reached and the court has not granted an extension, bail should be available.

We understand your point and we have carefully thought about it. There is a deliberate balance. The Executive recognises that extending and changing time limits is a sensitive issue, so there is a quid pro quo. When a time limit is reached, the court has a chance to consider the possibility of an extension and all the reasons why bail was not granted in the first place. If the court decides that it is not satisfied that there is enough to keep a person in custody and that they should be released, the full bail provisions will apply.

11:15

Mr Maxwell: So the normal range of bail conditions can be imposed at that point.

Wilma Dickson: Yes. Standard bail conditions are set out in the 1995 act, but judges have wide discretion to impose special conditions that are appropriate to individual cases.

Moira Ramage: Under the existing legislation, no matter how dangerous an individual is or what they have been accused of doing, if a time limit is breached, he will be liberated and can never be prosecuted. So the bill strikes a balance.

I agree whole-heartedly with you about the tensions that you have recognised. There are tensions, but the bill tries to balance the right of the accused to his liberty with the public interest in respect of freeing someone from prosecution.

Marlyn Glen (North East Scotland) (Lab): Section 11 provides for trial of the accused in his absence. Will such a trial be consistent with our international legal obligations? How will the interests of the accused be represented? How will a lawyer appointed by the court be able to defend such a case?

Wilma Dickson: Obviously, we took into account European convention on human rights obligations in particular. There is a right to attend a trial, but there is no European case law to the effect that if someone has been duly made aware of their trial but then fails to attend, continuing with the trial would, per se, be contrary to the ECHR.

Recently, the matter was considered thoroughly south of the border by the House of Lords, which considered a case in which someone had repeatedly failed to turn up and a large number of witnesses had been assembled, and the trial had proceeded. The House of Lords took the view that consideration had to be taken of whether the trial

had been as fair as possible in the circumstances and whether the jury had had the chance to examine the arguments that opposed the Crown's arguments. It found that, in the case in question, the judge had put things fairly to the jury and that the trial had therefore been fair. We considered that case carefully. There is nothing in ECHR case law that prevents a trial from being held in absence, provided that it is as fair as possible in the circumstances.

Marlyn Glen: In that case, the trial was thought to be as fair as possible, but generally speaking, how can a lawyer appointed by the court fairly defend such a case?

Wilma Dickson: I understand that point. Two options are envisaged under the bill. One is that the existing legal team should be empowered to continue, although we realise that, in many cases, the previously instructed legal representatives will probably choose to withdraw. There is no ECHR requirement for the court to appoint a lawyer. There is no such requirement south of the border, for example, where trials in absence, when the defendant absconds during the trial, have happened for a long time and where the House of Lords has just considered a trial in absence happening when the defendant is not there at the beginning and ruled that there is no difficulty with that in principle either.

There is no absolute ECHR requirement for legal representation, but it seemed to us that, in the interest of justice—such a test is included in the provision—we should allow the court to appoint legal representation. We understand the point that, by definition, a lawyer in such a case cannot take instructions and does not have their client on site—there are some issues around that about which the Law Society of Scotland has concerns that it might raise with you.

It is envisaged that there should be someone in the court who is in a position to put to the jury what they see as the weaknesses in the prosecution case and the strengths of the defence case. We accept that that is not quite the same as taking instructions from a client. In most other circumstances in which a solicitor is appointed, for example if the client is not allowed to conduct his own offence, the client has not been lost—he is around somewhere, so the solicitor can take instructions. However, the view was taken that, even though representing an accused in their absence is not the same as acting on a client's instructions, it is desirable to have a lawyer in the court who can put the opposing point of view to the jury, effectively criticise the prosecution case and say to the jury, "You might want to consider that," or "That is not a terribly robust argument," or "Think about that evidence." That is not the same as having instructions, but it is impossible to get instructions in such circumstances.

Marlyn Glen: Would the accused who has been convicted under such proceedings have a right to be tried in person if he subsequently surrendered himself for trial?

Wilma Dickson: He would have the normal rights of appeal against conviction or conviction and sentence, but he would not, as I understand it, have a right to be tried again.

Bill Butler: Section 12 makes provision for the apprehension of reluctant witnesses. Has any research been conducted to determine why witnesses fail, or refuse, to attend when duly cited?

Moira Ramage: Lord Bonomy conducted no research to find out why people do not come to court and are therefore labelled as reluctant. He relied heavily on his experience as a High Court judge and as a prosecutor in the High Court. We were aware of some research that the Scottish Office did, which we can provide at a later date, if you wish.

Bill Butler: What did the research reveal?

Moira Ramage: It was more to do with witnesses who needed the police to provide some protection; I believe that it led to the beginnings of the witness protection scheme, which I think Strathclyde police initiated. The research considered witnesses' physical concerns as opposed to perceptions of intimidation, but that is only one small part of why witnesses do not come to court. The reluctance of witnesses obviously varies, and although there are witnesses who will not come to court because they are frightened to come and have real reasons to be frightened, there are other witnesses who are more obstructive than reluctant—that might be a better way of looking at the matter.

To be frank, I think that everyone would be reluctant to give evidence at the High Court. All of us could be labelled with the word "reluctant". We are trying to deal with people who—

Bill Butler: Do you mean that people are deliberately unwilling?

Moira Ramage: They have been cited. They know that they should come to court, yet they do not do so. They cause a lot of disruption to the system.

Bill Butler: They may be connected, to use the term.

Moira Ramage: They may be connected or what is otherwise classed as hostile, or they may be friendly with the accused. There is a raft of reasons why people do not come to court. The issue, however, is the fact that they do not come

and the consequences of that on the court system. The proposals try to address that situation. The aim is to enable witnesses to make themselves available to come to court, or to do that as far as it is possible to do so.

At the moment, if someone in that position were found, they would simply go into custody. Our provision provides a further mechanism to assist those who perhaps should not be in custody, but over whom we should have a bit more control or knowledge about where they are. The provision would help to ensure that those people came to court. When the police have intelligence that a witness is going to abscond, it will allow them to arrest the witness without a warrant.

Bill Butler: A matter that is directly connected to that is the provision for a just excuse for failing to appear. Will you elaborate on that? Would that provision include, for example, a witness who had been threatened or who was a single parent with sole responsibility for the care of a sick child?

Moira Ramage: A just excuse would be one that satisfied a judge that the person had a good reason for not coming to court. It would vary from circumstance to circumstance and could include illness and situations in which people have tremendous transport difficulties. The judge would take such issues into account.

Bill Butler: So it would be up to the judge to decide what was or was not a just excuse.

Moira Ramage: That is correct. However, perhaps we should step back a little. Before the witness even gets before the judge, the prosecution has to seek a warrant and before that it has to have made some investigations—sometimes extensive—into why a witness did not arrive at court when they were expected to do so.

The prosecution would not seek a warrant for a witness who, on investigation, was found to have family or transport difficulties on the day. We are talking about a core of people who avoid coming to court. Before a warrant is sought and the witness is brought before the judge, the Crown Prosecution Service will have conducted an investigation into why the witness did not attend.

Bill Butler: So, the just-excuse provision would not apply to people who were deliberately unwilling to appear for one reason or another.

Moira Ramage: I cannot see—

Bill Butler: It would be unlikely.

Moira Ramage: It would depend on what the excuse was. Someone would have to satisfy a judge that they had a very good reason for not coming to court. The reason could include threats about which, for whatever reason, they had not told the police. A judge would take that sort of reason on board.

Bill Butler: So, in such a case, a process of filtering information to the police and so forth would have taken place, but the witness would be willing to tell only the judge that they had been threatened. Are we talking about that sort of thing?

Moira Ramage: The prosecution would have investigated why the witness did not come to court, but would not have found a reason such as those that we have discussed—the sort of difficulties, including transport or family difficulties, that humans understand. If the witness will just not come to court and will not explain why they will not come, the prosecution has no option other than to proceed with a warrant.

The situation would depend on the importance of the witness. I do not imagine that a warrant would be issued for someone who was not essential to a case. The prosecution might try to seek agreement on evidence to avoid that course.

People who seem to be refusing to give evidence without an obvious or good enough reason may disclose information to the court that the court would consider a just excuse in the circumstances. People may disclose information to the court that they did not disclose to the police or the prosecution. They may have been threatened but did not like to say.

The Convener: I am struggling to understand why we need this provision in the bill. Is it correct to say that the Crown currently has the power to apprehend a witness who has failed to appear and can ask the judge to have that person remain in custody until the trial?

11:30

Moira Ramage: The Crown can ask the court for a warrant to arrest a witness. The Crown will usually have to satisfy a sheriff—it depends when the warrant is being sought. The usual situation is either that the witness is essential and is avoiding being cited by moving around—

The Convener: But, if the Crown felt that there was due cause, it could apply for a warrant for the apprehension of a witness. Is that the case?

Moira Ramage: Yes.

The Convener: Right. I just wonder why we need an additional provision. We are running out of time so, to cut this short, could you provide us with criteria for this provision? I am not happy just to be told that, in the case of a reluctant witness, a "just excuse" will be the criterion, but that, in the case of a trial in the absence of the accused, "the interests of justice" will be the criterion. We need more detail on the criteria that will be applied.

Tom Fyffe: The provision was included in the bill to clarify the law. At the moment, a High Court judge cannot issue a warrant for a witness if they are informed before a case is called that the witness is not going to turn up. The advocate depute would need to instruct a procurator fiscal, who would instruct a petition to be raised in the sheriff court for the sheriff to grant a warrant. That all takes time.

The provision will allow a High Court judge—if they are informed on the morning of a trial that a witness is not going to attend for whatever reason—to grant a warrant. The intention would be to get the witness in to allow the trial to proceed. At the moment, a High Court judge does not have the power to grant a warrant to apprehend.

The Convener: I see. And the judge would determine what was a just excuse.

Tom Fyffe: Yes.

The Convener: I understand that the court is now required to consider whether remote monitoring, rather than remand, might be an option.

Sharon Grant (Scottish Executive Justice Department): If the court refuses bail and remands the accused or the appellant, the accused or the appellant can apply again for bail with a remote-monitoring condition attached. The provision is specifically targeted at those who would be refused bail to prevent sentencers taking a belt-and-braces approach and tagging everyone whom they bailed. The Executive tailored the provision in that way in response to a consultation on the future of electronic monitoring a couple of years ago. That consultation has since been supplemented by further research and evidence from sentencers. Sentencers would support electronic monitoring if it were used as a condition of bail, but they warned against its widespread use. They felt that it should be targeted at people whom they would otherwise have remanded. If a court refuses bail and remands a person, that person can apply for the court to consider a remote-monitoring condition. The court has the power either to continue to refuse bail or to grant bail.

The Convener: My next question is similar to Stewart Maxwell's earlier question. If a judge has decided that he is going to refuse a person bail, are there not concerns about electronically tagging that person? That person would otherwise have been in custody—perhaps because there was a risk that they would abscond or would be a danger to the public.

Sharon Grant: That is right. The court still has to be satisfied that its requirements will be met. In that regard, we have given both the defence and the Crown the power to be heard. If there are still concerns about the danger that an accused may pose, or about the risk of him absconding, the court can balance that up and make its decision.

The Convener: Can the defence appeal against the decision on the basis that the judge should have considered remote monitoring as an alternative to remanding in custody?

Sharon Grant: No.

The Convener: When an offender or accused person is on a restriction of liberty order for the purposes of bail, what is the procedure if there is a breach?

Sharon Grant: If there is a breach, the electronic monitoring contractor will notify the police within a set time limit. The police will then take action on that breach and return the offender to custody if they believe that there is good reason to do so.

The Convener: Is that on the first breach?

Sharon Grant: That will be determined by the police.

Margaret Mitchell: Section 17 requires the court, when considering sentencing, to take cognisance of the stage in the proceedings at which a plea of guilty is tendered. How will that differ from how things are done at present? Will it make a significant difference? What will it mean in practical terms?

Tom Fyffe: At the moment, judges may take into account the circumstances in which a plea of guilty has been tendered. They have to do that when the plea is intimated and, if they do not apply a discount, they have to state in court why they have not done so. A recent appeal court decision has given guidance to sentencers on how they should apply section 196 of the Criminal Procedure (Scotland) Act 1995. We see that as complimentary to section 17, which merely reinforces what is in effect in the 1995 act.

Margaret Mitchell: So you do not envisage the provision having a significant impact on encouraging people if they do eventually—

Tom Fyffe: It will depend on how sentencers apply the words and on application in the appeal court. If they say that they are entitled to impose a sentence of six months or six years, but that because the accused has intimated an early plea of guilty they will impose a sentence of only four months or four years, we hope that that would eventually get through to accused persons who wish to tender a plea of guilty, so that they know that they will be given a discount for tendering that plea at an early stage. We see that as an incentive.

Margaret Mitchell: Do you hope to encourage the accused to plead early rather than holding out to see how things develop?

Tom Fyffe: Yes.

Margaret Mitchell: If someone intends to plead guilty, that would be an incentive to do so as early as possible.

Michael Matheson: What assessment have you made of the impact that the bill's proposals will have on the work load of the sheriff courts, and what have you found?

Tom Fyffe: We think that the impact on the High Court will be a reduction of around 23 per cent of its case load; that does not necessarily mean a similar reduction in its work load. Throughout Scotland, that will represent about a 7 per cent increase in sheriff and jury solemn business. We have spoken to programmers throughout Scotland, who seem content that they will be able to take on that extra business. The information and statistics that we worked on were from the Scottish Court Service, which is taking the matter forward with the sheriffs principal, who have responsibility for the effectiveness and efficiency of sheriff courts.

Michael Matheson: Is that assessment still continuing?

Tom Fyffe: Yes.

Michael Matheson: When is it due to be completed?

Tom Fyffe: The Scottish Court Service has been called to give evidence, and it is in a better position to tell you that. It is looking at the whole picture—not just the present impact, but the general trends in solemn business.

Michael Matheson: Perhaps the Scottish Court Service should also answer my second question. How does all this dovetail with the McInnes review?

Wilma Dickson: An issue that was raised was whether we should go ahead with the proposal without waiting for the recommendations of the McInnes review. Ministers expect to get those recommendations very shortly, but the evidence to suggest that the sheriff courts' capacity could absorb the number of cases that would come down was sufficiently robust to allow us to go ahead with the proposal as a freestanding exercise without the need to wait for whatever Sheriff Principal McInnes and his committee may recommend about possibly implementing the other part of section 13 of the Crime and Punishment (Scotland) Act 1997 and giving increased powers to the summary courts. The judgment was made that the capacity in the system would not be overloaded by going ahead with this proposal first. However, we made it clear in the white paper "Modernising Justice in Scotland: the reform of the High Court of Justiciary" that we would develop the proposal—in particular, its timing—in discussion with the sheriffs principal. The white paper sets the date for implementation at spring next year, by which time ministers will have had a chance to look at the McInnes recommendations and assess how the whole package fits together.

Michael Matheson: Who made that judgment about the capacity?

Wilma Dickson: It was made by all those who were working together in developing the proposals, not just the bill. As you will have observed, the proposal is not directly in the bill because it already exists in legislation. However, we understand your concern that, because it is part of the package, it should be possible to talk about it. There is a small provision in the bill about extending sentences, which is a useful hook.

We were sufficiently confident in making that judgment on the basis of the work that had been done and the fact that the proposal would mean a relatively small percentage increase in the work of the sheriff courts. The rate of cases coming to trial in the sheriff courts is a bit lower than the rate in the High Court, with less than 25 per cent of cases in the sheriff courts requiring a trial. That, too, has an impact. The judgment was made that we should go ahead with the proposal in principle, although we have said that that we are working in partnership with the sheriffs principal. The sheriffs principal have responsibility for the administration of justice in their sheriffdoms so we need to work with them, especially in determining an implementation date.

The Convener: I have a question on the powers in section 13 of the 1997 act, which would probably be more properly put to the minister than to the bill team. As we now have a Scottish Parliament, the Parliament should have been allowed to review the 1997 act, but it was not. Why did you rule out extending the sentencing powers of sheriffs to four years rather than five years?

Wilma Dickson: Lord Bonomy went through that in some detail and concluded that the technical borderline between short and long sentences of four years should not be the determining factor and that five years was the right figure to enable the moving down to the sheriff court of a significant proportion of cases that are not drastically different in type from those with which the sheriff court deals already. That judgment was based on work that the Crown Office did in looking at a sample of cases that had been marked for the High Court. Given the fact that the prime criterion for marking down cases would be not whether they involved particularly complex issues of law, but whether the expected

sentence would be up to five years, the cases that were identified were similar in type to those that the sheriff courts deal with already.

In a sense, the white paper simply records the fact that we have looked at Lord Bonomy's reasoning and accepted that the arguments in favour of four years are not strong. Four years would also be more complex in legislative terms. The balance that Lord Bonomy sought was to find a level that was not unreasonably high while being sufficient to enable a significant tranche of cases to be moved down. That balance was found at the level of five years.

You are right that the question whether that issue should be reopened is for the minister rather than for me.

The Convener: Is the objective of the provision to move a significant number of cases from the High Court to the sheriff court?

Wilma Dickson: Yes.

Moira Ramage: The issue was sensitive. In anyone's view, five years had already been legislated for and consulted on by the Scottish Office. Lord Bonomy examined the old Scottish Office papers to see what the arguments for and against were. However, there was a view that it would be difficult for him to open up that debate when five years had already been provided for on the statute book.

11:45

The Convener: Can we presume that, in those cases in which an accused person can have counsel represent them in the High Court, that will continue in the sheriff court?

Moira Ramage: The same rules will apply. There will be no change to the availability for representation by counsel. As I understand it, the matter is for the Scottish Legal Aid Board, which can sanction counsel for the sheriff and jury court. Nothing has changed there.

The Convener: The issue was raised in the focus group. I think that ex-offenders made that presumption.

Moira Ramage: We have not changed any of that. Whatever the situation is for getting counsel in the sheriff and jury court at the moment, the same rules will apply. The same opportunity will be available under the Bonomy proposals as exists at the moment.

The Convener: I am afraid that we have run out of time, although I am sure that our witnesses are glad about that. We have a number of other questions that we would like to put to them. Is it acceptable that we do that in writing?

Moira Ramage: Yes, of course.

The Convener: The session has been long, but it has been very useful for us. Our thanks go to the whole of the bill team for their evidence this morning.

Our next set of witnesses is from the Crown Office and Procurator Fiscal Service. We will hear from Morag McLaughlin, who is head of the policy group, and Bill Gilchrist, who is the deputy Crown Agent. I am sorry for keeping you waiting so long.

We will go straight to questions, the first of which comes from Stewart Maxwell. Apologies, the first question is from Margaret Mitchell. No, sorry, it is from Margaret Smith. I will get this right eventually.

Margaret Smith: We are aware that the Crown Office and Procurator Fiscal Service is already making quite a lot of changes in terms of modernisation, but what additional staff, on top of the staff that you have already taken on, will be required to deal with the new mandatory preliminary hearings in the High Court?

Bill Gilchrist (Crown Office and Procurator Fiscal Service): We based our calculations on those of the Scottish Court Service and make provision for two additional courts in the first two years, which is a transitional phase. That means two additional courts and two additional judges to deal with preliminary hearings. Our simple calculation is that, with two additional courts, we need two additional advocate deputes and the support staff to back up the advocate deputes. In addition, we calculate that, even beyond the transitional two-year period, preliminary hearings will by definition require more preparation time by advocate deputes in all cases, which we reckon will have an impact on us of an additional two advocate deputes.

In the long term, we anticipate that we can absorb that extra work. If the provisions work and we have less churning of business in the High Court, that will be of benefit to the Crown, because advocate deputes who currently have to prepare for trials that do not proceed will, in effect, be preparing for preliminary hearings. However, we calculate—again, based on the calculations of the SCS—that in the short term, in particular in the transitional period while the culture is being changed and the provisions are bedding in, there will be additional courts and therefore a need for additional prosecutors.

Margaret Smith: What are your impressions of how pre-trial hearings have worked in summary proceedings? Have people been encouraged to make earlier pleas? In the visits that we have undertaken, we have had a mixed response from people whom we have questioned about whether pre-trial hearings are successful.

Bill Gilchrist: Intermediate diets in summary proceedings have a mixed track record. They appear to be more productive in some courts than in others. Often, that is attributed to the attitude of the sheriff. If the sheriff is more proactive in dealing with cases at intermediate diet, the process may be more successful, although it is successful to some extent in all courts.

There will be cases where pleas are tendered at the intermediate diet. I do not have the figures with me, but we can provide the committee with more detail. In every court, a percentage of cases will plead at intermediate diet, but in some courts the incidence is much greater than in others. In every court, a number of accused will not turn up at the intermediate diet and a warrant will be taken. It is better that a warrant be taken at the intermediate diet than at the trial diet, when the witnesses will have been inconvenienced. The picture is mixed and it could be better.

Paul Burns (Adviser): For the benefit of the committee, will you say whether you accept that the effectiveness of the intermediate diet is, to some extent, related to the ability of the Crown to disclose to the defence and for the defence to know what the case is?

Bill Gilchrist: Yes. Clearly, there are significant differences between summary and solemn procedure. In solemn procedure, there is an indictment and all the witnesses and all the productions are attached to the indictment. That does not happen in summary proceedings, where the defence simply receives a complaint. In summary proceedings, the Crown will provide, on request, a provisional list of witnesses and the defence may prepare on the basis of that list.

If the defence is not adequately prepared by the intermediate diet, that will impact on the effectiveness of the diet. Of course, one purpose of an intermediate diet is to check whether the parties are ready or whether the trial diet has to be adjourned. I accept that the defence's ability to prepare for the intermediate diet is affected by the extent to which the Crown can assist it. At the moment, we assist it only by providing a provisional list of witnesses. In summary cases, we also provide police witness statements, but not civilian witness statements.

Michael Matheson: You will be aware of the proposal in the bill to amend the 110-day rule and to establish various requirements in relation to that change. Will the change make the Crown's work easier, in particular with solemn cases?

Bill Gilchrist: The 80-day rule is not being changed and that is the rule with the greatest impact on the Crown. We must complete our investigations and our preparation and indict within 80 days. Under the bill, we will indict for a preliminary hearing within 110 days. At present, we indict for a trial diet within 110 days and, in far too many cases, that trial diet turns into a procedural hearing.

As the Crown will continue to have to indict within 80 days, the bill will not change the position for us. Our position will change if preliminary hearings work—if pleas are tendered and cases are disposed of at preliminary hearings or if the defence is fully prepared by the preliminary hearing and some confidence is felt that parties will be able to proceed to trial on the date that is fixed for the trial diet. All that will benefit the Crown. However, the 80-day rule has the greatest impact on the preparation, precognition and other work that we have to do.

Michael Matheson: You say that if a preliminary hearing is to work effectively, the onus is on the defence to have its case prepared. You sound fairly confident that the Crown could be prepared within that time scale.

Bill Gilchrist: We have to serve the indictment within 80 days, but we will still be able to add witnesses and productions after the 80th day—we will be able to do that up to seven days before the preliminary hearing. I have no doubt that, in larger and more complex cases, we will still need to do things after the 80th day.

If a preliminary hearing is to work effectively, both parties must be prepared. We must have completed our inquiries, decided what evidence we want to lead and informed the defence of our position on the evidence that we intend to lead. The defence must complete its investigations and inquiries and must be ready by the preliminary hearing, and preferably by the managed meeting the week before the preliminary hearing, to negotiate with the Crown if there is any prospect of a plea negotiation. The defence must be in a position to say whether it is ready to go to trial, as must we.

The question of how much time is needed between the service of the indictment and the preliminary hearing is important. The bill allows 29 days for that period, in which the parties complete their preparations, the defence takes instructions from its client and the parties meet to attempt to resolve any outstanding problems, to agree evidence and to negotiate the plea. Lord Bonomy's view, with which the Crown agrees, is that 29 days—three or four weeks—is the minimum period that is required to enable all that to be done, so that everyone is ready by the time of the preliminary hearing.

Michael Matheson: Are preliminary hearings key to addressing the problem of delays in the High Court?

Bill Gilchrist: Yes. At the moment, we have to select a trial date when we serve the indictment by the 80th day. The trial date is determined according to the 110-day rule. We have little choice as to the trial date in custody cases; we have more choice in bail cases. We simply have to fix a trial diet, which is allocated to a fortnight's sitting—it is not a fixed date.

In effect, we do that without any reference to whether the defence will be able to proceed by then. We do it without knowing what the defence position is likely to be. We simply launch into a trial diet and we have to cite the witnesses for that diet. Then, we all turn up and find out what the true position is. We find out only at the so-called trial diet whether there is a plea, whether there is a problem with witnesses and whether the defence need to do further preparation—whether there is a need to adjourn.

That is the problem in the High Court. Cases are continually being adjourned and there is a continual churning. That is partly caused by the fact that we launch into a trial diet without knowing whether all parties are in a position to proceed to trial at that time.

The preliminary hearing provides an opportunity to bring the parties together before the judge, who has an important role in managing the process. A trial diet is fixed only if the parties are ready and all outstanding issues have been addressed. We view that as an essential ingredient to ensuring that there is less churning of business in the High Court.

12:00

The Convener: You said that the managed meeting should take place a week before the preliminary hearing. What is your understanding of the format of the managed meeting?

Bill Gilchrist: The bill does not cover the form that the managed meeting should take. It is to be hoped that the meeting will be a meeting of minds; at any rate, it will be a meeting between defence and Crown. It need not be a face-to-face meeting; it could be conducted by telephone. It has to address the issues that are to be addressed at the preliminary hearing.

Whether the preliminary hearing is about the two parties' state of preparedness, about which witnesses will be required for the trial or about the negotiation or tendering of a plea, all those matters must be discussed between the Crown and the defence before the preliminary hearing. Whatever form the managed meeting takes, it will be a discussion involving questions such as, "Are you ready?" and "Is there anything that you still have to do?" or "Is there anything that we can do for you?" Other questions might include, "What witnesses will you require?" and "Are you going to be taking any preliminary pleas or objections?" The Crown might also wish to know whether there was a prospect of a plea in the case and, if so, what it might be.

It is desirable to ask all those questions in advance of the preliminary hearing, so that that work does not have to be done with the judge sitting on the bench. It makes sense to discuss all those issues before formally discussing them in front of the judge.

The Convener: How long would you expect a preliminary hearing to last?

Bill Gilchrist: I do not know; it is difficult to predict. I believe that 55 per cent of High Court cases are currently resolved by a plea at the trial diet. If a significant number of pleas were tendered by the preliminary hearing—I accept that there will continue to be many occasions when the plea will not be obtained until the last possible minute—the length of the preliminary hearing will simply be determined by the size of the case. Account has to be taken of how long it will take to narrate the facts, to hear the plea in mitigation and for the judge to pass sentence. That might take half an hour or an hour, depending on the size and nature of the case.

If there is no plea and if the hearing is simply an inquiry into the state of preparedness and into the most suitable date for the trial, that hearing could be completed within an hour. If, however, there are preliminary objections or arguments over the admissibility of evidence, and if the whole host of matters that are currently considered at preliminary diets arise, the preliminary hearing could take several hours to conduct. It depends on the case and on what is being done at the hearing.

The Convener: Would you expect that, when business is finished on the day of the preliminary hearing, a trial date would have been fixed?

Bill Gilchrist: The bill allows for a preliminary hearing to be continued. Some preliminary hearings may be short. For example, there may be major difficulties with the state of preparedness of either party and the court may quickly be persuaded that there is a need for a further preliminary hearing in a few days' time, a week's time or a fortnight's time. If there is no need to continue the preliminary hearing—if there is not to be a plea and the parties are ready—the issue is about identifying the most suitable date, with regard to the availability of witnesses and counsel.

The Convener: How have you decided that prosecutors will determine their availability?

Bill Gilchrist: That is a challenge for us. Advocate deputes are currently allocated blocks of time in the High Court. A rota tells the advocate

deputes that they will spend a fortnight in Glasgow at the beginning of July and a fortnight in Kilmarnock at the beginning of August, for example. We are actively considering how we will reorder the rota to accommodate preliminary hearings. We could still adopt the approach whereby advocate deputes will be available to do trials for blocks of time—perhaps two, three or four weeks. That would mean that, if at the preliminary hearing the court wanted to allocate the case to a trial diet in two weeks' or three weeks' time, we would have advocate deputes assigned to cover those trial courts.

The Convener: Are you not looking for continuity between the preliminary hearing and the trial diet?

Bill Gilchrist: Yes, we are. That is the challenge. It would be ideal if the advocate depute who conducted the preliminary hearing also conducted the trial. We hope that we can achieve that to some extent; we certainly want to achieve it in complex and sensitive high-profile cases. We identify that sort of case at an early stage and try to allocate it to a senior advocate depute. In such a case, we would want the senior advocate depute to take the preliminary hearing and then be available to do the trial. His availability, just as much as the availability of the defence counsel, would be a feature in determining the appropriate date.

The principal advocate depute and I visited the Old Bailey a few weeks ago to check how it organises business with Treasury counsel. We were told that in about 50 per cent of the cases allocated to Treasury counsel, counsel manages to stick with the case to the trial. The other half of the cases have to be reassigned to other Treasury counsel. If we could achieve a similar proportion, we would be content with the outcome.

In sensitive and complex cases, we will try to ensure that one advocate depute stays with the case throughout. A problem with the current system is that, because of the endless churning of cases, we cannot achieve that. If an advocate depute has been allocated to do a particular case in the next Glasgow sitting of the High Court and the case is adjourned, it may be difficult to keep him with the case if he already has further commitments in his diary down the road. It will assist us if the date that is chosen for the trial at the preliminary hearing takes account of the availability of the advocate depute as well as that of the defence counsel.

The Convener: One of the objectives behind the proposed preliminary hearings is to address the adjournment culture and to prevent witnesses from having to traipse back for cases that do not get heard. The preliminary hearing is one of the mechanisms that is meant to remove the adjournment culture, but such a hearing could adjourn and meet again in a week's time. Although that might not cause so many difficulties, because witnesses would not be trailing backwards and forwards, do you accept that there will still be a lot of adjournments? A judge has no sanctions to apply if the parties are not prepared. If adjournments continue, all that is being achieved is ensuring that only the Crown and the defence are involved in that process.

Bill Gilchrist: Yes, that is the minimum benefit of the proposed system. As you say, the witnesses are not cited and are therefore not hanging around while legal debates are undertaken or problems about the state of preparedness are discussed. That would be an advantage of the new system—the adjournment and continuation of preliminary hearings will have less of an adverse impact on witnesses.

It is to be hoped that, if the parties have sufficient time to prepare properly and if the procedures are in place to ensure that they are prepared—through disclosure by the Crown and the managed meeting—the case can be allocated to a trial diet without continuing or adjourning the preliminary hearing. That must be the goal and there is reason to believe that we can achieve it. We do not want to have endlessly continued or adjourned preliminary hearings.

The Convener: That is one of the issues for us in our scrutiny of the bill. Like the bill team, you have told us that there are challenges—you hope that this or that can happen and there is still a lot of uncertainty about whether the system can operate as efficiently as we would wish. However, the proposals represent a costly exercise. I hope that you accept that we are trying to discover whether, with all the ifs and buts, front-loading the system and achieving a change in culture will justify the additional expenditure.

Bill Gilchrist: That is the challenge, which is indeed about changing the culture. Lord Bonomy identified the need for judicial intervention and management of the process. The bill allows for that because it puts the procedures in place, but for the process to work requires more than just procedures. It requires willingness on the part of all to make it work. It requires judges to be proactive and the Crown to do what it knows that we have to do to help the defence to be ready. I agree that that is a challenge but there is reason to be optimistic that the process will work.

The Convener: Stewart Maxwell has a final question on preparedness for preliminary hearings.

Mr Maxwell: You have mentioned a lot of the complexities involved in the preliminary hearing and the move to a fixed trial date. We have heard

other, similar evidence. How confident are you that the proposed system can work? You said that you hope that it will work. Hope is a nice thing to have, but do you expect that the proposed structure will give us a fixed date, that everything else will fall into place and that a trial will occur on the identified date? The more evidence that we hear, the more that we read and the more that we think about the matter, the more imponderables there seem to be about the procedure.

Bill Gilchrist: The present system works—cases are going to trial and are being disposed of—but not very efficiently. The trouble is that we are dealing with procedural issues at trial diets, rather than at procedural diets. At current trial diets, the courts are inquiring into the state of preparedness and, as a consequence of parties not being prepared, cases are being adjourned. In one way, all that the bill is seeking to achieve is to ensure that such matters are dealt with at a procedural diet rather than at a trial diet. That is a more efficient approach, so at the very least we can achieve efficiency and resolve the issues without the witnesses' being present.

There has been research into the reasons for adjournments. I will list some of the ones that are set out in table 7.2 of appendix C of Lord Bonomy's report: "counsel … unavailable"; "expert … reports" to be received; "late or new" counsel instructed; and "fuller investigations" required—for example, into the mental health of the accused. In relation to defence motions to adjourn, the largest category is "more time needed".

We know why cases are being adjourned; the challenge is to design a system that addresses those problems so that they can be resolved before the preliminary hearing. That is one reason why the Crown thinks that it is important that a realistic amount of time should be available to resolve such issues—we need the full 110 days. With sufficient time, it should be possible to address those issues. Indeed, they are already being resolved, but that is happening after the 110th day—

12:15

Mr Maxwell: I am sorry to interrupt you. I accept everything that you say and I understand your point. However, the nub of my question was how confident you are that everything that is in the bill and that you listed a moment ago will be achieved. You said that you hoped that it would be, but I am trying to reach a tighter definition of how confident you are.

Bill Gilchrist: I am very confident that the bill will bring more certainty into the process but I cannot say that the bill will bring 100 per cent certainty. I have no doubt that cases that are allocated to trial will continue to be adjourned. Sometimes that will be because witnesses become ill or do not turn up—it is difficult to deal with such problems in advance, so a certain proportion of cases will go off at the trial date.

There will also no doubt be cases where parties tell the court in good faith that they anticipate that they will be fully prepared by the trial date but something goes wrong or something unexpected occurs that means that they are not prepared. However, the bill provides mechanisms for allowing such matters to be addressed before the trial date, so that if parties realise that they cannot meet the assurances that they gave at the preliminary hearing, they do not have to wait until the trial date to do something about it. There will still be a level of uncertainty in the process, but I am confident that there will be far more certainty than there is at present.

Marlyn Glen: The High Court has recently issued guidance on what might be called sentence discounting in respect of guilty pleas. Is there a danger that that will encourage people who are not guilty to plead guilty?

Bill Gilchrist: That is a difficult question for the Crown to answer. The legislation allows the court to discount and the appeal court has recently given some guidance on how that should be done. There has always been an argument about whether sentence discounting leads the innocent to plead guilty in the hope of getting a discount, but the settled policy and law is that discounting is competent. It is not for me, as a prosecutor, to defend or indeed comment on whether the law is right—it is the law.

Mr Maxwell: I refer to paragraph 9 of the Crown Office and Procurator Fiscal Service's written submission, which relates to witness statements. Will you outline the current arrangements for, and the extent of, disclosure by the Crown to the defence?

Bill Gilchrist: The Crown has a legal duty to disclose evidence that may exculpate the accused or undermine the Crown case. The means by which we do that will vary. Generally, we will intimate that a witness has relevant evidence. When we serve the indictment, we have to attach a list of the witnesses that the Crown intends to cite. That is the method at present; we simply say, "Here are our witnesses." We have an administrative arrangement whereby, at some stage after the accused has appeared on petition, we will give the defence a provisional list of witnesses.

In the High Court, we provide the defence with copies of productions. We respond to requests before the service of the indictment on a case-by-case basis. For example, in a major fraud case it

is fairly common for the defence to be given access to the productions. They may not be copied in at a very early stage, but they would be invited to attend at the fiscal's office to view the productions.

Mr Maxwell: In effect, the current arrangement is the production of a list of names of proposed witnesses. What changes will need to be made to the practices and procedures relating to witness statements to facilitate their early disclosure? You mention witness statements in paragraph 9 of your submission.

Bill Gilchrist: We have accepted that it would be good practice to disclose witness statements to the defence, so we will do that. The problem with witness statements just now is that they are not necessarily very good. They are taken in many different ways—perhaps by police officers at the scene, recording in a notebook—and then transcribed later. Generally, the statements are not written by the witness or by a police officer who then gives the witness the opportunity to read it over and sign it.

A concern about providing statements to the defence has been that the statements may be no more than a summary of the witness's evidence. Having accepted that it is good practice to disclose statements to the defence—which will certainly help them to prepare for trial and for the preliminary hearing—we were concerned to ensure that what is disclosed is a quality product and a decent statement. Therefore, we have been discussing with the Association of Chief Police Officers in Scotland how the police can improve their statement taking so that we have something that we and the defence can rely on. We have not concluded that exercise and I do not think that we have reached a view on whether we want all statements to be signed. On the one hand, that would be best practice. If a witness's statement is going to be disclosed, the witness should have an opportunity to know what is being disclosed and so should have an opportunity to read what the officer recorded. If the witness is reading that, they should sign it as well. We have not reached a view on whether only signed statements should be disclosed, but there will certainly be a better quality of statement than we have at present.

Mr Maxwell: But you have not reached a conclusion on the format.

Bill Gilchrist: No.

Morag McLaughlin (Crown Office and Procurator Fiscal Service): The final outcome will be an agreed protocol with the police about the format and content of statements and about the way of authenticating the statements—by signing or in some other way. At present, some witness statements are signed by the witness. That tends to happen in serious cases with civilian witnesses. From time to time, those statements are disclosed to the defence, but that is generally done only on a request from the defence. Such requests would be considered individually.

Through work with the police and with a view to the practice note that we mentioned in our submission, we are hoping to achieve a mechanism whereby we get a quality product, as Bill Gilchrist said. We also want to be able to disclose the victim statement as early as possible in the proceedings, so that the defence has it as soon as it is available. There are a number of issues that make that a complex process.

Mr Maxwell: On the process being complex, given that other agencies are involved and that the information might not be in a suitable format—it might appear in police notebooks and in various other places—will extra time and costs be involved, both for the Crown Office and Procurator Fiscal Service and for other agencies? You have already mentioned the police, but other agencies might be involved, too. If you think that there will be extra time and costs, will you outline what they might be?

Bill Gilchrist: It depends on the procedure that is to be adopted. If all witness statements have to be transcribed—or rather, if they are to be written down in a legible form and the witness is to be given the opportunity to read and amend them—that would undoubtedly take police officers more time than at present. I do not want to give the impression the quality of all statements is very poor, because the quality is variable. At present, quite a few statements will be written down and signed. Practice varies. If officers are to be required to take more detailed statements and to give the witness the opportunity to consider the content of the statement, the process will certainly take longer, which has implications for the police.

Having better-quality statements will offer a potential benefit to both the Crown Office and the defence—and perhaps also to the legal aid fund—as it might mean that we and the defence will need to precognosce fewer witnesses. One has to have a high-quality statement to enable one to rely on it rather than on precognoscing the witness. There are potential gains further down the line, but the proposal undoubtedly has implications for the police. That is why we are discussing with them what needs to be done and what can be done.

Mr Maxwell: Are there any further implications? If it becomes standard practice to release witness statements to the defence early on, as is intended under the bill, and if it becomes common knowledge that that is the procedure, will that influence witnesses? Will it affect the statements that are given?

Bill Gilchrist: That is a possibility. At present, there is good anecdotal evidence that many, if not most, witnesses expect their statement to be given to the defence. I am not sure to what extent witnesses know what will happen to the statement that they have given to a police officer. You are right to identify a potential difficulty with some witnesses, who would be unhappy that their statement was being given to the defence, which might make them more reluctant. On the other hand, what does a witness who gives a statement to the police think will happen? They must expect that they might end up being called as a witness, in which case the evidence that they are giving against the accused will become known to the accused at some stage. Therefore, I am not sure that the release of witness statements to the defence will necessarily have a huge impact on the willingness or otherwise of witnesses to come forward.

In certain circumstances and in certain cases in which certain types of witness are involved, it could have an impact. That is why we are not saying that we will necessarily hand over every statement immediately. For some witnesses, such as vulnerable witnesses, we would almost certainly want to precognosce them first and to address protection issues and their concerns. There might be circumstances in which we would not want to disclose a statement or parts of a statement.

At present, a person's existence as a Crown witness is disclosed to the defence and the defence is entitled to precognosce them. If the witness declines to be precognosced, the defence has a right to petition the sheriff to have that witness precognosced on oath.

In a sense, once someone is there as a witness, they cannot hide from the defence. Of course, if that person is called to give evidence, the accused will hear their evidence.

The Convener: On precognition statements, do you want the right of the defence to precognosce the witness to continue?

Bill Gilchrist: I am not sure that it is proper for a prosecutor to say what the defence should be able to do.

12:30

The Convener: The police say that they want to improve the quality of witness statements and I gathered from your comments that, if that happens, those statements could be released to the defence, who would then not need to precognosce the witness. I suggest that there might be an important purpose in both the police statement and the precognition statement. It is often the police's job to take a statement from a witness who has just experienced or witnessed a crime and is harassed and stressed. Such witnesses often tell the police officer everything that they think and feel at the time. When they are precognosced later, they are more rational and might even change their statement. I do not have a problem with the release of the witness statement at an early stage to give the defence an idea about what the witness is likely to say, but I would be concerned if we confused the purposes of the two statements.

Bill Gilchrist: The purpose of giving the defence copies of witness statements is to assist it with the preparation of the defence case. Whether the defence thinks that it still needs to precognosce all or some of the witnesses depends on who the witnesses are, on their evidence and on what the case is about. At present, the Crown does not precognosce every witness, but is selective—we precognosce the key witnesses, but there are some witnesses that we do not need to precognosce. If statements were of a better quality, no doubt there would be even more witnesses whom we would not need to precognosce.

You are right—the purpose of precognition is not just to check the accuracy of the police statement. Witnesses forget things, remember things and deliberately change their position. Precognition is about establishing their precise position—not what it was, but what it is. The circumstances in which the statement is taken by the police can result in an incomplete picture. As you say, the witness might have been traumatised and that might have affected what they said to the police. The passage of time will undoubtedly affect what a witness is able and willing to say. One purpose of precognition by both the Crown and the defence is to establish whether there has been a change.

In our system, precognition by the Crown is about the Crown checking what the police have produced. We do not have committal to trial by a court and, in effect, it is the Crown's choice whether someone is indicted. In our system, the prosecutor checks or investigates the case; we satisfy ourselves about the sufficiency and propriety of the police investigation. That is another reason why we precognosce—we do not do so simply to check the accuracy or otherwise of the police statement.

Marlyn Glen: We are considering improving and increasing communication. Does the Crown Office favour enhanced disclosure to the Crown of the defence case?

Bill Gilchrist: As a prosecutor, it would be helpful if I knew in advance what the defence case was. Lord Bonomy suggested that, prior to the preliminary hearing, the defence should produce a statement to set out its defence, although I think

that that was only for the court, not for the prosecution. The white paper states that that was not thought to be necessary or appropriate, so it will not happen, but as a prosecutor, of course I would like to know what the accused's defence is.

Marlyn Glen: It is something that we should perhaps investigate further.

Margaret Mitchell: The witnesses have said that the proposals in the bill present a challenge and the COPFS's submission stated:

"Ensuring that the new system works, from day one, will be a challenge."

Will the witnesses elaborate on the challenges, in particular on what they consider to be the really significant challenges? Where do the pitfalls and obstacles to making the new system work lie?

Bill Gilchrist: I have already referred—as several witnesses have done and as the white paper and Lord Bonomy's report did—to the fact that the bill is about changing culture. For the COPFS, one of the cultural changes that we must make is to bring about a greater willingness on the part of prosecutors to assist the defence and to co-operate with the defence fully. We do that at present, but what is envisaged is much greater co-operation and co-ordination with the defence. It will be a challenge to achieve that cultural change so that we are not just paying lip service to providing information to the defence.

What we have accepted in the white paper is that, as new evidence comes to light and as there are developments in the case, we will disclose that information to the defence. For example, we will tell them that we now have a forensic report, and we will do that as early as possible. We must ensure that we do not just pay lip service to that and that we are fully committed to such disclosure and to assisting the defence in being prepared. We must ensure that the managed meeting is productive and meaningful and that it is not just a formality because people have to get together to fill in a form jointly. There must be meaningful negotiations over pleas and about the state of preparedness. All of that is a challenge.

We have some technical challenges in how we organise Crown counsel in a way that allows for continuity. I have already referred to the fact that it is desirable that the advocate depute who takes the preliminary hearing should then take the trial. Achieving continuity in as many cases as possible will still be a challenge.

Morag McLaughlin: There is more to this than simply the bill. For us, it is about improving our whole approach to that area of work, which is what we have tried to set out in our submission. We want to improve how we investigate and how we prepare. Preparation will be critical to making the Bonomy provisions and the bill work, so that we reach the managed meeting having served the indictment and ready to discuss with the defence what can be agreed. In that way, we will be able to approach the preliminary hearing in a state of full preparedness, which will enable any issues to be identified so that, when a trial is fixed, it is because the trial is going to proceed rather than because we hope that it will proceed. All the work that we are doing at present, and that we will do over the next year or so until the bill is implemented, is about improving the process generally, improving our approach and improving our product and the way in which we prepare.

Margaret Mitchell: I suppose that a key part of that will be how the judiciary deals with people who come along unprepared to the preliminary hearing, so that judges send out a strong statement that that is not acceptable, other than in exceptional circumstances.

Morag McLaughlin: The judiciary has the ultimate sanction of not fixing a trial diet. If the court holds that it cannot fix a trial diet before the time bar expires, the case is lost.

The Convener: We note from the financial memorandum that additional resources will be required in the first two years. Does that mean that you will get additional funding from the Scottish Executive in the first two years? Where is that money to come from?

Bill Gilchrist: We have secured additional funding for the non-recurrent costs, which are to cover the additional courts in the first two years until the benefits feed through. To some extent, we will benefit from the transfer of business from the High Court to the sheriff court, because fewer resources need to be deployed in sheriff and jury cases than in High Court cases, which will assist us in absorbing some of the recurrent costs. I remain optimistic. If the proposals work and we have less churning of business, that will be of benefit to us. It is a sort of virtuous circle—resources will be freed up that can be used to prepare better and so cases will be dealt with more effectively at preliminary hearing.

The Convener: Will you give the committee details about precisely what the additional resources will be used for and where you think savings will be made? Perhaps we could write to you about that.

Bill Gilchrist: Yes.

The Convener: Are you aware of the report that we have received from the Finance Committee?

Bill Gilchrist: Yes, I have seen it.

The Convener: You will see from that report that the Finance Committee is concerned about new procedures being introduced in the High

Court without any recourse to budgetary controls. The Finance Committee was quite strong in recommending to the Justice 1 Committee that

"as this legislation forms part of a wider modernising programme of the Justice System, the Minister consider more innovative and creative ways of implementing Lord Bonomy's recommendations which involve some best value considerations rather than adding additional procedures."

I take it from that that the Finance Committee is leaning heavily on us to scrutinise arrangements for new or additional procedural elements in the system.

Bill Gilchrist: Yes. I was intrigued that "innovative and creative ways" were suggested instead of "additional procedures". The introduction of new preliminary hearings and judicial management of cases are at the heart of Lord Bonomy's recommendations. I am sure that innovative and creative things must be done around those. Bringing parties together without the witnesses to sort things out before a trial and judges playing an active part in managing the case are at the core of the matter. The creativity must be around what happens before that, in communications between the defence and the prosecution and in disclosure, for example.

The Convener: As there are no more questions, I thank you both very much for giving evidence. It has been helpful. We will put in writing the question about the additional resources.

I welcome our final witness. Elaine Samuel is from the University of Edinburgh's school of social and political studies. I thank her for coming to the meeting.

Michael Matheson: Elaine Samuel's research indicates that the number of certain types of indictment—notably sexual offences and misuse of drugs cases—increased between 1995 and 2001. What impact did that have on the High Court's work load?

Elaine Samuel (University of Edinburgh): Nothing in the research indicated the impact. There were no specifics and we did not consider exactly what the impact of such cases was. I could interrogate the data further, if you wish me to do so. The appendices of the review contain synopses of some of the data. Much could be done with the data so there is scope for considering that. You would be interested in the particular kinds of indictments and their impact on the court. Are you asking whether the kinds of indictments to which you referred were more likely to be adjourned than others?

12:45

Michael Matheson: It would be helpful to the committee to know whether, if there was a marked increase between 1995 and 2001, that had a significant impact on the work load in the High Court. That would assist us in analysing exactly where some of the additional work that the High Court is dealing with is coming from. If it were possible to do that, it would give the committee a better understanding.

Elaine Samuel: The research showed that the impact seemed to come from those cases that went to trial—obviously—rather than those that did not. It relates to cases that were adjourned, hence one could interrogate the data to see to what extent the increase in certain kinds of indictments led to more trials. That could be examined.

Michael Matheson: That would be helpful.

Marlyn Glen: In the research findings, Elaine Samuel refers to the impact of repeat business on the work load of the High Court. Will she explain more fully what is meant by that and outline its impact on the work of the court?

Elaine Samuel: Two different kinds of what I would call original research were conducted—at other times, my task was to examine other research that had been executed. One of those pieces of original research examined the pressure of business on the High Court. Pressure comes from two sources. One is new indictments, so the first question was whether there had been an increase in the number of indictments over time. The second question was whether there was repeat business. The research tried to separate out both of those. It showed that the number of cases coming before the High Court increased by two thirds in the six years, but that there was an increase in new indictments of only around 23 per cent, hence the gap was repeat business.

Margaret Mitchell: You also refer to the impact of adjournments in the High Court. Could you outline your findings to the committee? We are particularly interested in what type of cases were most frequently adjourned, and the reasons for that.

Elaine Samuel: First, I repeat that we found that mainly cases that went to trial were adjourned. I have the statistics somewhere; I can identify them for you later. As for the reasons for the adjournments, we have only what the clerk of court puts down in indictments to go on. Pages 135 and 136 of the Bonomy review show the different reasons that were given for motions to adjourn. We can see the difference in the numbers: in 1995 there were very few and by 2001 adjournments had vastly increased. As I said, the research was carried out by looking at indictments. All we know is what the clerk of court put down.

For example, we can see that between October and December 2001 there were 68 motions to adjourn by the defence because more time was

needed. We know nothing more than that more time was needed; we do not know whether it was because of the complexity of the case or whether it was to do with the prosecution. Was it because counsel was not available? There was a separate ground of "Counsel withdrawn or unavailable", but lack of availability of counsel could be the reason why more time was needed. The information says a lot while not saying much.

Margaret Mitchell: You mentioned that cases that went to trial were frequently adjourned. Was there a pattern of types of cases that went to trial that were more frequently adjourned?

Elaine Samuel: We know that certain kinds of cases—for example, murder cases—are more likely to go trial. The only pattern that I could see was that the more likely a case was to go to trial, the more likely it was to be adjourned. Again, I can provide data on which kinds of cases were more likely to go to trial.

The Convener: Did you consider the use of section 67(5) of the 1995 act? The committee has received evidence from an advocate about the use of that section, which allows the Crown to have new evidence included with only two days' notice. The Crown is required to show cause, but the argument is that section 67(5) notices have increasingly become the rule rather than the exception to the rule. The advocate argues that there might be fewer motions to adjourn from the defence if section 67(5) were applied more strictly.

Elaine Samuel: Interestingly, when we looked at indictments, we found that section 67 notices were recorded if the prosecution would have relied on them in going to trial. Therefore, the information that we have is only about section 67 notices for cases that went to trial.

Page 137 of the review has data that compare figures for 1995 and 2001. The data show the number of cases going to trial and whether section 67 notices were brought. Some of the results were quite surprising. If we look at table 8.1, which details productions listed rather than witnesses listed, we see that there was between 1995 and 2001 no difference in the proportion of cases going to trial with no section 67 productions. In 1995, 45 per cent of all cases going to trial did not have a section 67 notice. The percentage in 2001 was exactly the same.

Where we can see a difference between 1995 and 2001 is in the number of section 67 productions per indictment. There is a huge increase in indictments involving between 21 and 60 productions submitted under section 67: the proportion increases from 4 per cent of cases in 1995 to 6 per cent in 2001. Indictments involving 6 to 10 productions submitted under section 67 increase from 8 per cent of cases going to trial in 1995 to 14 per cent in 2001. Therefore, although there has not been an increase in the proportion of cases going to trial that have section 67 notices, there is some evidence, but not a huge amount, that there have been more section 67 notices per case.

The Convener: You fed your research into the Bonomy review. Did you simply take a scientific approach, or did you consider how we might cure the number of adjournments in the system by introducing preliminary hearings, as the bill will?

Elaine Samuel: My role was purely to document the problems. I had no part in policy development, so I had no stake in confirming the review team's views, although I was a full member of that team. As I had an independent role, my task was to provide documentation on whether the beliefs, suspicions and hearsay that came to the review team could be backed by evidence.

Mr Maxwell: You used a variety of techniques, which included focus groups and postal questionnaires. What were the main findings of the consultation that you undertook on the Bonomy proposals? What were people's responses in the focus groups and the postal questionnaires?

Elaine Samuel: Are you asking about the substance or the quantity of responses?

Mr Maxwell: The substance.

Elaine Samuel: The responses were diverse and are all covered in the summary of responses. The postal questionnaires were sent to victims, witnesses and jurors and there is no way to summarise in one minute responses that occupy many pages.

As the summary of responses shows, the focus groups involved prisoners and members of the public who we could say are difficult to get at or who are under-represented when a call goes out on the web to respond to consultation. The respondents were different in character and had different interests and I would not dare to summarise their different responses.

Mr Maxwell: Were the responses so different that those of under-represented members of the public did not overlap with those of prisoners, for example? Surely some agreement occurred.

Elaine Samuel: One interesting agreement was about the nature of local justice. Prisoners and members of the public preferred to go to the High Court, which they saw as belonging to Edinburgh or Glasgow. Even though going there might be inconvenient for supporters, all concerned had a strong preference for a trial with High Court judges.

Mr Maxwell: Do the proposals in the bill adequately reflect the opinions of the groups that you considered?

Elaine Samuel: I want to say, "I couldn't possibly comment."

Mr Maxwell: I would like you to comment.

Elaine Samuel: The white paper took on board the hesitations. In the summary of responses, no attempt was made to edit the substance or the force of the responses. The summary is a fair account of how members of the public and major stakeholders in the system responded to the proposals.

Mr Maxwell: I am sure that that is true.

Were views expressed in your consultation exercise that have not been addressed in the bill?

Elaine Samuel: I have been out of commission for the past six months, so I should clarify that that was not my job. I have not reviewed the bill in any detail to ascertain whether it has taken any such views into account.

13:00

The Convener: There are no further questions. Thank you for coming along today—it has been very helpful.

We move to item 2, which is also on the Criminal Procedure (Amendment) (Scotland) Bill. I refer members to a note that the clerks have produced, which lists suggested further witnesses. If members wish to vary that list, I need to know that today, so that we can start to work out some timings.

I will go through the paper. Our next meeting is on Wednesday 3 December, when we will hear from Scottish Court Service officials, the Law Society of Scotland and, if representatives are available, the Scottish Law Agents Society. On the following week—on 10 December—we will hear from the Procurators Fiscal Society, from Professor Peter Duff and from police organisations. On Wednesday 17 December, we will hear the Sheriffs Association's comments on the impact of increasing the sentencing powers of sheriff courts. We will also hear from Professor Martin Wasik, chair of the Sentencing Advisory Panel, and Professor Andrew Ashworth, who is a member of the panel. Representatives of the Scottish Human Rights Centre will address the questions of conducting trials in absentia and extending the 110-day rule. On Wednesday 7 January 2004, we will hear from the Faculty of Advocates, Safeguarding Communities-Reducing Offending and a panel consisting of Victim Support Scotland, Rape Crisis Scotland and Scottish Women's Aid. Finally, on Wednesday 14 January, we will hear from Christine Vallely of the school of legal studies of the University of Wolverhampton, who is the author of research on reluctant witnesses that was carried out for the Home Office.

Are there any areas that members feel are not covered? I note that the Scottish Legal Aid Board is not on the list. Do members feel that we could benefit from input by SLAB?

Michael Matheson: Given some of the evidence that we have heard today, I say that we could. Some procedural matters will depend on legal aid. Paul Burns raised a point about counsel appearing in the sheriff court. The witnesses' response to that was that it would depend on whether SLAB was willing to accept and fund those arrangements.

The Convener: Does Paul Burns agree with the evidence that was given by the bill team on the question of counsel appearing before the sheriff court?

Paul Burns: No, not really. Technically, the evidence was right, but it did not provide a very full picture. It is possible to apply for counsel in the sheriff court as things stand, and counsel is sometimes granted. However, that is very much the exception rather than the rule. Plain reading of the material that I have seen suggests that one of the anticipated savings is that counsel will not be employed in the sheriff court when there is a transference.

It therefore seems possible to me that somebody in the Executive thinks that savings will lie in moving cases that are presently heard in the High Court to the sheriff court, which is a cheaper forum. Part of the savings would depend on the presence or otherwise of counsel. That might contribute to discussion of whether sentencing powers in the sheriff court should extend to five years, four years or some other period. I am not expressing a view on that; I am just saying that, from a techie point of view, I do not think that it is quite right to say that nothing is changing.

Mr Maxwell: In that respect, I was confused by an earlier comment that transferring cases from the High Court to the sheriff court would work out cheaper and create potential savings. After all, exactly the same case will be transferred. Do you have any views on that? I did not really follow the logic behind the proposal.

Paul Burns: I agree—the significant difference between the two forums is that counsel is present in the High Court, but a solicitor carries out the preponderance of work in a sheriff court.

Mr Maxwell: Given that counsel takes on such cases in the High Court, is it fair for the Executive to say that counsel would not be present in the

sheriff court? Would there be no pressure to increase such representation?

Paul Burns: That question is why you might want to hear from the Scottish Legal Aid Board which, after all, determines such matters. At present, counsel is sanctioned in the sheriff court not solely because of the potential sentence involved, but also because of the complexity of the case, the technical issues in question and so on. For example, where child witnesses are involved, a more senior hand might be needed on the tiller. However, I simply do not know what would be the Scottish Legal Aid Board's position on extending sentencing powers to five years.

The paperwork suggests that transferring cases to the sheriff court will result in a cost saving. However, Mr Maxwell's question about where that saving will come from was very well put. The committee might want to tug at that issue because, if I read matters aright, it is being asked that money be spent, on the assumption that there will be savings downstream. The committee might want to give that issue a little poke to find out whether those savings will come on-stream.

Michael Matheson: Indeed, in its evidence to the Finance Committee, SLAB said that although there would be initial set-up costs it expected to make savings further downstream. The Finance Committee is also unclear about the matter.

Paul Burns: All other things being equal, if there are 30 witnesses in a High Court case that is transferred from the High Court to the sheriff court, there will still be 30 witnesses, a judge, 15 jurors, a procurator fiscal and a defence solicitor. All that will be missing will be Crown counsel and counsel for the defence. As a result, the savings seem to be focused on the provision of counsel.

I tend to focus on the defence, because that is my background—I suppose that I should try to be more objective. Would the Crown be adequately represented in such cases? I do not want to be disrespectful to procurators fiscal in any way but, if it is currently thought necessary that Crown counsel should represent such cases in the higher forum, will there be any deterioration, or a perception of deterioration, if cases are transferred to sheriff courts? Indeed, the same applies to the other side of the table. That is a legitimate public matter. Otherwise, the question is: where will the savings come from?

The Convener: That forms part of the overall question of the shift of work load from the High Court to the sheriff court. Although we have been told that counsel can still appear in the sheriff court, our advisor has suggested that we test the matter a little further to find out whether that is the reality. Indeed, ex-offenders were concerned that if, under the Bonomy proposals, cases were transferred to the sheriff court, the accused would not receive access to counsel.

The matter derives from section 13 of the Crime and Punishment (Scotland) Act 1997. Extension of sheriffs' sentencing powers from three to five years is only one part of the equation; the key point is that the business still has to be shifted. Until now, we have been told that that decision has already been taken because the provision is contained in the 1997 act. However, although that is technically correct, I hope that in its stage 1 report the committee will agree to recommend that any impact of the decision to shift business as a result of the 1997 act will be scrutinised.

We have not spent a great deal of time considering what would be the impact of shifting that business. We do not have evidence on the record from the Crown Office on that issue. There seems to be general consensus—at least, there is no dissent—that we should also call the Scottish Legal Aid Board to give evidence. We may take some evidence by correspondence, but in the coming weeks we will return to and focus on the question of the impact on the sheriff court. We can talk to the Procurators Fiscal Society about its view, but we may also want to ask the Crown Office back to the committee to focus on that issue.

We will have all the written submissions shortly—the deadline is Friday. Something might interest members when they see the submissions. Members should notify us of any omissions in, or suggestions about, the evidence as quickly as possible.

Finally, the date for the seminar to canvass the views of practitioners in the High Court has been set as Friday 9 January. We hope to record the session in some way, but it will give us a more informal way in which to talk to practitioners about the bill. The details have been sent to members by e-mail.

HM Prison Greenock

13:11

The Convener: Agenda item 3 is on the visit to HM Prison Greenock. Margaret Mitchell hoped to go with us on the visit, but in the end was unable to do so. Members will receive a full report of the visit in time, but does Mr Maxwell want to give feedback on the visit now?

Mr Maxwell: The visit to Greenock was useful and interesting, particularly because of the mix of female, male, remand, long-term and short-term prisoners and even asylum seekers—a wide variety of people are in the prison.

For me, the most useful part of the day was the discussion with a group of female prisoners. Several questions were raised during that discussion that we should at least ask the Scottish Prison Service about. In particular, we should ask about home visits. Several female prisoners said that they are not allowed to have home visits from Greenock prison, but must instead go via HMP Cornton Vale. They have to go to Cornton Vale for two months to get two days out, then go back to Cornton Vale and, eventually, back to Greenock. We were subsequently given reasons for that system, but when I put those reasons to prison officers in discussions over lunch, they did not agree that they were the real reasons. There is confusion; at the least, a question has been raised about why home visits are not allowed from local prisons. We should write to the Prison Service on that issue.

The Convener: The visit was useful. We wanted to see the new conditions for female prisoners who have moved to Greenock from Cornton Vale. We received mixed views on the conditions but, on the whole, the views were positive. Prisoners can sign up for a greater variety of activities at Greenock. For example, joinery is not available at Cornton Vale, which makes me wonder whether we should think about the activities that are available at Cornton Vale. The visit was impressive.

One point arose in the introduction that Tony Cameron gave before we began to move round the prison. He mentioned the rising prison population and said that he and his researcher have been studying other jurisdictions, including Scandinavian countries, that show similar trends. Although Scotland is still one of the countries that use a high level of custody, trends seem to be similar in other countries. Tony Cameron offered to give evidence to the committee on that issue. If we take up the offer, his evidence might help to inform our inquiry on sentencing.

Michael Matheson: I was not at Greenock to hear that information, but it is not new. For a number of years, the overall trend in Europe, including Scandinavia, has been an increase in use of custody. In Europe as a whole, an increase of around 19 per cent in the prison population is expected in the next 10 to 20 years. The increase is happening across the board and the key for us will be how we manage the increase. Given that the increase is beyond doubt, the committee must consider how to deal with it.

The Convener: I do not disagree with that. If we were to include the evidence from Tony Cameron in our inquiry, we would hear about the experiences of other countries and how they manage rising prison populations. The suggestion is that New Zealand has the most effective system. Such evidence might inform our inquiry, if members want to consider that perspective. Are members happy to take that evidence?

Members *indicated agreement*.

The Convener: The meeting has been a long one, but it has been helpful to get on the record evidence on the Criminal Procedure (Amendment) (Scotland) Bill, although the evidence did not answer all our questions; indeed, it has given us more questions. However, it was a good start on an important bill.

I remind members that the next committee meeting will be on Wednesday 3 December in committee room 2, when we will take evidence from a range of witnesses on the Criminal Procedure (Amendment) (Scotland) Bill.

Meeting closed at 13:15.

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