JUSTICE 1 COMMITTEE

Wednesday 31 March 2004
(*Morning*)

Session 2

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JUSTICE 1 COMMITTEE
13th Meeting 2004, Session 2

CONVENER

*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)

CLERK TO THE COMMITTEE

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SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Douglas Thornton

LOCATION

The Chamber

Scottish Parliament

Justice 1 Committee

Wednesday 31 March 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:07*]

Protection from Abuse (Scotland) Act 2001

The Convener (Pauline McNeill): Good morning and welcome to the 13th meeting in 2004 of the Justice 1 Committee. We have a varied agenda of eight items on all sorts of different topics. I remind members who have mobile phones to switch them off. No apologies have been received—we have a full attendance.

Item 1 concerns the Protection from Abuse (Scotland) Act 2001. Members have among their papers several documents that set out the current situation and some possibilities for follow-up action. This is the first time that the committee has attempted to do post-legislative scrutiny of an act, and we have received lots of feedback. The question is whether we wish to act on it. I invite members' comments.

Margaret Mitchell (Central Scotland) (Con): The act was widely welcomed, but a common theme in the responses is that not enough was known about it. It should have been advertised and promoted to make it more apparent that there is a remedy in the legislation, as people who could have been using it were not using it. A comment to the effect that more needs to be done to promote the fact that the act is available would be good.

The Convener: The fact that the bill was not known about is a running theme in the evidence that has been submitted so far.

The submission that interests me is the one from the Association of Scottish Police Superintendents, which states that, although the power of arrest lasts for three years,

"it does appear that some Sheriffs are turning down a high percentage of such applications, reducing the arrest period and making it difficult to obtain powers of arrest unless the case involves physical assault."

My understanding of the act was that, to remove the person who is in breach of an order from the area concerned and to protect the victim, the police were intended to be allowed to arrest the person simply for having contravened the order. It was not my understanding that the act could be enforced only when a crime—physical assault—had been committed. It concerns me a lot if that is how the act is being interpreted.

I clearly remember from when the bill, which was a committee bill, was being scrutinised by the justice committees, that it was intended to give added protection to victims, and that it would allow for an arrest to be made at the point at which the person had contravened the condition of the order not to be in a particular street. I want to pursue that point a bit further, to find out whether there is any further evidence to support what the Association of Scottish Police Superintendents has told us.

Michael Matheson (Central Scotland) (SNP): I totally agree. The act is called the Protection from Abuse (Scotland) Act 2001: it was intended to protect individuals from being subject to physical abuse in the first place. The bill was meant to make a difference such that, if an interdict was breached, the police had an automatic power to arrest the individual before someone had been subjected to any form of abuse. When I read the response from the Association of Scottish Police Superintendents, I automatically assumed that it related to the status quo ante: that an interdict could be obtained under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, but a crime would not have been committed and the police could not intervene until the person subjected another person to some type of physical assault.

I was having a chat with a senior police officer last week who had just completed a three-week training course for police managers at the Scottish Police College at Tulliallan, which covered some issues around dealing with domestic violence. I was informed that part of the training involved examining the legislation that may be used to assist in protecting individuals from abuse of which the police should be aware. I asked the police officer whether he was aware of the Protection from Abuse (Scotland) Act 2001, and whether it had been discussed at his recent presentation. The officer informed me that no mention had been made of it. Ensuring that enough information about the 2001 act is made available to those involved in enforcement, to those concerned with the legal point of view and to people who might be able to seek an interdict under the act is a genuine issue.

A further concern of mine was raised in the responses that Scottish Women's Aid received. It appears that people have no problems getting legal aid when they are going for an interdict, but there appear to be problems obtaining legal aid once the interdict has been breached. I note that one of the firms that responded to Scottish Women's Aid highlighted the fact that, if an interdict is breached, the firm is required under the act to raise the matter in the sheriff court within 48

hours. It appears to be difficult to obtain legal aid for that. Any consideration that we give to the matter should include an examination of the legal aid provisions.

The Convener: I support what Michael Matheson has said about needing to pursue the question of legal aid. What he said about the Scottish Police College was also useful. I am wondering what the best way to proceed is. If the committee agrees that we need to ensure a wider knowledge of the legislation's existence, we need to think about what action could be taken to ensure publication of information on the powers that are available to protect victims in domestic violence situations—although the 2001 act has quite wide powers and may also be used in other circumstances. The Protection from Harassment Act 1997 created a power of arrest that can be attached to non-harassment orders, so two options are available to protect people who have been the subject of abuse.

The committee could write directly to the Scottish Legal Aid Board and to the Scottish Police College for confirmation of whether it includes that information in its training. We could also write to ask the Law Society of Scotland whether it thinks that further steps should be taken to widen knowledge about the availability of the orders. The committee should keep an open account on receiving information about how the act is operating. I realise that the 2001 act has been in force for only about two years, so we are scrutinising it after a fairly short period. As time goes on, we might be able to obtain more up-to-date information about the act's operation.

10:15

Margaret Smith (Edinburgh West) (LD): It might be worth while sticking out a committee press release to advertise the act again. When writing to the Scottish Police College, it might help to send a copy of the Scottish Parliament information centre's document to provide more background information. I am sure that lecturers there would find that helpful.

The Convener: We will do that, if that is okay with SPICe.

Bill Butler (Glasgow Anniesland) (Lab): I agree with all the suggestions from members about action to be taken. As members have mentioned all the points that are suggested in our briefing paper as issues to raise with the Executive, it would be worth while to raise them. The act's proper application, training and legal aid questions are pertinent and should be brought to the Executive's attention formally. We should ask for a ministerial response, because we want the act to work. It is worthy legislation, but to be worthwhile, it must be enacted properly. Members have expressed concerns that we should raise with the Executive.

The Convener: Will we do that in addition to what has been suggested?

Bill Butler: Yes.

The Convener: That is helpful.

Marlyn Glen (North East Scotland) (Lab): The committee wrote to ask the Sheriffs Association to provide evidence in July last year, which was quite a few months ago. When would it be suitable to ask the association to give evidence again? That is important given the comment in one paper that one sheriff prefers to use the Matrimonial Homes (Family Protection) (Scotland) Act 1981 rather than other acts, although that is unnecessary. It is important that sheriffs are on board. Will we write again to the association?

The Convener: Yes. There is no disagreement about the suggestions, which I will run through.

On knowledge of the 2001 act, we could take up Margaret Smith's suggestion of issuing a press release about the fact that the committee urges agencies to ensure that they are fully aware of the act's availability.

We propose to write to the Scottish Legal Aid Board to ask about the availability of legal aid. Cost has been a running issue, but we should ask about whether the interdict's availability is cost prohibited. We will make the Law Society aware of our concerns.

We will ask the Police College whether it has incorporated the act in its training. We will see what we receive.

We can take up Bill Butler's suggestion that we make the Executive aware that we will continue to scrutinise the legislation and are keen to know whether the Executive can do anything further on a publicity campaign about the availability of the options under the 2001 act.

Finally, we can take up Marlyn Glen's suggestion that we write to the Sheriffs Association, in particular on the point that the Association of Scottish Police Superintendents made—the association's perception is that some sheriffs use the 2001 act only in cases in which there has been a physical assault.

Mr Stewart Maxwell (West of Scotland) (SNP): When we write to the Executive to say that we are keeping a watching brief on the situation, would it be worth asking specifically whether it has formed a view on some of the matters that have been raised by Michael Matheson and others? For example, the fact that a breach of the interdict is not an offence seems to cause problems. If the Executive has not yet formed a view, perhaps it

should start to think about how it might improve the situation by amending the 2001 act. I know that it is early days, but difficulties are already emerging in relation to the 2001 act, so we should flag those up and ask the Executive whether it is beginning to think about how it might resolve them. Perhaps the Executive has not yet decided to consider the matter, but it would be worth our asking the question.

The Convener: I think that there is general agreement with Stewart Maxwell's suggestion. We could make some of the points that are in our notes when we write to the Executive. Stewart Maxwell mentioned in particular the fact that a breach of the interdict is not a crime; there are powers to remove the person from the situation, but that is as far as it goes. That might represent a failing in the 2001 act and we can certainly ask the Executive to consider the matter in future.

Members have no further comments, so I think that we have exhausted discussion of all the possibilities.

Legal Fees (Transparency)

10:21

The Convener: Item 2 is on transparency of legal fees. I refer members to the paper that the clerks have prepared, which sets out the background to correspondence on the matter.

The matter is on the agenda because Margo MacDonald MSP wrote to me, in my capacity as the convener of the Justice 1 Committee, about a constituency case concerning a solicitor's fees. As members know, the committee will not become involved in individual cases, but it may pursue general points if it wants to do so. I thought that the correspondence raised general points about the transparency of solicitors' fees and I decided to move the matter on a wee bit. I wrote to the Scottish legal services ombudsman to ask for her view on whether solicitors' fees are sufficiently transparent for the ordinary person. Members have a note from the clerks that summarises the action that was taken and the interesting response that we received from the ombudsman, which reads:

"Despite recommendations by the Ombudsman and unlike the Law Society in England and Wales, the Law Society of Scotland does not have a practice rule that, at the beginning of the solicitor-client relationship, solicitors send a letter of engagement, setting matters out clearly, such as charges or charging rates, how much may be paid to other parties on the client's behalf and when they expect to be paid".

As far as the ombudsman is concerned, there is clearly room for improvement.

It is for the committee to decide whether to take the matter further. I thought that it raised wider issues, given my experiences with constituents who think that, when they engage a solicitor, it can be quite hard to establish how they are being charged. Of course, we could relate any work to our continuing work on the inquiry into the regulation of the legal profession. Certainly, the ombudsman thinks that there should be improvement, at least in one area. I invite comments from members.

Margaret Smith: I am happy with the recommendations for action in paragraph 7 of the note from the clerk.

Two points arise. One arises when people end up in dispute with a solicitor over charges. However, a more general point is that people who consult a solicitor often come away quite concerned about what they have got themselves into. Paragraph 5(a) in the paper says:

"unlike the Law Society in England and Wales, the Law Society of Scotland does not have a practice rule that, at the beginning of the solicitor-client relationship, solicitors send a letter of engagement"

to explain certain things about charges, when they expect to be paid, and so on. From anecdotes from many people, I know that that causes concern. People are not sure what they are getting themselves into. Issuing a letter would be good practice. That alone would make the situation much clearer than it is at the moment. However, I am happy with the action points in paragraph 7.

Margaret Mitchell: We need more information. Paragraph 5(a) seems quite reasonable but I have doubts about the suggestion in paragraph 5(b), which might be too much of an imposition. We should write to the minister and seek the views of the Law Society of Scotland on the ombudsman's comment. That would give us the background information that we need to make a reasoned and good decision.

Michael Matheson: I support the proposal in paragraph 5(a) on the letter of engagement. If someone came to work on your house, you would want a quotation—or at least an idea—of how much it would cost. It would be good practice for solicitors to advise clients at the outset of the approximate cost of any work. I am surprised that that does not happen.

The Convener: I am a lay person and when I saw the correspondence from the constituent concerned—a Mr Wilson, who went first to the auditor of court, which is what you do—things were not made any clearer. Members will see that we have received a table of fees from the Law Society of Scotland. If I was confused before, I was certainly confused when I saw the table. Although it sets out clearly what solicitors can charge, you could draw any conclusion from it. I know that solicitors cannot always predict what they are going to charge their client, but, when the client receives the bill, the figures should be obvious. I do not think that people should have to refer the matter to the auditor of court just to understand what a solicitor has charged. There is dissatisfaction about that.

Mr Maxwell: I agree with everything that has been said. The situation seems bizarre and I agree with the two action points in the paper. Margaret Mitchell mentioned paragraph 5(b). I find it extraordinary that the Law Society of Scotland thinks that there would be a huge number of extra charges just to produce an itemised bill. I would expect an itemised bill from anybody whom I engaged to do work for me. I would want to understand clearly what the charges were, and I would then be happy to pay. If I bought something, I would expect to be charged for it, and I would expect to be able to see how that charge had been arrived at. I find bizarre the Law Society's idea that just drawing up an itemised bill would lead to lots of extra charges for clients. I agree with the ombudsman's point about new technology. Producing an itemised bill is not a big task—it should be quite easy. Therefore, I would like us to ask the Law Society of Scotland why it feels that such extra charges would arise. It does not seem reasonable to me.

Margaret Mitchell: I think that the problem may lie in just how itemised the bill becomes. If a case has gone on for a long time and a bill has not been sent in the interim, the cost of producing an itemised bill could be excessive. I do not know. We need more information. For example, are we talking about every phone call that has been made over a period of two years? It is certainly worth writing to the Law Society of Scotland to ask for an answer.

I was surprised by the comment in the paper that the auditor of court was "not appropriately qualified". I had assumed that the auditors would automatically have to be legally qualified; perhaps there does not have to be a stipulation that they are. I would like to know more about the appointing of auditors of court and about the qualifications required.

The Convener: Does the committee agree that we will take action as suggested in paragraphs 7(a) and 7(b) of the clerk's note, and that—in response to Margaret Mitchell—we will obtain a note or other information on the role of the auditor of court? We will seek that information from the Executive, so that members are furnished with all the facts about what that person does. If there are issues to raise, members will have the opportunity to take them up.

Security of Tenure and Rights of Access

10:30

The Convener: Item 3 is on security of tenure and rights of access. A background paper covering closed petition PE14, from the Carbeth Hutters Association, and related subsequent correspondence has been supplied. Members will recall that the committee discussed the matter a few months ago, that we took quite a strong view on the matter and that we wrote to the Executive, providing a copy of the relevant *Official Report*, outlining the committee's views and concerns. Members will note that we have received a reply from the Executive, outlining its position. In summary, it seems that, although the Executive is sympathetic about the issues that we have raised, it does not really see a way forward by way of legislating to protect hutters in Scotland. The question is whether the committee feels that further work could be done or wishes to accept the Executive's response.

Michael Matheson: I note the Executive's response, but I wonder whether there is scope for the committee to procure some expert advice on the matter and to consider what other options might be available. The Executive has given us its view, which is that it does not believe that legislation is the route to go down. However, I do not feel that I have sufficient information before me to decide whether we should just accept the Executive's view. I would like to know whether there is a possibility of procuring expert opinion from an academic in the field, who might be able to advise us as to the other options that might exist, should the Executive not be prepared to consider new legislation.

Mr Maxwell: I agree with what Michael Matheson has said. I do not think that we should drop the matter—or draw a line under it, as the Executive puts it in its letter. I would not be happy to leave the matter as it stands at the moment, and I think that getting expert independent advice would be very useful.

I am concerned about the part of the Executive's letter that suggests letting the negotiations at Carbeth go ahead so that the issues can be resolved locally. The problem does not exist only at Carbeth; it applies, as we know, to other locations—Lochgoilhead being a case in point—and I think that there is another case in Dumfries and Galloway. To focus only on Carbeth is rather to miss the point; there is a wider problem. We should continue to examine the matter, and we should keep it open. I would welcome some expert independent advice and would wish to find out whether an expert's view was in line with that of the Executive, or whether they would take a contrary view.

Bill Butler: I do not have any real problem with seeking independent expert advice, so that we can get a view that helps us when we consider the difficulties that the Executive has outlined. There is no doubt that they are real difficulties—I do not think that anybody would gainsay that. It might be an idea to have a fresh eye looking over the whole issue, so that we can ascertain whether there are any ways in which we may be of assistance and whether the problems that the Executive has outlined may be overcome in any way. I think that that would be a reasonable thing to do.

The Convener: That is helpful. I draw to members' attention the fact that a note was left for us by the Carbeth Hutters Association, before we came into the chamber for this morning's meeting. As convener, I have taken a decision on the matter. I felt that the committee has been getting information in dribs and drabs over the past month or so, and I do not like papers appearing two minutes before the meeting. I must be consistent in that regard. However, I will circulate to members a note from Bill McQueen, who is the vice-chairman of the Carbeth Hutters Association.

Michael Matheson is probably in the same position as I am, as we have both been involved with the issue for a long time. I have been to Carbeth—that was one of the first things that I did after I was elected. I have always been persuaded that there is a unique situation at Carbeth, where land was gifted to people from Clydebank. The people built huts on the land, most of which have no running water or electricity and therefore might have a slightly different market value from that of chalets. We investigated the matter and I accept the Executive's position that people freely entered into leases and that to tamper with that arrangement would upset other aspects of the law. However, it seems grossly unfair on someone who has signed a lease for land that costs £500 a year and who has been going there for 10 years that the landlord can come along and say, "This year I have decided to charge £4,000."

I accept that it might not be easy to rectify the law in a way that does not upset other aspects of it, but I detect that there is a will in the committee to try to resolve the problem, even at this stage, and I support what members have said about taking independent advice.

It has been suggested that we take a fresh look at the possibilities—that is a good suggestion. We could ask the Law Society of Scotland or the Faculty of Advocates to cast an eye over the situation, or we could appoint an adviser to investigate the possibilities—or we could do both.

Michael Matheson: I suggest that we appoint an adviser who is a legal expert in the field to provide us with further information. I am conscious that it might be some time before the Law Society of Scotland or the Faculty of Advocates is in a position to provide us with a detailed briefing on the matter.

Margaret Mitchell: It would be helpful to hear the views of the Law Society of Scotland or the Faculty of Advocates so that we can balance those against the expert adviser's opinion. We should consider not just the situation at Carbeth but the wider issue, and those bodies would take a wider view.

The Convener: It might well be that we are not able to secure an adviser, but we could certainly investigate the possibility.

Bill Butler: Perhaps we could investigate both options to ascertain the most practical approach—or we could adopt both approaches.

The Convener: On the basis of what members have said, we will consider the options that are available and come back to the committee. It is clear that we want to keep the matter going to see whether we can find a resolution to the problem.

Children (Scotland) Act 1995

10:38

The Convener: Item 4 is on access rights under the Children (Scotland) Act 1995. Members have a paper that the clerks prepared, which gives the background to petition PE124, from the Grandparents Apart Self Help group. The committee decided in a previous discussion that the petition raised wider issues that it wanted to take further.

Bill Butler: The committee considered the matter most recently on 8 October. I recollect that all members of the committee were sympathetic to the petition, but that, frankly, it was difficult to see what could be done in relation to existing legislation. We agreed to write to the Executive to ask it to give serious consideration to the matter in the context of the forthcoming family law bill. The response that we received from the Minister for Justice was quite encouraging. She says that she shares our concerns and that the Executive

"will consider in the context of our forthcoming consultation what actions may be helpful in improving the position."

I would like the committee to consider not simply noting the Minister for Justice's commitment, but writing to her to acknowledge her sympathetic tone and comments, to say that we look forward to the publication of the family law consultation paper and to show strongly our continuing interest. We may also wish to consider option (b) in the clerk's paper, which suggests writing to the minister about the associated issue of the position of a father following the deterioration of his relationship with a mother.

Margaret Mitchell: I strongly support option (b), because there is a gap in the circumstances that it deals with. I am pleased to see the action that it proposes, which I support.

Michael Matheson: I too support Bill Butler's suggestion. I understand that when the minister announced the proposed family law bill, the intention was to provide fathers and mothers with the same legal rights if both were named on a birth certificate. It is not clear whether that would apply retrospectively, and people who are campaigning now might have views on that. However, if the provision were to apply retrospectively, that could create a range of problems. In pursuing option (b), we could ask whether it is intended that such a provision would apply retrospectively.

Margaret Smith: I support what other members have said. Grandparents' role in children's development is important. The subject has been a source of much sadness to constituents of mine who have approached me about the issue. Safeguards must be put in place. Occasionally, it

might be in the child's best interests to maintain contact with a set of grandparents even if it is not in their interests to maintain contact with the parent. With safeguards built in, it will be important to pursue such a provision in the proposed family law bill.

As more than 40 per cent of children are born to parents who are not married, access rights for unmarried fathers must be examined in the family law bill. The bill will be complex. It will have to catch up with the world as it is, rather than the world as legislation sees it. I strongly support and welcome the minister's comments. We should do what we can in children's best interests at all times. For the most part, maintaining contact is in the child's best interests, unless good reasons exist for not doing that.

Mr Maxwell: I agree with pretty well everything that members have said. We must differentiate grandparents' access from fathers' access. They are not the same, although both grandparents and fathers should have access rights.

Margaret Smith talked about dealing with the world as it is. I have concerns about going too far down the road of making a father's rights pre-eminent. Some fathers are abusive and a child's rights must be pre-eminent. In such cases, denying fathers access is often in the child's best interests. We should consider the rights of grandparents and parents—in particular fathers—but we must always remember that the child's rights are pre-eminent.

The Convener: We need to be clear that it is about equalising the law for unmarried fathers, because, unless the couple is married, the man is not automatically deemed to be the father. Even in cases in which a married woman has a child by another male, the man who is married to the mother will be deemed to be the child's father regardless of whether he is, and it is for the other man to prove paternity. The Executive will attempt to equalise the law in its forthcoming family law bill. The issue is related to access, because it is harder for a father to ask for access rights if he is not deemed in law to be the father, but access is a separate and individual point.

10:45

Margaret Smith: If Stewart Maxwell is in any doubt about what I meant, I point out that, in the Children (Scotland) Act 1995 and other legislation, the rights of the child are paramount.

The Convener: I draw committee members' attention to the letter from Sarah Boyack's constituent, because it contains issues that need to be addressed.

I also have an interest in the matter. I feel that it is about time that, in the first instance, determination of the child's welfare should be taken out of the courts. I think that we all agree that the child's welfare and needs are paramount, not who gets access. The first port of call in determining what is best for the child should be outwith the courts. I am pleased that the minister's letter acknowledges to some extent that mediation can play a greater role, but the question is whether the committee wants to go further and request that the structures of the law be changed to ensure that mediation would be the first port of call. I leave that for members to comment on.

The second issue that arises from Sarah Boyack's constituent's case is the cost of access. A primary concern about the system is that if someone believes that it is in the child's interest for them to have access, they can apply for the access rights under the 1995 act, but they have to be prepared to pay for that. We are hearing stories of the cost of access, which should not be prohibitive, because that is not in the child's interest.

In Sarah Boyack's constituent's case, there seemed to be competing court orders. Not long ago, we considered a European Union provision that was intended to ensure that, once an action had begun in a court in any European Union member state, another court could not begin a case for six months, but in Sarah Boyack's constituent's case, there seemed to be a contradiction between what the court in England had picked up and what the court in Scotland had started. There are some issues in that case that need to be tidied up.

Margaret Mitchell: I agree totally, convener. The child's rights and well-being are paramount, but I took option (b) in the paper and Sarah Boyack's constituent's letter to refer to a situation in which the parents' relationship had broken down and the mother was almost determined to exclude the father to the child's detriment. There are two aspects. In Sarah Boyack's constituent's case, because the mother moved away, two court orders competed: after a year and a day, the English orders took precedence over anything that had been decided previously in Scotland. Where both parents are still resident in Scotland and the mother suggests that there is a problem where there might be none, mediation is certainly the way forward, as opposed to going to the courts and trying to settle the matter in a formal, legal manner, so I support your suggestion on mediation.

Bill Butler: I too support the idea of mediation. Perhaps we should write to the minister regarding petition PE124 and include a question asking whether the Executive has a view on the notion

that legislation should prescribe some form of mediation in the first instance and whether it has considered legislating for that. That would be helpful indeed, because the Minister for Justice mentions mediation in her response, but I think that that is as a further option.

Margaret Smith: I agree with what Bill Butler has just said. As somebody who has used mediation in such circumstances, what I would say about it would be 95 per cent positive. Family mediation offers a much more child-centred, less combative approach all round. I hope that, a few years down the line, people can still feel that they have some kind of family, and that both parents will still be involved in the upbringing of children, which, I think, is the purpose of all this.

Mediation is much more likely to work when people want it to work and when they go into it genuinely thinking that, although their relationship has broken down, it is important to come out of the experience with an arrangement that is in the best interests of their children. If people go into mediation with that attitude, the chances are that it will be highly successful. If, however, they are forced into mediation by legislation, the circumstances would be totally different and mediation services would require much greater financial and other support. That would, to an extent, change the face of mediation as we have known it, and the level of people's involvement in mediation would be different from what it has been so far.

To reiterate, mediation can be highly successful when people are committed to it. I would be interested to find out whether there is evidence on that from other jurisdictions and, if there are countries where people are compelled to go into mediation before using the courts, to find out whether that approach works.

The Convener: The points made by both Margaret Smith and Bill Butler are good additions to the discussion. I do not know whether resources would be available to us for looking at other jurisdictions, but we will investigate the possibility of getting a note on what we know about what other jurisdictions do.

Bill Butler emphasised the role of mediation, and I take Margaret Smith's point about mediation working only when both parties are willing to participate. The court's role is limited when it comes to access to children. The law is well intentioned, but experience has shown that the court route is somewhat cost prohibitive. If we were to try to think of another system that would be more accessible, the next obvious step would be to consider some form of arbitration, tribunal or something less costly. My paramount concern is that the system is cost prohibitive in this area of family law.

We can make all those points to the Executive. They are not mutually exclusive. At this stage, we are exploring possibilities, but we want to say loud and clear to the Executive that we think that further work needs to be done, and that we want to push the debate on a bit further.

I will try to summarise what we would like to do. We will obtain a note on what is being done in other jurisdictions on access to children. On PE124, the committee is agreed that there are issues for grandparents, but in the wider context of access to children. Some of the issues of access and costs that we have raised today should be helpful with respect to those raised in the petition.

Michael Matheson raised an issue about retrospection, which I think would be a fair point to put in our letter to the Executive in connection with unmarried fathers and access. The point has perhaps not been considered so far, so I do not have any difficulty with including it in our correspondence. We have discussed the role of mediation, and we are clear that the overriding principle, on the welfare of the child, should be as it is under the 1995 act. Is that agreed?

Members *indicated agreement.*

Bill Butler: We should also thank the Minister for Justice for her sympathetic tone and comments and say that we are looking forward to developments.

Civil Partnership Registration

10:54

The Convener: Item 5 is civil partnership registration. I refer members to the paper on the matter. The Civil Partnership Bill had its first reading in the House of Lords yesterday—which means that it was formally introduced—and its second reading has been provisionally scheduled to take place on 22 April. It is expected that a Sewel motion will be lodged in the Scottish Parliament before the summer recess.

The committee must consider its approach to the matter. Recently, as members know, we have considered Sewel motions and provided a report to the Parliament before a short debate. We could ask the Scottish Executive to provide an informal briefing on its input into the bill, we could take oral evidence from the minister, or we could simply take written evidence. We could appoint a reporter to consider the matter and we could set up further evidence sessions with interested parties.

It would be useful to take advice from the Law Society of Scotland, which will obviously be involved in one way or another in giving a view on the bill's impact on Scots law. I am persuaded that there are many technical issues that might have such an impact and that we should certainly highlight at the preliminary stages of the process the areas of law that might be affected by the proposed change to UK legislation.

It is for the committee to decide whether a Sewel motion would be adequate and whether the Westminster Parliament should consider the bill's knock-on effects on Scots law.

Bill Butler: The convener's point about hearing from the Law Society is appropriate. I suggest that, given the technical nature of the bill's impact in Scotland, we first request an informal briefing and then take oral evidence from the minister, which is our normal practice. We can then construct a report. That would be a reasonable way in which to proceed.

Margaret Smith: I agree with most of that. There are a number of technicalities in the bill and the original consultation was very vague on a number of issues to do with Scots family law—indeed, it was vague on some of the issues that we have just been talking about. It would be useful to take up Bill Butler's suggestion and have an informal briefing from the Executive, followed by oral evidence from the minister, but there would also be some value in taking oral evidence from the Law Society earlier in the process rather than later, to ensure that we pick up on everything that we should. I think that in the past we asked for an audit of the potential impact on other legislation, but I do not know whether we received that.

The Equality Network's work on the matter has certainly raised a number of different issues. It would probably be useful to hear from the Equality Network as well as from the Law Society.

We should also bear in mind the fact that Hugh Henry has assured us that if substantive amendments are made to the bill during its passage through Westminster that impinge on Scots law, the matter will be brought back before the Scottish Parliament.

The sooner we get moving on the proposed legislation, the better, so that when the Sewel motion is lodged we do not find ourselves having to deal with a lot of technical aspects of different pieces of legislation without enough time to consider the matter properly. We have to get our act together now so that when we have the Sewel motion in front of us, we do not have to do what we have had to do in the past—receive briefings on the same morning as we are considering the Sewel motion.

11:00

The Convener: You ask about the audit. Members should be aware that we have yet to see the bill; what we have is the consultation. We will have to wait and see how the bill is taking form before we can see how it will impact on Scots law. We may have to point out to the Executive that the committee really needs to see the bill as opposed to the consultation. There is no point in our taking evidence on the consultation if the bill is dramatically different.

There are at least two approaches that could be taken. One is to create a new set of rights; the other is to pull together legislation based on an old set of rights. We will need to see what is in the bill. Will we have to ask for that?

Alison Walker (Clerk): The committee will receive an Executive memorandum within a couple of weeks, we think.

The Convener: I presume that that memorandum will give us a summary of the bill. We will want to see the bill itself. Part of the bill will relate to Scotland, so we will try to get hold of it for the committee.

Unfortunately, sometimes our intentions do not match our schedule. As members know, we have a busy schedule—what is new? When we come to our next agenda item, we will hear about our timetable for the Emergency Workers (Scotland) Bill. We will have to give some thought to how much time we can devote to all the subjects that we will be required to work on.

Before we move to item 6, I will summarise what we are going to do about civil partnership registration. We are agreed that we will have an informal briefing from the Scottish Executive and that we will take oral evidence from the minister. It has been suggested that we should also take oral evidence from the Law Society and the Equality Network. Are members happy with that?

Michael Matheson: Why are we taking evidence from those two groups? I just want to be clear on the exact purpose of taking evidence from them.

The Convener: From what we have heard, the Law Society will certainly help us to address some of the technical issues. Members can correct me if they think differently, but I think that we will be taking evidence not with a view to supporting or not supporting the bill but with a view to learning about the technical aspects and the impact on Scots law. The Law Society will be helpful in that.

Margaret Smith said earlier that the Equality Network has done a lot of work on this issue, so it may have expertise to offer.

Margaret Smith: It has. The evidence that it gave to the Equal Opportunities Committee was a balance between the more human aspects and matters relating to existing Scots law. The Equality Network did not come at the issue purely from an anecdotal point of view. It had a balanced viewpoint.

I suggested taking evidence from those two organisations; my other suggestion, while I remember, was the chap who is the head of family law at the University of Strathclyde—a guy called Professor Kenneth Norrie. He is seen as one of the leading people in his field. His evidence to the Equal Opportunities Committee was very much grounded in the impact on law. It is up to colleagues to decide how they feel, but I feel that taking oral evidence simply from the Executive will not be enough. The question that then arises is whether it would be enough also to get evidence from the Law Society, or whether we should hear evidence from two or three lots of people? I see no reason why representatives from the Equality Network and the Law Society and the likes of Professor Norrie could not give evidence together. I do not think that a full morning of evidence would be needed. It would be useful to question people other than the Executive.

Michael Matheson: I raised the issue because I have just seen the responses to the Executive's consultation and the range of organisations and individuals who responded. I am happy for people to give evidence purely on technical legal aspects of the bill, but if the committee is to consider general issues, it will have to call a balance of witnesses. The obvious group that is missing from the parties that we have considered is churches, which have made submissions on the bill to the Executive. If we open up evidence to a wider group of organisations that might not be interested only in technicalities, we must be careful not to be drawn into not having balanced responses in oral evidence.

Marlyn Glen: If the evidence that the Equal Opportunities Committee took has been used properly and the audit of the bill's effect on Scots law has been undertaken, the subject should not be time consuming. We will just consider whether something has been missed out. It is to be hoped that the Executive's memorandum says that it has picked up those matters and that we will not have to spend much time on the subject. I presume that we will not reopen the principles behind the bill and that we will consider only technicalities, which have been well covered.

Bill Butler: Michael Matheson has a point. We do not want to stray from the technicalities. With the best will in the world, the churches or the Equality Network may tend to stray from the technicalities, without meaning to do so. Perhaps we should restrict ourselves to Professor Norrie and Law Society representatives, which Margaret Smith suggested, as they will tend not to stray, even inadvertently, from the technicalities. Hearing from those two parties would assist us.

Margaret Smith: I would be happy with that.

Mr Maxwell: I agree with Bill Butler. We are not about to consider the bill's merits—whether it is good or bad. We will consider technical matters and the impact on various aspects of Scots law. We should restrict our consideration to that, as that is our role in the process. I am happy to support his suggestion of witnesses.

I am not sure whether Marlyn Glen's point that considering the bill will not take much time is correct. We have not yet received the audit. I understand that the audit has not been undertaken because the bill had not been published and only the consultation was taking place. We will not know until the bill is published and we have the audit and the evidence whether our consideration will take a lot of time or a little time. The jury is still out on that.

I support the idea of restricting our consideration to our role, which is to examine the impact on Scots law. We should deal with evidence on that basis.

Margaret Mitchell: I agree that we must be careful not to stray from the technicalities, so hearing from Scottish Executive officials and the Law Society would be good. Professor Norrie has definite views—he was my lecturer in family law at the University of Strathclyde. He will also be

excellent on the technical aspects, so he is a welcome addition.

The Convener: We all agree that we want to review the technical impact on Scots law as far as possible. If that proves impossible, the committee will have to be open minded on the point that Michael Matheson made. We assume that it is possible to consider the bill in the way that has been suggested. However, we should be mindful that if it becomes apparent that it is impossible to talk about the technicalities without straying into other areas, we might have to review the issue of balance that Michael Matheson raised. Our objective in taking evidence will be to consider the technicalities, and that will inform our report to Parliament on the Sewel motion—that is not a foregone conclusion, but that is what we will set out to do. Michael, now that you have heard the discussion, are you satisfied that we should take further evidence in addition to hearing from the Executive?

Michael Matheson: Yes.

The Convener: Does the committee agree that we should hear from the Law Society of Scotland and from Professor Norrie, from the University of Strathclyde, who is a leader in the field of family law? Are we also happy to invite the Equality Network, which has developed expertise in relation to—

Bill Butler: No, we are not.

The Convener: Okay. Does the committee agree to invite the Law Society of Scotland and Professor Norrie to give evidence? It is open to the committee to review its decision later.

Members *indicated agreement*.

Emergency Workers (Scotland) Bill

11:10

The Convener: We move on to item 6. I ask the committee to give some thought to how it wants to approach the Emergency Workers (Scotland) Bill and to the witnesses from whom it wants to hear. Members have an approach paper that suggests witnesses and a timetable for our stage 1 consideration. The bill is short—that does not mean that it is not complicated; we do not know that yet—so the paper proposes that we have four evidence sessions and suggests witnesses for each session. Of course, the committee may change the proposals or add to them if it wants to do so.

I invite members to comment generally on the timetable of work on the bill, and on how we might incorporate the work that we have just agreed to do on civil registration partnerships into our timetable.

Michael Matheson: The bill will cover prison officers, but the approach paper does not suggest that we invite the Prison Officers Association Scotland to give evidence—perhaps a reference to the association, which is the trade union for prison officers, has escaped me.

The Convener: We issued a call for written evidence on 25 March and it is suggested that we take six weeks to consider the bill. We normally allow eight weeks, but we thought that we could probably consider the bill in six weeks, because it is short. The first oral evidence session would take place on 5 May and subsequent oral evidence sessions would take place on 12 May, 26 May and 2 June. On 9 June, we would discuss the issues that came out of the evidence session, in preparation for the writing of our draft report, which we would discuss on 16 June. We would agree our final report on 23 June, which would allow for the publication of the stage 1 report on 25 June, in time for a stage 1 debate on 1 July.

Members will have noticed the problem. If we want to squeeze in the stage 1 debate before the summer recess, there will not be much slack in the timetable.

Michael Matheson: I noticed that the bill also intends to cover midwives. If I remember rightly, midwives have their own royal college and are not covered by the Royal College of Nursing. If we invite the RCN to give evidence, perhaps we should include the Royal College of Midwives on that panel.

The Convener: We could do that. The RCN, Unison and the GMB all represent midwives, but

you might want to hear exclusively from the Royal College of Midwives.

Michael Matheson: It might be just a question of clarifying the situation with the Royal College of Midwives, because if the college is happy for others to cover the situation in relation to midwives, that will be fine. If the college is not happy, it should have the option to attend.

Margaret Smith: In the recent debate on emergency workers, an issue that emerged was which workers the bill should include. I want to put on the record that we might receive written evidence from groups that suggest that the bill's scope should be wider.

The approach paper suggests that we take evidence mostly, if not exclusively, from the workers who are covered by the bill. However, there are issues with social workers, housing officers and others who go into individuals' homes, often on their own in difficult circumstances, and although we have scheduled oral evidence-taking sessions with those who are covered by the bill, we might find when we receive written evidence that groups of workers who are not covered by the bill come to us and highlight an issue. To some extent, we might pick that up in our evidence from the Scottish Trades Union Congress or from the Convention of Scottish Local Authorities, if we were to invite it for a local authority view.

11:15

The Convener: That is a good point. For your information, I have asked for the GMB to be included—I declare an interest, as that is my union—because it represents home care workers, as does Unison. The committee will therefore get a union perspective on the matter, but it might want another perspective. I have also asked for the Transport and General Workers Union to be included, because it represents a high proportion of ambulance workers.

Margaret Smith: The point might come through, but I wanted to flag up the possibility that we might get representations from other bodies of workers.

The Convener: That is a valid point, but you can see the impact that that will have on the timetable. If we were to agree the witnesses who have been suggested and then add to them, you can see how difficult it would be to fit everything in. We would have to add to the timetable, even if we were to add only three half-hour evidence-taking sessions on to the meetings on the registration of civil partnerships. You can see what the timetabling issues are, but let us hear out the discussion before we come to a conclusion on that.

Mr Maxwell: In the debate that we had not so long ago, Margaret Smith, I and others spoke about certain groups of public sector workers being excluded. I raised the issue of the non-uniformed staff who work in the fire, police, ambulance and health services, who might be excluded from the bill because they are not specifically emergency workers. Unison and the GMB represent most of the non-uniformed staff in the fire service, so I hope that they will come at the bill from that angle, but perhaps the professional bodies that represent social workers, for example, will wish to say something about the bill, as social workers have a difficult job and deal with difficult individuals.

I accept that the timescale is tight. However, although I cannot think of an individual organisation that could represent other public sector workers, I am concerned that, as Margaret Smith mentioned, we are leaving out all those who have been left out of the bill.

The Convener: Those are legitimate points. Although we will focus on the public sector, when committee members hear what the bill is about, they might ask why we should legislate to protect only public sector workers when there might be private sector workers whose employment puts them in similar situations, although we might be unaware of that. The difficulty is that we have to pre-empt what issues might come out of the consultation and anticipate what witnesses we want to come and speak to the committee.

Mr Maxwell: I notice that it is suggested that we hear from Unison and the STUC in the third evidence-taking session and from the T&G and the GMB in the fourth. There might be a good reason why they have been split, but perhaps it would be better to have them as a single panel in the third evidence-taking session, which would create more room in the fourth.

The Convener: Yes. That is a good suggestion. It would, in theory, create a bit more room, but my experience is that, with bigger panels, either we find ourselves talking to one person on the panel to the exclusion of the others—naming no names—or everybody wants to speak, which is only fair if they have come to give evidence. I have never found a solution to that. If we follow your suggestion, we will probably have to schedule in a slightly longer meeting to take account of the numbers on the panel. You talked about non-uniformed staff on professional bodies. Do you want anyone in particular to be considered for addition to the list of witnesses?

Mr Maxwell: The problem is that it is difficult to identify a single representative of all the disparate groups of workers. Michael Matheson mentioned the Prison Officers Association Scotland, which is not on the list, and the Royal College of Midwives,

which we will ask. Perhaps we should also consider social workers.

Margaret Smith: I agree.

The Convener: We could hear from the Association of Directors of Social Work. While members think about that, I will call Bill Butler to speak.

Bill Butler: If we receive submissions before evidence sessions 1 or 2, you might wish to bring to the committee's attention a suggestion that leaps out of written submissions that might be better taken as oral submissions. We could work flexibly and leave the matter to your discretion.

The Convener: That is a good point. We might want to consider having blank slots until we have a feel for the consultation. Witness availability would also provide some flexibility.

Margaret Smith: It might be appropriate to hear from COSLA, which may have an umbrella view for many public sector workers. The British Association of Social Workers is the grass-roots organisation for social workers, unlike the ADSW.

I would probably go along with Bill Butler's suggestion that it might be best to keep session 4 free until we have written evidence. After that, you can decide who else we should hear from. That might be the best way to proceed, because it is difficult to second-guess who will respond.

The Convener: Michael Matheson suggested the Prison Officers Association. Do members want it to be included? I think that the association must be invited, so we will have to find a slot for it. Session 4 is not completely free, because we will hear from the minister at the end of it. We would want a minimum of an hour for the minister, which leaves room to fit in two other witnesses. Margaret Smith suggested COSLA. Do you want that suggestion to be considered now or to be left hanging in the balance?

Margaret Smith: I am happy for that to hang in the balance, but if we do not receive written evidence from many other groups, hearing from COSLA might cover home care, social work, housing and other similar officials. One big issue is the fact that many of those people must enter homes on their own. If anything, they might need more protection than people who work in accident and emergency departments, for example. The busiest accident and emergency departments probably have security guards on hand.

The Convener: Evidence session 1 has no room for anything else. That session will be heavy, because it will provide our opportunity to understand early as much as we can about the bill from the Executive team and to hear the views of the Law Society and the Faculty of Advocates.

At evidence session 2, we will hear from the Scottish Police Federation and from the Association of Chief Police Officers in Scotland and the Association of Scottish Police Superintendents as a panel. We will need to leave time for that panel. After that, we will hear from the Fire Brigades Union and the Chief and Assistant Chief Fire Officers Association as a panel. That session will take two and a half to three hours.

At evidence session 3, we will hear first from the Royal College of Nursing, after which we will have the British Medical Association Scotland and the Royal College of Physicians as a panel. A further panel will comprise Unison Scotland, the STUC, the T&G and the GMB. We have to slot in the Prison Officers Association.

Session 4 is left with the minister and at least two blank slots. Members may take the view that two blank slots are not enough, but that is impossible to say until the written evidence has been seen. I note that the deadline for written evidence is not until 7 May. As members can imagine, it is always the case that submissions are received right up to the deadline. I also note that our first evidence-taking session is scheduled for 5 May.

Margaret Smith: It might be worth while to include the substance of the conversation that we have just had in the call for written evidence. We could say that some of the oral evidence slots will not be scheduled until we see what people have said in their written evidence. That might suggest to people that it would be worth while getting their evidence in early.

The Convener: The call for evidence has already gone out. If it had not, we would not have met the deadline.

Margaret Smith: Okay.

Bill Butler: I think that we will have to keep two blank slots in the fourth evidence-taking session and leave it up to the convener and deputy convener to fill them. There is no other practical way around the situation.

The Convener: I am happy to leave it at that. If the committee agrees, however, I think that we should tell the Parliamentary Bureau that we need some flexibility in our timetable, because we want to do a good job on the bill and we feel that it is important to give the Parliament some guidance on civil partnership registration. We will be working pretty hard to meet the deadlines.

I realise the implications of that. At the moment, the bureau wants to have the stage 1 debate on 1 July. If we do not say anything, the problem is that it may not be possible to meet the deadlines and we might also miss out on evidence. We can review the situation as time goes on.

Margaret Mitchell: It is important that we give the bureau that guide. It is looking at procedures at the moment. Later in our agenda, we have an item about the Procedures Committee's inquiry into the subject. The discussion that we are having typifies the kind of comment that the bureau needs to hear. All of us want to pass good legislation. The idea is not to process it as fast as we can get it through but to do a good and thorough job. I agree entirely that we should flag up to the bureau that we need flexibility.

The Convener: I should also mention that there will be no plenary sessions in the week commencing 17 May. The Parliament is meeting in the Hub that week, as we are no longer in these premises. There is the possibility therefore that we could have two committee meetings in one week. I am not wild about the idea. It is a matter of good practice that the *Official Report* is available to committee members before each of our meetings. We need to be able to see what was said in the previous evidence-taking session so that we can put the evidence to the next witnesses. It is an option, however, and I want quickly to canvass reactions to the suggestion.

Bill Butler: If we have to do it, we have to do it.

The Convener: As no member is otherwise minded, I thank members for their assistance.

Annual Report

11:28

The Convener: Item 6 is our consideration of a paper on the committee's annual report. I refer members to the paper that sets out our draft report for the parliamentary year 7 May 2003 to 6 May 2004. The format of the report follows the style that was agreed by the Conveners Group. I ask members whether they have any comments to make.

Mr Maxwell: I have one comment on the first paragraph. It says that we have

"reported on three proposals for Sewel motions"

Have we not done three already? I am losing track of them but, if we have done three already and we have another one coming up, which is the Sewel motion on civil partnership registration, should the number of Sewel motions not be four?

The Convener: The three proposals on which the committee has reported are the Gender Recognition Bill, Civil Contingencies Bill and the Justice (Northern Ireland) Bill. We may not have reported on the Sewel motion on civil partnership registration by the time of the deadline, which is why the report gives three as the total.

If there are no further comments on the draft annual report, I ask members to agree the report.

Members *indicated agreement*.

Procedures Committee Inquiry

11:30

The Convener: Agenda item 8 is on the Procedures Committee's inquiry on timescales and stages of bills. How appropriate. The Procedures Committee wrote to me and I felt that I should put the letter before members to invite comments because the inquiry is important. As members have found to their cost, this committee will be considering proposed legislation almost permanently. Members have experience of the timescales that are involved.

The deadline for comments to the Procedures Committee is 5 May, but if members have any comments to make now, that would be helpful.

Michael Matheson: I have two points. The first is about committees having sufficient time to consider bills at stage 1. We must ensure that the system is sufficiently flexible so that when the Parliamentary Bureau has set a deadline for completion of stage 1, if a committee requests extra time to consider the bill further, that request is accepted. At present, committees can request extra time from the bureau, but it would be helpful to have it formalised that they can make such a request.

When ministers come before a committee at the end of stage 1, there is always a danger that they will make reference to specific points that have arisen in evidence and say that they intend to take certain action. The committee will not have been aware of that when it was considering the bill. We need to ensure that if the Executive says at a late stage that it intends to make a significant change on which the committee has not taken evidence, the committee should be able to ask for time to consider the matter. If necessary, the committee should be able to take evidence on the issue.

That brings me to my second point, which is about stage 2. The Executive can lodge substantial amendments that may change the legislation considerably, but which the committee has not considered. The committee is then at a disadvantage because it has to take the Executive's word on the matter. If at stage 2 a substantive amendment is introduced that would lead to significant changes to the bill as considered at stage 1, the committee must have scope to consider that amendment and, if necessary, to take wider views on it and its possible implications. Within the present timescales, committees do not have scope to do that because they are locked into the process and must simply take the Executive at its word.

Margaret Smith: I strongly support Michael Matheson's comments. At stage 1, it is important that secondary committees have sufficient time to feed into the lead committee's consideration. Secondary committees sometimes flag up different issues because they approach the bill from a slightly different remit. Because of timings, the system does not work as well as it might.

I feel more strongly about stage 2. We may have concerns about timing at stage 1, but we are usually able, within the kind of constraints that we talked about earlier in relation to the Emergency Workers (Scotland) Bill, to spend a number of weeks taking oral and written evidence. People can comment on the proposals.

However, a totally ridiculous situation can then arise, as happened with the Adults with Incapacity (Scotland) Bill, whereby the changes that the Executive made as a result of representations from parents altered the bill substantially, although it could be argued that that was the right thing for the Executive to do. Members spent months considering the original proposals, but had only days to consider the changes. That is ludicrous and calls into question our ability to pass decent legislation.

A mechanism must be introduced that will allow a committee—when an amendment to a bill would substantially alter provisions on which the committee had taken evidence—to take further evidence. The previous Health and Community Care Committee, as a secondary committee for the Adults with Incapacity (Scotland) Bill, took further evidence at stage 2, but that was unusual. That procedure should not be regarded as the norm, but it should be accepted as reasonable for a committee to take evidence at stage 2. Greater time must be spent on stage 2 consideration of bills. Members need more time to formulate amendments so that outside bodies and the public can realise that things have changed since stage 1 and can lobby members and pass on information.

Throughout stage 1 of a complicated bill, such as the Criminal Procedure (Amendment) (Scotland) Bill, committees have the helpful assistance of advisers. However, the Executive might make substantive changes to a bill at stage 2, by which time committees no longer have such advice. As Michael Matheson said, that means that committees must take the Executive's word on whether something is a good or a bad thing or whether it is legally correct. I am not suggesting that the Executive would say that something was okay when it was not, but mistakes can be made. Stage 2 gives me the greatest cause for concern and my views on that get stronger with every passing year.

Margaret Mitchell: This is my first experience of dealing with legislation and I was amazed to find that amendments are lodged on a Monday and we debate them and try to get to grips with them on a

Wednesday. I believe that we should have a week in which to consider them. It was helpful that we considered only so many sections of the Criminal Procedure (Amendment) (Scotland) Bill. Normally, a committee must consider a whole bill and tackle all the amendments. It seems to me that there is a gap at stage 2 and that there is room for significant improvement, especially when—as Michael Matheson and Margaret Smith outlined—no committee adviser is available to consider the implications of a stage 2 amendment that would fundamentally change a bill. Those are worthy points that should be considered in order to improve the legislative process.

On the Criminal Procedure (Amendment) (Scotland) Bill, we had the stage 1 debate before the Executive released the results of the consultation on the bill. The debate would have been better informed if we had had that information. There does not seem to have been any good reason for not making it available to members at that time.

On the point on the Emergency Workers (Scotland) Bill, there must be flexibility—procedure cannot be set in tablets of stone—to allow us to take all evidence that we deem necessary to reach a balanced view and to produce good legislation that will stand the test of time. We are revisiting bills that Parliament has passed, which indicates that we are not getting things right. I am in favour of sending all our comments to the Procedures Committee and I am delighted that it has asked us about the matter.

The Convener: The inquiry is welcome and I think that we could use all the information that has been given so far. I would like to add a few comments to what has been said.

I agree whole-heartedly that, for a variety of reasons, stage 2 is the main problem. We have no second chamber—the decision not to have one was rightly made with the Scotland Act 1998. However, having no second chamber is all the more reason to ensure that our scrutiny is right. Once bills are passed into law, hundreds of regulations should not have to be passed to rectify matters if we have not got things right. Of course, some high-profile people argue that there should be a second chamber; if we want to counterbalance their arguments, we must ensure that procedures are right.

When stage 2 has been completed, as it now has been with the Criminal Procedure (Amendment) (Scotland) Bill, there are no notes with the bill. That has always struck me as odd. There is the amended bill and some way of identifying what the amendments have been, but there are no notes. However, there are explanatory notes and a policy memorandum when a bill is introduced. It is the oddest thing in the world that a bill's policy and effect can change at stage 2, but there are no accompanying notes. I think that I have raised that issue with the Scottish Parliament information centre, which confirmed that that is the practice. The practice should change.

As Margaret Smith and Margaret Mitchell said, it is outrageous that the deadline for amendments is a day and a half before we debate them. I am not telling any tales out of school by reinforcing what the deadlines are or in telling members that our clerks often work until 9 or 10 o'clock on the night before a meeting to prepare a convener's brief, so I receive my brief sometimes at about 10 o'clock at night. I am then expected to go through it. Such things can be done periodically, but such a system should not be run permanently. I am worried about such matters because the Justice 1 Committee will deal with legislation.

I agree that there should be a minimum of a week between the deadline for amendments and when the committee deals with them. In the intervening time, those who lodge amendments—particularly the Executive—should give notes on the effect of amendments. We receive co-operation from the Executive if we ask for it and we receive notes if we ask for them; however, as a matter of policy, notes should be issued to explain amendments.

There is an awful lot of work to be done. I realise that the net effect of such proposals would be that the legislative process would be slower, as weeks would be lost here and there, but we should want to be sure that we are doing the best job that we can. There are time limitations. Members often have meetings on nights before committee meetings and have to consider papers—I am sure that I am not the only member who has such meetings. People feel a heavy responsibility. Going through a bill at stage 2 and marking what should be done with all the amendments is a time-consuming job, unless somebody else does that for a member.

On advisers, I pushed hard to have Chris Gane with us and, indeed, he was with us for part of stage 2, but there was a problem with his time and he could not attend all the meetings. However, it should be normal practice that, if we adopt an adviser for stage 1, they should see us through stage 2. It seems odd that they should stop advising us when we probably need them most.

The deadline for amendments for stage 3 of the Criminal Procedure (Amendment) (Scotland) Bill is 4.30 on Friday 23 April. The debate is likely to be on 28 April, so members can see that there is quite a short time between the end of stage 2 and the beginning of stage 3, particularly bearing it in mind that there will be a recess, which certainly makes things a bit tighter.

Does any member want to add to what I have said?

Members *indicated disagreement.*

The Convener: To add to the inquiry, we could simply copy the *Official Report* to the Procedures Committee. I encourage members to take the opportunity of feeding any further thoughts that they have into the Procedures Committee in the course of the inquiry.

I remind members that the next meeting of the Justice 1 Committee will be on 21 April, which is after the Easter recess, when we will consider subordinate legislation. There will also be a joint meeting of the justice committees at which we will take evidence on the draft budget for 2005-06.

The earlier that amendments for stage 3 of the Criminal Procedure (Amendment) (Scotland) Bill are lodged, the better, but I remind members that they should be lodged no later than 4.30 on Friday 23 April and that the stage 3 debate is likely to be on 28 April.

I thank members for their attendance.

Meeting closed at 11:45.

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