

JUSTICE 1 COMMITTEE

Wednesday 5 May 2004
(*Morning*)

Session 2

£5.00

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JUSTICE 1 COMMITTEE

† 18th 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)

THE FOLLOWING GAVE EVIDENCE:

Shona Barrie (Crown Office and Procurator Fiscal Service)

Alison Coull (Scottish Executive Legal and Parliamentary Services)

Gery McLaughlin (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 2

† 15th, 16th and 17th Meetings 2004, Session 2—joint meetings with Justice 2 Committee.

Scottish Parliament

Justice 1 Committee

Wednesday 5 May 2004

(Morning)

[THE CONVENER opened the meeting at 11:12]

Emergency Workers (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning and welcome to the Justice 1 Committee. As usual, I ask members to switch off their mobile phones. I have received apologies from Michael Matheson.

Item 1 is consideration of the Emergency Workers (Scotland) Bill. I welcome the bill team from the Scottish Executive—Gery McLaughlin, who is the bill team leader, Beth Staffell and Alison Coull.

Mr Stewart Maxwell (West of Scotland) (SNP): Good morning. Will you explain to us the extent to which behaviour that is not already covered by existing law is made criminal by the bill?

Gery McLaughlin (Scottish Executive Justice Department): The answer to that is slightly complex and I will ask our solicitor to deal with it. In general, protection is already available to the police under the Police (Scotland) Act 1967 and to the fire services under the Fire Services Act 1947. Common law deals with assaults and, to some extent, obstruction.

As well as adding to existing legislation and to common law, the reason for introducing the bill is to highlight the fact that the Executive believes that attacks on emergency service workers are entirely unacceptable. By highlighting that, the bill serves the purpose of having a deterrent effect—which is what the introduction of the bill and the placing of its provisions on statute is intended to achieve—that is not available under the current law. I ask Alison Coull to deal with the legal questions.

Alison Coull (Scottish Executive Legal and Parliamentary Services): I will speak about the general common law and then move on to the existing provisions that relate to the police and the fire services, highlighting the differences.

It is obviously an offence at common law for a person to assault any other person, regardless of that person's status or whether they are an emergency worker. To that extent, the bill does not

provide anything new, other than that it describes a specific statutory assault in specific circumstances. There is no specific offence at common law or at statute of obstructing or hindering an emergency worker as defined in the bill. To that extent, the provisions go beyond existing criminal law, although it may be possible to include such obstructing or hindering within existing criminal offences, such as breach of the peace.

11:15

The committee will be aware from the papers that relate to the bill that the existing statutory position, under the Police (Scotland) Act 1967, is that an offence is committed by any person who

“assaults, resists, obstructs, molests or hinders a constable ... in the execution of his duty”.

The bill covers police officers, but there is existing case law to suggest that the “obstructs” or “hinders” element of the 1967 act would not apply unless there was a physical element to the obstruction or hindrance. The bill makes it clear that obstructing or hindering a police officer will be an offence even if means other than physical means are used. Section 2(2) of the bill gives a specific example of such conduct—giving false information. Therefore, the protection afforded to police officers goes slightly beyond the 1967 act—providing, of course, that the police are acting in emergency circumstances.

The protection of firefighters is covered in section 30 of the Fire Services Act 1947, which says that an offence is committed by any person who

“obstructs or interferes”

with a firefighter

“who is engaged in operations for fire-fighting purposes”.

In contrast, the bill will cover firefighters in all emergency circumstances, regardless of whether they are extinguishing fires. The protection therefore goes beyond existing statutory protection. In addition, the maximum penalties in the Fire Services Act 1947 are lower than the penalties provided for under the bill.

The other distinction between the bill and common law is that the statutory penalty in the bill is higher than the maximum penalty that would normally be available under sheriff summary proceedings. The bill provides for imprisonment for nine months, whereas the normal penalty under sheriff summary proceedings is imprisonment for three months, or six months for a second offence.

Mr Maxwell: You say that, in certain ways, the bill takes us beyond the Police (Scotland) Act 1967 and the Fire Services Act 1947. However,

does the bill make anything criminal that is not criminal already? I am not clear about that. It seems that, for all the actions that you have mentioned, people could be arrested and charged with an offence at the moment, under criminal law or common law. We are not really creating any new criminal offences, are we?

Gery McLaughlin: As Alison Coull said, assault is already covered by the common law. Obstruction may amount to a breach of the peace or some other common-law offence, but that would depend on the circumstances. In the bill, we have specifically defined behaviour. Depending on the circumstances, some actions might not be a criminal offence at present.

As I have said, the intention is to make clear the Executive's view that such behaviour is unacceptable. We can send that message by enshrining that view in statute, so that it will have a deterrent effect.

Mr Maxwell: I absolutely accept that and I agree with the message that is being sent out. However, I am concerned about some of the logic behind the bill, rather than about the public relations message, which, as I say, I think is good.

What evidence led to the introduction of the bill? Have certain types of behaviour, which are not clearly covered by existing criminal offences, led the Executive to introduce the bill? Has evidence that certain activities particularly affect emergency workers led to the bill's introduction, or is the bill simply about sending out a message?

Gery McLaughlin: There is clear evidence that there are attacks on emergency workers in the fire services, the ambulance service and so on. In the partnership agreement, the Executive agreed to take action to deal with those attacks. The policy memorandum makes it clear that the bill is part of the Executive's response and that there is a wider programme of action in relation to attacks on public service workers. From the evidence, the Executive views the level of attacks on emergency service workers as unacceptable.

Mr Maxwell: I think that Alison Coull referred to sheriff—

Alison Coull: Sheriff summary proceedings.

Mr Maxwell: I am sorry—that is right. Are sentences at the moment failing to act as a deterrent? If so, will the new sentences turn that situation around?

Gery McLaughlin: Sentences are a matter for the court. The legislation simply specifies the maximum sentence that can be passed. As Alison Coull said, the nine-month sentence specified in the bill is longer than the sentence that would usually be passed under summary procedure. In fact, that nine-month penalty is the exact

equivalent of the current protection provided for the police under police legislation, and the intention was to replicate that provision for other emergency service workers.

Mr Maxwell: I assume from your response that you feel that the existing law is not sufficiently severe or that available sentences for such an offence might not be severe enough.

Gery McLaughlin: The bill certainly provides for more severe sentences to be passed in the sheriff summary court. At the moment, if the offence were sufficiently serious, it could be tried under solemn procedure or in the High Court, where the offender could receive a more severe sentence.

The Convener: In that case, could you simply have issued guidance to the prosecution on referring attacks on emergency workers to a higher court to ensure that they attracted more severe sentences?

Gery McLaughlin: In "Protection of Emergency Workers: A Consultation Paper", the Executive considered the ways in which it could take action to protect emergency workers. Although it noted that the Lord Advocate had issued to procurators fiscal guidance on how to deal with attacks on public service workers, it concluded that statutory protection in the form of the bill that we have introduced was a better way of dealing with emergency workers' needs.

The Convener: So it would be possible to follow the Lord Advocate and issue guidance that such cases could be referred to a higher court, but the Executive prefers to do things this way.

Gery McLaughlin: Yes. The consultation makes it clear that the Executive feels that the Lord Advocate's guidance is an appropriate way of dealing with attacks on workers other than emergency workers. The point is that emergency workers perform a very difficult service in trying circumstances. They need to respond quickly and if they are assaulted or obstructed the consequences can be very severe, not only for themselves but for the people caught up in the emergency. That is why we are taking specific and different action for them.

Marlyn Glen (North East Scotland) (Lab): I want to ask about the definition of emergency circumstances in section 1(5). I accept that such circumstances might cause "serious injury", "serious illness" or "death", but could you give us examples of circumstances that are "present and imminent" or that are

"likely to cause ... serious harm to the environment"?

What does "serious harm" mean in the context of section 1(5)(ii), which refers to

"plants and animals and the fabric of buildings"?

Gery McLaughlin: It is worth while to consider the definition of emergency circumstances alongside the definition of emergency workers in section 1, because the two are meant to match up. The reference to serious threats to the environment is intended to cover specific instances, such as fire services responding to major fires—for example, in the case of buildings, the Edinburgh old town fire or, in the case of plants, forest fires. I accept that it might seem odd to refer to “plants” otherwise.

Marlyn Glen: So you are talking about large-scale fires, as well as serious ones.

Gery McLaughlin: The phrase

“serious harm to the environment”

is meant to encapsulate that. In any individual circumstance, it would be for the court to interpret whether something was an emergency under that definition.

Marlyn Glen: I was concerned in case the provision was open to interpretation.

Gery McLaughlin: It is intended to capture the type of emergency circumstances to which emergency workers, as defined in section 1, respond and therefore to catch any assaults or obstruction that take place while they are in the process of responding.

Marlyn Glen: I was also worried about the fact that circumstances can be “present or imminent”, because if an emergency were only imminent, somebody would have to make a judgment call.

Gery McLaughlin: To continue using the example of the fire services, “imminent” might cover a situation in which the fire brigade responds to a fire alarm that has been set off by smoke detectors. The fire might not have started—or it might not have begun to do major damage—but if the fire brigade did not react to the alarm and the emergency were to get out of control, it would become a major incident. The word “imminent” is intended to catch circumstances in which the emergency has not yet developed to its potential full scale but attention is needed to avoid it developing.

Marlyn Glen: I appreciate that a discussion needs to be had about which workers should be covered, but are the health workers whom the bill covers only those in the accident and emergency department, and not those in the rest of the hospital?

Gery McLaughlin: The bill contains two separate provisions on health workers. You refer to section 3, which covers hospital accident and emergency premises, but section 1 covers medical staff responding to an emergency more generally. Section 3 effectively ensures that, rather than it

being necessary to prove that there is an emergency in an accident and emergency department, an emergency is deemed to be in continual operation in such departments. Medical staff who respond to an emergency elsewhere in a hospital would be covered by section 1.

Marlyn Glen: So they are covered. Thank you very much.

Margaret Smith (Edinburgh West) (LD): In the debate on the protection of emergency workers that we had in January, the minister was questioned about hoax calls and said that the bill would act against such calls. There is a big problem with people who make hoax calls in which they say that there is an emergency and who then attack the fire crews or other emergency workers when they get into position. What is the existing legal position in relation to those who make hoax calls, and what would it be under the bill?

Gery McLaughlin: Emergency workers who respond to a hoax call as an emergency will benefit from the protection of the bill. If a hoax call for a fire engine were made and the fire crew were assaulted when they got there, which has happened on occasion, the firemen involved would be protected by the bill's provisions. The penalties for making hoax calls are dealt with not in the bill, but in fire services legislation. I do not have details of those penalties available immediately, but I know that they are covered in that legislation.

Margaret Smith: Does the Executive intend to consider those penalties when it reviews fire services legislation in general?

Gery McLaughlin: Yes, that is the intention.

The Convener: Would a non-medical person who assists an emergency worker be covered if they were obstructed?

Gery McLaughlin: Yes. Sections 1 and 3 provide for a person who is assisting an emergency worker who is responding to an emergency to benefit from the same protection. In a hospital, anyone who was assisting a doctor or a nurse in responding to an emergency would benefit from the protection that is set out in the bill.

11:30

Margaret Mitchell (Central Scotland) (Con): The penalties that are available for a conviction of common-law assault under solemn proceedings are greater than those in the bill, so what cases will be tried under the new offence?

Gery McLaughlin: The short answer is that such cases will be those for which the level of offences in the bill is suitable. The most serious offences will continue to be prosecuted under common law. If a life-threatening assault had been

committed, a nine-month penalty might not be appropriate and the full provisions of the common law in solemn procedure in the High Court might be more appropriate. Perhaps Shona Barrie of the Crown Office will comment on that later. It would be for the Crown Office to decide under which provisions to try an offence. As with the current statutory protection under the Police (Scotland) Act 1967, more serious assaults would continue to be tried under the common law rather than under statutory provisions.

Margaret Mitchell: Would the emergency workers whom the 1967 act and the 1947 act do not cover fit into the new offence, which is not serious enough for a solemn prosecution?

Gery McLaughlin: I started by talking about offences under the bill, rather than categories of people.

Margaret Mitchell: I am thinking about cases.

Gery McLaughlin: It depends on the seriousness of an offence. If an offence were sufficiently serious to merit a longer sentence than nine months, which is the maximum for which the bill provides, the case would be tried under common law, perhaps in the High Court. Sentences of much more than nine months have been given for assaults on emergency workers. That flexibility will continue to be available after the bill is passed. However, the bill deals with a less serious variety of offending behaviour.

Margaret Mitchell: We are asking about cases because the word "offences" sounds remote. If we talk about cases, we are discussing people and scenarios, which gives us a better idea of who the new offence is aimed at and where the gap in provision is that needs to be addressed, which is separate from the deterrent element that has been mentioned as the bill's *raison d'être*.

Gery McLaughlin: As I have said, the primary motivation is not necessarily to address the gap in the law. However, as Alison Coull said, the bill will fill potential gaps. The intention is to use the bill to target people who have assaulted or obstructed emergency workers in such circumstances, but not when the assault is serious and would benefit from a longer sentence.

Margaret Smith: One subject on which people dwelled in the recent debate on protecting emergency workers was that of which workers the new offence should cover. You touched on some reasons for focusing on emergency workers and I ask you to expand on that. Is the focus on emergency workers because they are considered particularly vulnerable in what they do or because the consequences of an assault on such a worker could be serious not only for the worker, but for the person whom they were helping? Are the reasons a combination of both those factors?

Gery McLaughlin: It is a combination of both. Your second reason is certainly a major issue behind the bill—assaults on emergency workers implicitly impact on the people who are involved in the emergency. That is a particular reason for the bill and is behind our distinguishing the groups of emergency workers in section 1.

Margaret Smith: Are there any issues connected with the drafting of the legislation, or with the prosecution of offences, that would make it difficult to extend the scope of the legislation to cover other public service workers or other workers who provide a service to the public?

I asked about the vulnerability of workers. One group that we have discussed are public sector workers who might visit people in their own homes. I am thinking about workers such as social workers or housing officials who, because of the nature of the work, are often women and often go alone to people's homes. Those workers could be vulnerable, so could the legislation be extended to cover them?

Gery McLaughlin: Obviously, the Executive decided that the appropriate groups to protect are those that are set out in the bill. On the question whether the drafting could lead to problems in extending the definitions, from a technical point of view rather than from a policy point of view, the major issue might be that the groups covered by the bill are, in essence, the traditional blue-light services, in which people tend to be uniformed and fairly easily distinguishable. I will ask Alison Coull to talk about the evidential provisions in the bill but, in essence, they require that someone should have known that a person was an emergency worker responding to an emergency. The circumstances that Margaret Smith describes may be more difficult from an evidential point of view.

Alison Coull: I do not have much to add. No doubt, it would be technically possible to produce legislation that covered public sector workers, but issues of proof would arise. In the way in which the bill is drafted, *mens rea* is required—that is, the person must know, or ought to know, that the worker is an emergency worker. Difficulties could arise in proving that if the bill were extended to cover public sector workers in general, who might not be easily identifiable as such to the accused.

Gery McLaughlin: The specific provision is in section 2(4)(b), according to which circumstances are held to be emergency circumstances only if

"a reasonable person would have grounds for believing that the emergency worker is or might be responding to emergency circumstances."

As I say, that might be more difficult to prove in the circumstances that Margaret Smith has described. Generally, housing officers are not responding to

emergency circumstances—such as life-threatening injuries—as set out in the bill.

Margaret Smith: I understand what you are saying and I think that the bill gives an example of a situation in which problems of identification may arise. When somebody such as a general practitioner is responding to an emergency, somebody may assault him for all sorts of reasons, not knowing that he was answering an emergency call. Equally, it could be argued that a social worker going into a child-protection situation may be in an emergency situation in certain circumstances. Those are two examples of difficult situations.

Gery McLaughlin: In general, emergency workers wear a uniform, but, as you said, GPs do not. Therefore, that might make a case more difficult to prove in court.

Margaret Smith: A GP would have to find a way of making it known to an assailant that they were a doctor.

Gery McLaughlin: Yes.

Margaret Smith: I want to pick up on another group of workers: mountain rescue teams. It has been said that they are an example of a group that could be brought within the bill's scope. Is the Executive considering doing that?

Gery McLaughlin: The Executive is considering that matter, but it has not come to a firm conclusion on it.

Alison Coull: May I clarify something? Your latter line of questioning makes me think that you might be looking at a different aspect of the bill. On whether it is technically possible to extend the bill's definitions to cover other workers, there is an order-making power in section 6 to add groups of workers. However, that provision is restricted, because a person cannot be added unless it is considered that that person's functions or activities mean that they are likely to deal with emergency circumstances. Subject to that test, there is scope in the bill to add new categories of people. For example, it would not be possible to add all public sector workers, but it would be possible to add specific categories.

Margaret Smith: Okay.

Mr Maxwell: I have a couple of points for clarification. Uniformed officers have been mentioned. Obviously, emergency workers' uniforms are an easy way of identifying them. However, if an off-duty police officer who was not wearing a uniform responded to an emergency, would the bill cover them?

Gery McLaughlin: The bill applies to all constables. I do not know whether there is a legal aspect regarding off-duty police.

Mr Maxwell: You made the point earlier that a reasonable person would have to be able to tell that someone was responding to an emergency.

Gery McLaughlin: Wearing a uniform obviously makes identification easier under section 2(4)(b). However, as has been pointed out, if someone has made it known that they are a doctor or a police constable who is responding to an emergency situation, it would depend on the circumstances of the case whether a court would decide that a reasonable person ought to have understood that the person was responding to emergency circumstances.

Mr Maxwell: What would happen if a member of the public was assisting an emergency worker out of doors at the scene of an accident or a fire? Would they be covered in the same way as a member of staff in a hospital who assists a nurse or doctor is covered?

Gery McLaughlin: Yes. Section 1(2) states:

"A person who assaults, obstructs or hinders another while that other person is assisting an emergency worker who is responding to emergency circumstances commits an offence."

That provision is not exclusive, so it covers the situation that you described.

Mr Maxwell: I have a final question. Section 1(3)(a) refers to "a constable". Does that include special constables? Further, are neighbourhood wardens—a relatively new introduction—also covered as emergency workers?

Gery McLaughlin: I am not certain that neighbourhood wardens are constables and that they are covered.

Alison Coull: I do not think that a neighbourhood warden would be covered. The definition of "constable" goes back to the Police (Scotland) Act 1967 and it means a constable in a police force.

Mr Maxwell: So that would include special constables.

Alison Coull: Yes, I understand that that would include special constables.

Mr Maxwell: But not neighbourhood wardens.

Alison Coull: No.

The Convener: I have a general question about who will be covered by the legislation. If the bill is passed, will it mirror the section 41(1) offence in the 1967 act of obstructing or hindering the police? Is that what you are trying to create along with expanding the types of people who will be covered?

Alison Coull: It mirrors the language, as it uses terms such as "obstructing" or "hindering", but case law under the Police (Scotland) Act 1967

requires there to be a physical element to that. The bill makes it clear that hindering or obstructing by non-physical means is covered.

11:45

The Convener: On the policy intention, does the Executive think that the police carry out their duties and functions in the same way as other emergency workers? Have you considered the thought that the police are the last line of defence, and that if emergency workers are obstructed in their duties, they are likely to call the police to assist them? Should the provisions in the bill be the same as those in the 1967 act, or should there be added protection for the police as the last line of defence?

Gery McLaughlin: That was considered, but the Executive's view is that the appropriate course of action is to provide for equivalent protection for the different categories of emergency worker so that they are on a level footing with the police.

The Convener: So there will be no difference in how the law will view the role of the police.

Gery McLaughlin: For emergency circumstances, that is correct. The provision in the Police (Scotland) Act 1967 is wider than emergency circumstances.

The Convener: The difference is that if someone assaulted or hindered a police officer who was not carrying out an emergency duty, they would still be committing an offence. Under the bill, assaulting or hindering an emergency worker who is in the course of providing emergency assistance will also be an offence.

Gery McLaughlin: Yes.

Bill Butler (Glasgow Anniesland) (Lab): I turn to the application of the proposed legislation. Will you outline the types of behaviour that will be covered by the "obstructing" or "hindering" elements of the offences in the bill? Will you include examples that do not involve physical means?

I know that section 2(2) mentions

"A person who gives false information"

but section 2(3)

"does not prejudice the generality of subsection (1)(a) above."

I am interested in further examples of obstructing and hindering that do not involve physical means.

Gery McLaughlin: As Alison Coull said, the specific reason for including that was to respond to the case law for the Police (Scotland) Act 1967, which held that non-physical obstruction was not covered by the 1967 act.

Bill Butler: Do you have any other examples of non-physical obstruction or hindrance?

Gery McLaughlin: The false information provision is the one that I am aware of. I am not sure whether Alison Coull is aware of any others from consideration of case law.

Bill Butler: Are there any other examples, or is that the only one?

Alison Coull: I do not have specific examples.

Bill Butler: Section 2(3) says:

"Subsection (2) above does not prejudice the generality of subsection (1)(a) above".

Is that provision in the bill so that if the bill becomes an act and some other non-physical obstruction pops up, it will then be included?

Gery McLaughlin: As I have said, case law under the 1967 act held that non-physical obstruction was not covered.

Bill Butler: Ms Coull, will you answer my particular question?

Alison Coull: The provision is in the bill more for the avoidance of doubt and to make it absolutely clear that giving false information is to be covered by the legislation, because it is regarded as quite a serious matter in the context of emergency circumstances. It is quite possible that such behaviour would be covered without that provision, but it has been put in to make absolutely certain.

Bill Butler: So the bill does not cover any other type of non-physical behaviour.

Alison Coull: I am not sure that I would go that far. I do not have examples today.

Bill Butler: I have another question about the application of the legislation. Is there any danger that people involved in a stressful emergency situation—anxious relatives waiting at a hospital, people suffering from mental health problems, or someone who is in a distressed state because they have suffered an injury—might be unfairly criminalised under the legislation?

Gery McLaughlin: Do you mean if they assault an emergency worker?

Bill Butler: I guess so. It is also possible that they might hinder or obstruct the worker. A person with an injury is in an extremely stressful situation. Might they be unfairly criminalised?

Gery McLaughlin: Whether they are charged with an offence under the bill would depend on the circumstances of the case. If it was deemed appropriate for them to be charged, the case would go to court and the court would decide whether they should be found guilty. I am confident that anyone who is found guilty of an

offence under the bill will not have been unfairly criminalised.

Bill Butler: Does Ms Coull have anything to add?

Alison Coull: Not really. The Crown Office might want to comment on that, as it takes account of all the circumstances.

Bill Butler: Why does section 1 not contain the words “molests” or “resists”? Section 41(1) of the Police (Scotland) Act 1967 uses the words,

“assaults, resists, obstructs, molests or hinders”.

Alison Coull: When we examined the provisions in the existing police legislation, we felt that the concept that is covered by “resists” relates to resisting a constable in the course of his duty—resisting arrest, basically.

Bill Butler: It is already covered, in other words.

Alison Coull: Again, it would depend on the circumstances. As you have said, the Police (Scotland) Act 1967 makes express provision for someone who is resisting arrest. We have not incorporated that provision because we think that everything that we want to cover is covered by the words “obstructs or hinders”.

We have been unable to find any case law relating to the word “molests” in the 1967 act. I think that it is probably obsolete, in a sense.

Bill Butler: Are you saying that it has fallen into desuetude?

Alison Coull: Yes. The feeling was that it was a bit of a dead letter. In the new legislation, we wanted to focus on obstructing and hindering behaviour.

The Convener: I will put a scenario to you on whether we need to include the word “resists” in the legislation. In my former life, I represented ambulance staff, who regularly complained that the obstruction came not from people in the vicinity, but from patients, who, because they had had too much to drink or whatever, resisted and obstructed emergency workers as they tried to get them into the ambulance. Have you thought about situations in which the victim of the accident obstructs the emergency worker?

Gery McLaughlin: I do not know whether Alison Coull wants to comment on whether that scenario is covered by the words “obstructs or hinders”. I am not sure that it would be terribly useful to prosecute in that case, as it would be the individual involved who would suffer the disbenefits of not being treated appropriately.

The Convener: I simply mention the point for consideration. Emergency workers have the right to say that they will not treat someone who is kicking and punching them but I cannot think of a

person who would do that. Emergency workers want to carry out their function. It might be worth considering the fact that there are a minority of cases in which the person who is obstructing the emergency worker is the person whom the emergency worker is trying to help. Perhaps you would want to send out a message about such situations.

Margaret Mitchell: The evidential applications were covered in Margaret Smith’s questions so, if you do not mind, I will return to section 6 and the power to modify the bill. Will the bill in any way cover teachers who find themselves in a violent situation, given the increase in violent assaults on teachers? Will it cover health workers, for example when they are doing psychiatric assessments of people in their homes? Where would any such provisions fit in?

Gery McLaughlin: Teachers do not come under the classes of worker that are set out in section 1. A health worker who is either a nurse or a medical practitioner within the meaning of section 1, who is in a situation that is deemed to be an emergency under the terms of the bill, will be covered.

Margaret Mitchell: Someone not covered by the bill who was in an emergency situation would simply be covered by the common-law offence of assault; if the incident was particularly grave, the penalties would probably be more severe.

Gery McLaughlin: Outside emergency circumstances, everyone, whether they are covered by the bill or not, is covered by common law or, in the case of the fire and police services, by the relevant statutory provisions.

Margaret Mitchell: So you do not see any scope to include teachers in emergency situations—potentially violent situations—under the bill. Introducing a new deterrent effect and sending out a strong message that such behaviour is not acceptable are major aspects of establishing the new offence.

Gery McLaughlin: In considering how to deal with assaults against and the abuse of public service workers, the Executive decided to deal with emergency service workers in new legislation. The definition of emergency service workers has not included teachers. However, work on a package of measures to cover public service workers more generally is under way. Teachers and other people who work in educational settings could be covered by those measures, which are not legislative in nature.

Bill Butler: I refer to paragraph 16 of the policy memorandum. What is the evidential basis for predicting that the proposed legislation will not

“lead to a significant increase in the number of prosecutions for attacks on emergency workers”?

Gery McLaughlin: I think that the reason behind that relates to our examination earlier in this discussion of the overlap between the bill's provisions and current common-law provisions and statutory offences. The reasoning is that the provisions under the bill will not criminalise a large section of behaviour that is not already criminal. The intention is for the new legislation to have a deterrent effect, which should decrease the number of offences and prosecutions.

Bill Butler: That might be the logical assumption, and it might be seen to be correct if the bill becomes an act, but what is the evidential basis for making that assumption?

Gery McLaughlin: Obviously, we do not have any evidence about future trends. I cannot show you any statistics about what will happen; I am describing our thought process on what will happen as a result of the introduction of the proposed legislation.

Marlyn Glen: The deterrence argument is an old one—I would reject it in different circumstances and I find it difficult here. How effective will the bill be as a deterrent? Will you expand on the package of measures that are to accompany the bill?

12:00

Gery McLaughlin: I can only repeat the Executive's view that the bill—which will clearly delineate the type of behaviour that will be criminalised—plus the public commitment to dealing with assaults on emergency workers, should have a deterrent effect. Obviously, the outcomes remain to be seen.

The Executive has been working on the wider package of measures in partnership with employers, trade unions and other professional bodies. A lay member of the Scottish Trades Union Congress has been seconded to the Executive to help to develop the package. The minister may be able to say more about the details when he appears. Little has been announced publicly, other than that the measures may include a public awareness campaign, the provision of training, the education of children and improved recording and reporting of incidents. As the convener has said, because of the wide incidence of assaults on and abuse of workers, they have become so routine that they are not even recorded or reported in some circumstances. That is one of the issues with which the wider package of measures will aim to deal.

Marlyn Glen: What is the timescale for the introduction of the wider package of measures?

Gery McLaughlin: An announcement on the details will be made during the summer. The

minister might be able to say more about that when he appears before the committee.

Mr Maxwell: I want to return to the issues that Bill Butler raised. I understand why you say that there will not be a sudden increase in the number of prosecutions, but what is the basis for the prediction, which I think is in the financial memorandum, that the bill will not lead to a significant change in sentencing patterns, given that the bill will introduce new offences and penalties? Surely part of the purpose behind the bill is for the courts to use it to focus on attacks on emergency workers.

Gery McLaughlin: The assumption that sentencing patterns will not change is based on the fact that, while the Executive's policy will be clearly stated, sentencing in individual cases is a matter for the courts and one in which the Executive does not interfere. We do not start with the assumption that we will interfere in the courts' sentencing behaviour.

Mr Maxwell: I do not suggest that that is the intention. When I asked earlier about the reason for introducing the bill, the response was that it will provide for more severe sentences. If that is the case, surely the expectation is that the courts will use the measures against those who assault emergency workers, so there will be a change in sentencing patterns because the penalties will be more severe.

Gery McLaughlin: To be clear, the bill will provide for more severe sentences than is the case at present under the summary procedure. We expect a change in the pattern of sentences in the summary courts simply because the bill provides for higher sentences there. However, if we consider sentences for assaults on emergency workers as a whole, in cases in which the current sentencing power of the sheriff summary court is not sufficient, the case would be taken under solemn procedure. That means that the overall sentencing pattern afterwards might not be vastly different from before. Does that answer the question?

Mr Maxwell: I was not talking about solemn procedure because, obviously, that is different. However, I would have thought that there would be a clear shift in sentencing patterns under summary procedure, which could have an impact on prison numbers, with all the financial implications and other problems that follow on from that. The Executive's current drive is to remove short-term sentences and to put people on non-custodial sentences to keep them out of prison. Therefore, I am interested to hear you say that the bill will not lead to a significant change in sentencing patterns.

Gery McLaughlin: I agree with the first part of your statement that the bill will lead to a change in sentencing patterns in the summary courts. However, when one considers the overall picture, there will be no change, and so there will be no knock-on effect on the prison population as you suggest. Currently, cases for which the summary maximums are not sufficient will be taken under solemn procedure, which means that those found guilty can receive a sentence of up to nine months.

The Convener: Is it possible to provide the committee with the statistics that you have on offences against fire crews and the other categories of workers that are covered in the bill? I would be interested to see what statistics are available at the moment. In your introduction, you talked about what sparked off the desire for the bill. All members are aware of the attacks on fire crews. Can you provide us with those statistics? It would be useful to see whether one service is more vulnerable than another.

Gery McLaughlin: Statistics is probably an exaggeration of the term that should be used to describe the information that is available at the moment. Although information is available for the various services, it tends to be sporadic. In some places, it is collected consistently and in others it is not collected at all. It is difficult to make comparisons between different parts of the country let alone between different services.

The Convener: It would be helpful to have anything that would give us a picture of what led you to the conclusion that we need to legislate in this area.

Gery McLaughlin: We can certainly provide the committee with the information that we have at present.

The Convener: That would be helpful. Thank you.

Section 1(3)(d)(i) includes the category of

“a prison officer, that is to say ... a person who holds a post, otherwise than as a medical officer”

and section 1(3)(d)(ii) includes the category of “prison custody officer”. Who are you thinking about under the second category?

Gery McLaughlin: Alison Coull might want to expand on what I say, but in essence the two different provisions are intended to cover Scottish Prison Service employees and people who work in Kilmarnock prison in roles other than as SPS employees.

The Convener: Is that just prison officers or are you thinking more widely than that?

Gery McLaughlin: Generally, it is prison officers, but the category of workers in the privatised prison comes under different legislation.

The Convener: So would Reliance staff be covered by section 1(3)(d)(ii)? Do they come under the definition of a custody officer under part VIII of the Criminal Justice and Public Order Act 1994?

Gery McLaughlin: My understanding is that section 1(3)(d)(i) would cover Scottish Prison Service employees both in the prison and when they are on escort duty, in so far as they are responding to emergencies, and section 1(3)(d)(ii) would cover privatised prison guards whether they are working in the prison or on escort duty, so Reliance staff would be covered as well.

The Convener: I want to take this line of questioning a little further. I can easily see why fire and ambulance crews are included, but I am not sure why crews of Royal National Lifeboat Institution boats are included when other workers are not. An emergency is defined in section 1(5) as circumstances that:

(a) are causing or are likely to cause—

(i) serious injury to or the serious illness of a person;

(ii) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); or

(iii) a worsening of any such injury, illness or harm; or

(b) are likely to cause the death of a person.

What scenario might constitute an emergency for a prison escort officer? I presume that a prisoner's escape would not be an emergency.

Gery McLaughlin: Prison officers are primarily responsible for responding to emergency situations in prisons. They perform a similar role to the police in prisons and when they are on escort duty, although the circumstances that constitute an emergency for the purposes of the bill are more likely to be encountered in a prison than during escort duty.

The Convener: That is logical. I do not think that it is necessary for section 1(3)(d)(ii) to apply outside prisons. In what circumstances do you envisage that someone other than a prison officer would need to be protected in an emergency outwith a prison?

Gery McLaughlin: A prisoner might assault another prisoner. An officer might have to intervene to prevent an assault, but such an incident would be more likely to happen inside a prison than on escort duty, as I said. In the confines of a prison, prison officers operate in a similar way to the police. They perform a similar role in mobile prisons, by which I mean the vans that are used for escorting prisoners.

The Convener: An incident might take place that was likely to cause

“serious injury to another person”.

Gery McLaughlin: Such a situation seems to be most likely to trigger the protection that the bill would afford.

The Convener: I assume that a prisoner’s escape from custody would not constitute an emergency. In such circumstances, would it have to be proved that the incident could lead to “serious injury”?

Gery McLaughlin: The bill deals only with emergency circumstances, but separate provisions in prison legislation deal with matters such as escapes and assaults on officers. It would obviously be an offence under prison regulations to assist in an escape, for example.

Mr Maxwell: Section 1(3)(f) includes in the definition of an emergency worker:

“a member of the crew of a vessel operated by the Royal National Lifeboat Institute or a person who musters the crew of such a vessel or attends to its launch”.

I assume that that would not apply to the crew of an inshore rescue boat, which would not necessarily be operated by the RNLI. There are also rescue boats that are operated by volunteers on various lochs.

Gery McLaughlin: I understand that the bill would not apply to such people unless they were RNLI personnel.

Mr Maxwell: Why not?

Gery McLaughlin: I am not aware that those groups were mentioned during the consultation on which groups should be included in the bill. We can certainly look into that.

Mr Maxwell: I hope that you will do so. Crews of inshore boats carry out an emergency function, so it seems to be strange that the definition would be restricted to people who do exactly the same job, but who happen to be RNLI personnel.

Gery McLaughlin: The intention was not to be restrictive. If other groups of people respond to emergencies in a similar way, we can examine whether there is a case for their inclusion. The order-making powers in section 6 would permit us to do that by way of regulation.

12:15

The Convener: That concludes our questions to you. Thank you very much for coming along. Your evidence has been helpful in giving us a start in understanding the principles behind the bill. It would be helpful if you could clarify whether special constables are included in the term “constables”. I think you said that neighbourhood

wardens would not be included. If, when you have had time to consider that matter you take another view on it, it would be helpful if you would let us know.

I welcome Shona Barrie, who is the team leader of the policy group of the Crown Office and Procurator Fiscal Service. We have the same type of questions for you that we had for our previous panel.

Mr Maxwell: I will start with a question that I asked at the start of the evidence session with the previous witnesses. Does the Crown Office believe that any new criminal offences are being created? To what extent will the bill make criminal any behaviour that is not criminal under common law?

Shona Barrie (Crown Office and Procurator Fiscal Service): I listened with interest to the distinctions that Alison Coull drew. At the moment we have the panoply of common-law offences and we are able to meet the circumstances of most of the conduct that is presented to us. Committee members will be aware that we have the flexibility in common law to deal with offences such as breach of the peace. However, it appears that there could be conduct on the margins that the bill will cover explicitly, which we might previously have required to craft into a breach of the peace offence. Is that helpful?

Mr Maxwell: Yes. The important phrase that you used there was “on the margins”. I have difficulty understanding what will be added to the current criminal law, which allows breach of the peace and assault-type offences to be pursued. Will you give us a practical example of where you think the bill will add to the current law? At what margins would it be used?

Shona Barrie: I was racking my brains during the questions that the previous witnesses were asked. An example that occurred to me relates to the provision of false information, which we might currently frame as a charge of wasting police time at common law. However, if that conduct was directed at a paramedic, we might not have the equivalent charge at common law. Examples of conduct were starting to emerge in my mind around those sorts of areas. I hope that I have provided a relevant example.

Mr Maxwell: Are you saying that you would currently have difficulty prosecuting a case in which somebody deliberately misdirected a paramedic or a fire emergency vehicle, but a case of misdirecting a police officer would be straightforward?

Shona Barrie: Yes. I suppose that there could be situations in which there has been an attempt to pervert the course of justice or to defeat the ends of justice but, as with situations that involve

wasting police time, they tend to require to be housed in the conduct of criminal inquiries. The point that I was trying to make was that perhaps a case can be rendered criminal because a police officer is making inquiries and pursuing the course of justice. Currently, depending on the circumstances, if a paramedic makes a request of someone and that request is not fulfilled or there is a wall of silence, although that might render ineffective that emergency worker's ability to deal with the situation, such behaviour might not, in fact, constitute a criminal offence.

Mr Maxwell: If there was a fire appliance and crew at a fire in a building and a member of the public deliberately gave false information to that crew by saying, for example, that persons were trapped in the building, which led to the crew entering premises that they would not otherwise necessarily have entered and endangering their lives, could that person not currently be prosecuted?

Shona Barrie: I want to clarify the scenario. Are you saying that people were in danger in the burning building, but that the crew was misdirected to somewhere else?

Mr Maxwell: No. If a crew turns up at a derelict building that has been set on fire, its first concern will be whether there are persons in that building—I do not mean people living there, but perhaps children who have been using the building. That is a common occurrence. If somebody deliberately said to the crew that there were people in the building, but knew full well that that was not the case, and the crew used that information and did not fight the fire from outside the building, but went into it—

Shona Barrie: And put their lives at risk?

Mr Maxwell: Yes. If that happened, surely that person could be prosecuted.

Shona Barrie: Yes. I would be content that we would be able to find a charge in those circumstances.

Mr Maxwell: I would have thought so. That is why I am having difficulty in trying to determine exactly the margins that we are talking about.

Shona Barrie: In the kind of situation that you describe in particular, the more serious the consequences, the more apparent it will be that endangerment has been caused by such actions or inactions. I think that the bill covers a lower level of conduct. Of course, it is geared at summary conduct, for want of a better phrase, where the consequences are perhaps not quite so grave, but the immediate need for co-operation, clarity, information and so on has been impeded.

Marlyn Glen: Do you foresee any difficulties in the definition of “emergency circumstances” in the bill?

Shona Barrie: The test that the bill provides is essentially that a reasonable person would have grounds for anticipating that a situation will be an emergency. I do not think that the courts would have any difficulty with that test. I understand that evidential provisions are also built in that the test can come from only one source. The prosecutor would therefore lead information or evidence from the worker who was affected that that person understood that they were responding to an emergency situation.

Margaret Mitchell: I would like to explore the kind of cases—specifically assault cases—that would not be prosecuted under solemn procedure and which would not therefore carry the same penalties. Do you have in mind the kind of cases that would be covered by the new offence?

Shona Barrie: Again, earlier questions have inspired me. I have found it easier to consider factors that might be absent—for example, if substantial injury is absent from an assault, that might be the kind of assault that would be dealt with at summary level, using such a provision.

The absence of a significant analogous record of previous convictions for the accused and the absence of any adverse consequences for the third party who was awaiting delivery of those emergency services are factors that could indicate that that would be the appropriate level and the appropriate offence.

Margaret Mitchell: Do you have an example of a third party being affected?

Shona Barrie: It is a question of balance. If an accused person was physically assaulting a paramedic while someone lay bleeding on the ground, even though the physical assault per se might not have been particularly violent—I do not like describing it in those terms—the fact that the assault was preventing the delivery of an emergency service to someone who was in acute need might sway the balance as regards our determination of where the public interest lay.

Margaret Mitchell: That is helpful.

Margaret Smith: Will you explain the main reason for focusing on emergency workers? Is it because they are particularly vulnerable or—to pick up on your last point—is it because of the consequences not only for them but for the people whom they try to help?

Shona Barrie: I understood from the bill team's evidence that both those limbs were motivations behind the bill. I suppose that it is not really for the Crown Office and Procurator Fiscal Service to

enter the territory of policy intention. The scope of the bill is more a matter for the bill team.

Margaret Smith: Do you think that extending the scope of the legislation to other public service workers would create any difficulties in relation to effective prosecution of offences under the bill? Earlier, I gave the example of a social worker who goes into someone's home to deal with a child-protection case.

Shona Barrie: Yes. I think that Alison Coull spoke about the mens rea aspects. If a social worker was assaulted in the circumstances that you described, the provisions of the bill as drafted would require a test of reasonableness whereby the accused appreciated the capacity in which that person was working. A regime of the kind that you propose would have to have built into it the opportunity for the person delivering the emergency service to explain who they were and what they were doing. Extension of the bill's scope in the manner that you describe could bring evidential challenges.

Margaret Smith: I could pursue further the scenario that I have just cited, but I will leave things at that.

Bill Butler: I want to explore the Crown Office's point of view on the bill's application. Will you outline the types of behaviour that would be covered by the "obstructs" and "hinders" elements of the offences in the bill? Do you have any ideas about including examples of non-physical means of obstructing or hindering other than that of providing false information?

Shona Barrie: An example of such a scenario that struck me as I was sitting in the public gallery was one in which, rather than provide false information, someone simply failed to provide any information.

Bill Butler: That would be an offence of omission rather than commission.

Shona Barrie: Yes. That kind of wilful obstruction is perhaps an example that we could build on.

Bill Butler: For the committee's information, will you also outline the types of physical behaviour that would be covered by the "obstructs" and "hinders" provisions?

Shona Barrie: Do you mean physical behaviours?

Bill Butler: Yes.

Shona Barrie: In the course of fulfilling my duties as a procurator fiscal, I have seen situations in which people have not allowed entry, doors have been slammed in people's faces and attempts have been made to interfere with paramedics' equipment—for example, by whipping

off oxygen masks. That is the kind of conduct that is being referred to.

12:30

Bill Butler: That is helpful, thank you. I turn to a question that I posed to the first set of witnesses. In the Crown Office's view, is there any danger that people who are involved in stressful emergency situations, for instance people who are in a disturbed state of mind because they have suffered an injury, will be unfairly criminalised because of the proposed legislation?

Shona Barrie: Information on the motivation for the conduct, for example information that there was a medical reason for the person's behaviour, such as an injury that they had sustained, would weigh heavily in making a decision on whether the public interest would be served by a prosecution. Mitigatory material such as that would have to be taken into account.

Bill Butler: So, you see no circumstances in which someone could be unfairly criminalised because of the proposed legislation.

Shona Barrie: The matter will be the subject of the Lord Advocate's guidance to prosecutors, to ensure that appropriate care is taken. It might even require instructions on police reporting of such incidents.

Bill Butler: That is helpful. I have another issue that I raised with the first set of witnesses. What are the Crown Office's reasons for not including references to "resists" or "molests" in the bill? We understand that the "molests" provision has never really been used. On "resists", the convener gave the example of an ambulance worker who is being resisted by the person whom they are trying to aid.

Shona Barrie: The bill team is taking that on board. The Crown Office is not behind the drafting of the particulars of the bill. If scenarios are presented, we will have to have an open mind. However, "assaults, obstructs or hinders" appears to be fairly comprehensive.

Margaret Mitchell: Do you foresee any difficulties in establishing a standard of proof in a situation where the emergency worker is not in uniform? How would you establish that the guilty person knew that the person was an emergency worker?

Shona Barrie: There are evidential concessions in the bill. It will not be necessary to corroborate the status of the emergency worker. There is also the test of whether, to a reasonable observer, it would be apparent that the person was an emergency worker delivering an emergency service. The fact that one source of evidence can be used is helpful to the prosecution. We imagine that the information would be led from the victim.

Margaret Mitchell: So the victim's testimony would be enough, even if at the time of the incident they were not wearing a uniform of any kind in the emergency situation.

Shona Barrie: I hope that I am not misrepresenting the bill team. We are dealing with sections 2(4) and 2(6). It will always be extremely helpful in terms of providing objective evidence to a court if a paramedic wears a green uniform and arrives in an ambulance with insignia emblazoned all over the side of it. If the victim was a GP, evidence could be led from him that he had arrived at the scene and was attempting to administer first aid. The sheriff in the summary prosecution could hear that the GP had presented himself and, for example, had a medical bag beside him. I am sure that there would be lots of other adminicles of evidence that we would seek to lead to support the scenario and to satisfy the test that any reasonable observer would be satisfied that that was an emergency worker delivering an emergency service.

Margaret Mitchell: So what you describe is almost corroboration by any other name in that there would be circumstantial evidence, backed up by the victim—

Shona Barrie: It is the habit of prosecutors to look to adduce any adminicle of evidence that they can find. They generally take a belt-and-braces approach. My position is that the bill was drafted in a useful fashion in that it states explicitly that we do not require corroboration.

The Convener: On that point, section 1(3) of the bill simply refers to

“a member of a fire brigade”

and

“a person acting for the Scottish Ambulance Service”.

I presume that, if it were proved at the time that the person was a member of a fire brigade or the Scottish Ambulance Service, one would not have to pursue the matter. The fact that they were not in uniform might be a disciplinary offence for the service.

Shona Barrie: I agree.

The Convener: What about the person who assists in the emergency? Would they have to identify themselves in some way?

Shona Barrie: That would probably rely on the identification of the principal who was administering at the emergency. The assistant might be kneeling beside a GP with his medical bag open, loosening someone's tie or assisting in the administration of cardiopulmonary resuscitation—I suppose that one would return to the test of what the reasonable observer would make of the situation.

The Convener: Do we even need to consider that matter, as the bill refers only to “a person acting for” one of the services?

Shona Barrie: I will leave that question to the bill team, whose members are the experts in drafting the bill.

Bill Butler: I raised this question with the first set of witnesses. Paragraph 16 of the policy memorandum makes the assumption that the bill would not lead to a significant increase in the number of prosecutions for attacks on emergency workers. Is the Crown Office and Procurator Fiscal Service content with that assumption?

Shona Barrie: We are broadly content with that assumption. The bill supplements a panoply of criminal charges that are already available to us. It might be that, because the bill provides for explicit penalties, we might, if it is endorsed by Parliament, select it to charge someone with in preference to using the common law, as we would have done before.

Bill Butler: So the increase would be at the margins.

Shona Barrie: I suspect so. We do not know whether enacting the bill will increase reports of such conduct. However, as regards transferring the business that we currently administer, the provisions give us another tool—perhaps a more appropriate tool in certain circumstances—to bring a charge.

Bill Butler: That is helpful.

The Convener: I will ask about the definition of an emergency. I realise that that is a grey area and that the way in which the Executive has decided to draft the bill is not your issue. However, are you happy that the definition will cover the scope that it should when you come to prosecute?

Shona Barrie: I have no problem with the provision as it stands.

The Convener: Do you regard the scope as being too narrow or too wide?

Shona Barrie: I sound like the prosecutor that I am, but I believe that the bill is flexible enough that the individual circumstances of a case can, if appropriate, be brought home to that definition—the definition looks accurate, but flexible.

The Convener: That is a fair answer for a prosecutor. As a legislator, however, I want to be clear about what we are driving at. This seems to be a morning for scenarios. I have just thought of a scenario in which a woman in labour is not covered by the definition of illness or serious injury and an ambulance is hindered from getting to her on time. I do not think that that scenario is covered. Do you think that the bill is flexible enough to cover any stage in that scenario?

Shona Barrie: I suppose that the issue again comes down to the imminent danger in which the woman or her unborn child might be. If the situation were one of escalating danger, it might even be covered by section 1(5)(b), which covers circumstances that are “likely to cause ... death”. That might sound fairly extreme, but it is not beyond the bounds of reason.

The Convener: So that is what would have to be shown if you wanted to cover that situation under the bill: you would have to prove that what had happened had resulted in serious injury for the woman or the baby.

Shona Barrie: Section 1(5)(a) uses the words

“are causing or are likely to cause ... serious injury to or the serious illness of a person”.

If a woman is in urgent need of assistance with labour, it is easy to envisage that the situation could result in serious illness to her or her unborn child. We might require to take further advice on that, but it appears to me that there is latitude in paragraphs (a) and (b) of section 1(5).

The Convener: I am trying to test how wide the scope of the bill is. As a legislator, I would like to know roughly what the parameters are. I accept that as a prosecutor you might want there to be flexibility.

Mr Maxwell: If an ambulance is travelling to an emergency and it is impeded, I assume that that would not be covered by the bill, irrespective of the end circumstances for the individual, whether death, injury or anything else. I assume that road traffic legislation would be used if somebody deliberately impeded the progress of an ambulance.

Shona Barrie: That would depend on our having evidence of the person's intention. If there were evidence that somebody had no concept of what they might be impeding, it might be appropriate to deal with the matter under road traffic legislation, but if somebody deliberately obstructed an ambulance, preventing it from reaching a stricken person or an obvious emergency—

Mr Maxwell: How would they know? Even if the person refused to move to allow an ambulance to get through the traffic, how would they know that an emergency was involved?

Shona Barrie: That is what I mean about having evidence about the intention behind the actions. I do not think that I could rule out the possibility that the bill might be appropriate. That would depend on the facts, the circumstances and the evidence that were available to us about the conduct.

The Convener: As there are no more questions, I thank Shona Barrie for her helpful evidence.

Subordinate Legislation

12:43

The Convener: Item 2 is subordinate legislation. There are four instruments on today's agenda, which are all subject to negative procedure. Members have copies of the note attached to each instrument outlining what the instrument is about.

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2004 (SSI 2004/137)

The Convener: I refer members to the note prepared by the clerk on the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2004. Do any members wish to comment? Does the committee agree just to note the regulations?

Members indicated agreement.

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2004 (SSI 2004/149)

The Convener: I refer members to the note prepared by the clerk on the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2004. Do any members wish to comment? Does the committee agree just to note the instrument?

Members indicated agreement.

Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004 (SSI 2004/152)

Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment No 2) 2004 (SSI 2004/196)

The Convener: I draw to members' attention the link between the final two instruments, as the latter is intended to correct an error in the former. Paragraph 2(2) of the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment No 2) 2004 substitutes paragraph 3(e) of the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004, which omitted a provision for fees relating to

“lodging and intimating or for considering note of the basis of preliminary plea”.

Members will know that the Subordinate Legislation Committee, at its meeting on 4 May, identified a further error. That just shows that the committee is on the ball. However, it is content with the decision by the Scottish Court Service to reject the option of a further amendment—

members will be pleased to hear that—because it believes that the interpretation will be clear. That is efficient. Often, we do not find out that there is a mistake until much later.

Mr Maxwell: I am a member of the Subordinate Legislation Committee. The situation is slightly strange. The original instrument contained an unacceptable error and the Executive is to be congratulated on producing an amendment quickly. However, the speed with which the amendment was drafted has led to a further error. The error in the amended instrument is a typo referring to the wrong paragraph. However, the meaning is clear. Although the paragraph that is referred to does not exist, any person reading the instrument would be able to recognise the paragraph that ought to be referred to.

The Subordinate Legislation Committee wanted the Justice 1 Committee to note that fact, but there does not seem to be any solid ground for asking the Executive to produce another amendment, which would create further confusion. Therefore, although the amendment is technically incorrect because of defective drafting, it is probably best for us to accept it as it is. The Scottish Court Service is aware of the mistake and I am sure that future instruments will be slightly better.

The Convener: Thank you for that. I have only one comment on the instrument, which concerns solicitors and witnesses in the sheriff court. The provision relating to witnesses is very small, but when I first saw the instrument I thought that it provided an opportunity for me to raise an issue about the level of witness payments. I understand that a review of that is under way. With the committee's indulgence, I shall write to the Lord Advocate to ask whether such a review is under way and when we are likely to see its conclusions.

Members indicated agreement.

The Convener: As there are no other comments, is the committee happy to note the instrument and its amendment?

Members indicated agreement.

The Convener: A joint meeting with the Justice 2 Committee will take place on Tuesday 11 May in committee room 2, at which we will consider our draft report on the budget process. The next meeting of the Justice 1 Committee will be on Wednesday 12 May in the Hub, at which we will hear from the Law Society of Scotland, Professor Kenneth Norrie and the Deputy Minister for Justice on the Civil Partnership Bill. I thank members for their attendance today.

Meeting closed at 12:48.

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