JUSTICE 1 COMMITTEE

Wednesday 26 May 2004
(*Morning*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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JUSTICE 1 COMMITTEE
21st 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:

Gerry Brown (Law Society of Scotland)
Assistant Chief Constable Ricky Gray (Association of Chief Police Officers in Scotland)
Morag Jack (Faculty of Advocates)
Anne Keenan (Law Society of Scotland)
Douglas Keil (Scottish Police Federation)
Chief Superintendent Clive Murray (Association of Scottish Police Superintendents)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Wednesday 26 May 2004

(*Morning*)

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

Item in Private

The Convener (Pauline McNeill): Good morning, everyone. Welcome to the 21st meeting of the Justice 1 Committee in 2004. As usual, I ask members to switch off their mobile phones and so on. I have received no apologies. Margaret Mitchell might have to leave temporarily to move amendments at another committee, but she will return to us.

I invite the committee to consider whether it wishes to consider in private the draft stage 1 report on the Emergency Workers (Scotland) Bill at forthcoming meetings. Is that agreed?

Members *indicated agreement*.

Emergency Workers (Scotland) Bill: Stage 1

10:08

The Convener: I refer members to the summary of responses that has been prepared by the clerk. I thank the clerks for efficiently putting that information together in a neat folder—it will be useful for continual reference as we progress through the bill. We have received correspondence from the Crown Office and Procurator Fiscal Service and from the Emergency Workers (Scotland) Bill team, further to the oral evidence that it gave to the Finance Committee on 11 May.

I invite members to comment on the written evidence that was received following the committee's call for evidence. I also refer members to the note that has been prepared by the clerk on oral evidence sessions. Earlier, we agreed who to call for oral evidence, but members might wish to give the matter further consideration: we might wish to consider whether to invite social work representatives to give evidence to the committee on 9 June, which is the only slot that is still available. Are members happy to do so?

Members *indicated agreement*.

The Convener: Are there any general comments on the written evidence?

Margaret Smith (Edinburgh West) (LD): There are a lot of conflicting points of view, and there are many things that we will have to tease out in our questioning. It is worth while putting on the record and exploring a point that was raised in the Scottish Executive's response to the Finance Committee. The impression is given that the problem that the bill would address is escalating, but the figures that the Executive gave the Finance Committee suggest that although there was an upward trend in 2001 and 2002, there was a downward trend in the two years before that. In the past four years, the problem has consistently occurred less than it did in the 1990s. Has any work been done that would tell us why there appears to be a downward trend? Is there an explanation for the figures being lower than they were throughout the 1990s? Might the downward trend continue without legislation? I expected the figures to show an escalating problem, but they do not appear to do that. The figures relate to charges under section 41 of the Police (Scotland) Act 1967. Is the problem escalating for other groups of workers but not for the police? We might want to follow that question up.

The Convener: That is a fair point. Most people would have expected to see an upturn in the

figures. The best way to deal with the matter might be to put it to the Executive when it comes before us. Is that acceptable?

Margaret Smith: Perhaps we could flag up the matter to the Executive so that it can come to us with supporting evidence, perhaps on other groups of workers, so that we can see whether the problem is escalating and whether that is why the Executive thinks that it has to deal with it.

The Convener: We will flag up that point to the Executive, along with any other points that emerge, before it comes before the committee. We will do that through the usual channels.

As there are no other comments, we will move on to the oral evidence session. I welcome to the committee the witnesses from the Law Society of Scotland and the Faculty of Advocates, and I thank them for attending. Gerry Brown is convener of the criminal law committee of the Law Society of Scotland; he is known to members. Anne Keenan is deputy director of the law reform department at the Law Society of Scotland, and Morag Jack represents the Faculty of Advocates.

I thank the witnesses for their written evidence, which has been useful to the committee. As usual, we move straight to questions.

Margaret Mitchell (Central Scotland) (Con): Will you outline the extent to which you consider that behaviour that will be made criminal under the bill is already criminal, either under common law or as a statutory offence?

Gerry Brown (Law Society of Scotland): Anne Keenan will deal with that question. As an initial comment, I add that the Law Society of Scotland is behind the bill's policy intentions. We want the provisions to protect emergency workers in whatever situation. In our response, and in our letter of 21 May, we raise a number of evidential issues that need to be considered if the bill is to be effective rather than create more confusion and complexity.

Anne Keenan (Law Society of Scotland): I hope that it will be helpful to the committee if I start by outlining the common law and statutory provisions as I understand them that meet some of the offences that are covered in the legislation.

The committee has heard in evidence that the most common cases of assault are covered by the common law, as everyone is protected from assault by another person. There can be aggravating circumstances; the common law of assault can be aggravated by the nature of the injury or the identity of the person who is assaulted. The common law covers situations that are covered in the bill, and the Lord Advocate's guidance to fiscals, which was highlighted following a Scottish Parliament debate in February 2003, highlights the need for fiscals to consider the appropriate forum in which to prosecute a case when they consider that the offence is an assault or an offence against a public service worker.

Malicious mischief covers a situation in which damage is done to the property of an emergency worker, such as an ambulance, and there is a statutory offence in section 43 of the Telecommunications Act 1984 that covers nuisance or hoax callers. Section 31 of the Fire Services Act 1947 also covers hoax calls as it refers to a situation in which a person

"knowingly gives or causes to be given a false alarm of fire to any fire brigade".

Bomb hoaxes are covered by section 51 of the Criminal Law Act 1977, and other cases of false reporting are covered by breach of the peace. That is an outline of some of the existing common law offences and statutory provisions.

I think that the committee heard evidence from the bill team and the Crown Office to the effect that the situations that they see as being covered by the bill and that are not covered at common law are situations in which a person gives a false report to an emergency worker. I have given that matter some consideration and have examined some of the case law on the issue. It is the criminal law committee's view that the category of culpable and reckless conduct might cover some of that type of behaviour.

10:15

The report on the case of Kimmins v Normand—1993 SCCR 476—concerns an individual who was stopped by the police; when asked whether he had any sharp objects on his person, he denied that he did. While the individual was being searched, a police officer was injured because the individual had a needle on his person. In that case, the court recorded that that was an example of culpable and reckless conduct. The High Court said:

"a person who positively attempts to mislead the constable who is about to exercise his statutory power, by lying about his possessing a concealed sharp and dangerous object, is clearly guilty of conduct which is culpable and reckless."

That case went on to back up the principle that someone who disregards the welfare of the lieges could be guilty of culpable and reckless conduct. You can see the analogy between that case and a situation in which an emergency worker goes to premises to seek to give emergency medical assistance to someone who is injured, but is told by someone that the person is not there. In that situation, the person who misdirected the emergency worker, knowing that the injured person was on the premises, is clearly showing

complete disregard for the welfare of the person and, in my view, could be said to be guilty of culpable and reckless conduct.

The situation that the Crown Office highlighted concerned a failure to give information to emergency workers. That is perhaps a bit more difficult to cover at common law. A relevant case is Mallin v Clark—2002 SCCR 901. It is similar to the previous case to which I referred, but in this situation the accused was under the influence of drugs and said, when asked, that there might be a sharp object about his person but that he was not sure. Again, a policeman pricked his finger on a needle while searching the accused and the individual was charged with culpable and reckless conduct. In that case, the High Court said that the individual's behaviour did not amount to culpable and reckless conduct as there was no conduct by way of denial. The High Court stated clearly that the case had been decided on its own merits and that it was not saying that there would never be a situation in which that sort of conduct could be viewed as being culpable and reckless conduct. The dictum says:

"Nor are we holding that 'conduct' in such a context has necessarily to take the form of a positive acting; it is not difficult to conceive of possible situations in which a failure to give a warning, when one is necessary in order to avoid an unexpected danger, might be regarded as culpable and reckless … We express no view as to whether or not it would be possible in comparable circumstances to aver and establish in evidence a background giving rise to a positive duty of disclosure."

In a sense, the jury is out on that issue, but it is fair to say that there could be circumstances in which such behaviour could be seen to be culpable and reckless conduct. That is the only situation in relation to which the bill might give protection to an emergency worker in an area that is not covered at common law. However, I have one proviso. Section 2(2) of the bill says:

"A person who gives false information with the intention that an emergency worker will, while responding to emergency circumstances or instead of doing so, act upon that information is to be regarded, for the purposes of section 1(1) of this Act, as hindering the emergency worker."

I appreciate that section 2(3) states that section 2(2) does not prejudice the generality of section 2(1), but if the Executive makes specific provision on the giving of false information, one would think that it would also refer to the fact that if a person fails to give information, that would amount to hindering. Doing so would make the bill clearer, given that it has already covered the specific situation.

Margaret Mitchell: That is helpful.

Gerry Brown: May I elaborate on that erudite response by Anne? The situation has not been formally tested yet. That last point of refusal could amount to an elaborated breach of the peace at common law. There would have to be a test case on that, but it could extend to that situation.

The Convener: To be clear, in your view, could failure to give information amount to a breach of the peace?

Gerry Brown: Yes, because if refusal to give information results in actions being taken by individuals which result in other people being alarmed or distressed, or are likely to cause them alarm or distress, that could amount to a breach of the peace, which is the catch-all crime in our jurisdiction.

Mr Stewart Maxwell (West of Scotland) (SNP): I am sure that you have already clarified this but, for absolute certainty, you seem to be saying that the bill does not add one single thing to the current common law. There is no offence that would effectively be created by the bill that could not be dealt with under the current common law.

Gerry Brown: Our research shows, and our opinion is, that in common law and in statute there is already sufficient cover for such situations, without discussing—as we may do later—the question of sentencing.

The Convener: Would the Faculty of Advocates like to add anything?

Morag Jack (Faculty of Advocates): The position of the Faculty of Advocates is that the existing common law and statute provisions probably address all such situations. There is therefore concern that legislation is being introduced that might not be necessary. If the bill is passed, you might find that situations that previously would have been prosecuted at common law will be more difficult to prosecute because of the complexities of the legislation and of meeting its provisions.

The Convener: In the past, could the Crown Office take a different view of cases by putting them into different courts? In your evidence, you point out that some cases could proceed on indictment, and therefore attract higher penalties. Would that be another way of giving out an important message and dealing with the situation seriously?

Gerry Brown: There is the deterrence aspect; there are also issues of education and monitoring. As far as sentencing is concerned, the Crown can choose the forum. The forum was extended from 1 May by what is commonly known as the Bonomy bill, which some of you may have heard about—we certainly have. The Crown now has the power to refer cases to the sheriff court where the sentencing provision is for up to five years.

As you will see from our letter, there is also power to invoke section 13 of the Crime and

Punishment (Scotland) Act 1997, which would result in an increase in sentencing of up to 12 months. However, one has to remember that there is on-going consultation in connection with the McInnes report. As I understand it, the McInnes report recommendation is that in summary jurisdiction the sentencing provisions should extend to a maximum of 12 months and up to a fine of £20,000 in a case that is before a single sheriff or a stipendiary magistrate. We will respond to that, but from our initial look at it—our committee has to look at it again—we do not see any problem with that, subject to there being other safeguards.

The Convener: I will put the same question to you in a different context. The bill aims to protect a narrow scope of workers. As you may be aware, the committee has received many representations from groups of workers, such as shop workers and social workers, who feel that they should be included in that scope; we will have to consider all that evidence. You said that the common law could cover the situations at which the bill is aimed, but would that also apply to the wider group of workers?

Gerry Brown: When you say "the wider group of workers", are you talking about workers such as shop workers and teachers?

The Convener: I am talking about shop workers who face violence at work and social workers who might be dealing with child protection, for example.

Anne Keenan: The common law of assault and breach of the peace that we have already outlined would cover such situations. In drafting the charge, the fiscal would narrate the circumstances, such as those to which you have referred, so that the fact that there were aggravated circumstances would be highlighted to the court. Perhaps one of the advantages of the common law is that only one source of evidence is needed to prove an aggravated circumstance under common law. Adminicles of evidence could come from a number of sources and the court could draw the inference that the situation was an aggravated circumstance. It is not necessary for the case to fall within the rigid parameters of a definition, because the circumstances are libelled in the charge, and it would be for the court to draw the inference from the appropriate facts and circumstances of the case.

The Convener: Does Morag Jack want to add anything to that?

Morag Jack: I do not think so. What has been said covers the matter.

Mr Maxwell: How would the court react to a case of common assault and a case of assault on somebody who responds to an emergency such as is anticipated in the bill? Would it take different views?

Gerry Brown: I cannot speak for the court, but I can speak for the advice that I would give to someone who was charged with assaulting an emergency worker and was pleading guilty. Even if the individual was a first offender, I would tell them that they could anticipate that the court would request a social inquiry report to investigate all the alternatives to custody. In my experience—I am sure that it is the same in Morag Jack's and Anne Keenan's experience—if a description in the libel, or the circumstances, involve a fire officer or doctor, the courts take that very seriously and have to exclude the other non-custodial options.

Anne Keenan: The evidence in the original Scottish Executive consultation document contains examples of the courts sentencing appropriately in such situations. We have seen cases in which people have been placed on indictment and received the then maximum sentence of three years' imprisonment from the sheriff court.

Margaret Smith: You have touched on some of my questions already. Do you agree that enacting the bill would send out a clear message that attacks on emergency workers are not acceptable? There would be some publicity about the fact that a new piece of legislation had been passed by the Parliament to send that message, so do you agree that, by sending that message, the bill would help to deter such attacks?

Gerry Brown: We are sending out a message by debating the matter now, but I suggest that the real deterrent is to arrest the guilty person and find them guilty on evidence that is sufficient in law and is of a good quality. That is what deterrence should be about.

Margaret Smith: Does the Faculty of Advocates have a position on that?

Morag Jack: No.

Gerry Brown: I think that Morag Jack is just corroborating what I said.

Morag Jack: Yes.

10:30

Margaret Smith: You might think that my next question is not particularly in your field. You will have heard my comment earlier that the perception is that there is a growing trend, but that the figures in relation to the Police Act 1967 suggest that that is not the case. Can you shed any light on whether you believe that there is a growing problem, in relation not only to the police but to other workers? You mentioned that there was a role not only for legislation but for education and so on. Do you have more thoughts about whether we can attack the issue differently?

Gerry Brown: I have not, based on my appearing almost daily in court, seen an escalation in such cases. As far as education is concerned, that is a matter for other organisations or the Executive. Such education could be done through school programmes and other methods.

On a more positive note, if the bill became law it might be much easier to monitor the situation and the convictions. I think that the Scottish Criminal Record Office should have a record of convictions and aggravations, but perhaps it should not. Certainly, if there were convictions under the bill, should it become law, the committee could examine the issue in two years and ask whether it is working. That is one positive element.

Mr Maxwell: Do you agree with the bill's focus on emergency circumstances? Would it be reasonable for such offences to be applicable equally in non-emergency circumstances for the same workers?

Anne Keenan: I do not want to seem to be avoiding the question, but that is essentially a policy matter. It is for the Executive and the Parliament to decide to whom they are trying to give additional protection. The convener has highlighted that there will always be situations in which other groups will say that they should be afforded similar protection. It is a question of policy as to where the balance is struck.

On how the offence would be proved, I am guessing that the Executive thinks that such cases might be easier to prove in emergency circumstances than they would when such workers were operating in the ordinary course of their duties. That might be more problematic to prove. However, I surmise.

Mr Maxwell: I accept that we may be straying into Executive policy areas, so I will word my question differently. If the situation is that some health workers are covered and others are not, is it reasonable in law—I am trying not to stray into policy areas—to have a health worker working in an accident and emergency unit being protected while a nurse down the corridor is not?

Anne Keenan: We discussed that issue just before we came into the committee today. We were envisaging a situation in which a nurse who was operating outside the accident and emergency room was taking a patient into accident and emergency. Where would the line be drawn? We could get into arguments about whether someone was in the curtilage of the accident and emergency room and whether they were operating under section 1 or section 3 of the bill. That is an anomaly, although I can also see pragmatism in section 3 in that one would not have to prove that an accident and emergency room was a place where emergency treatment is given. However, I can see the difficulty—

Mr Maxwell: The difficulty is with where the line is drawn. That is fine—that is where I wanted to get to.

On a similar issue, do you agree with the definition of emergency circumstances in the bill? Clearly, there are definitions of emergency circumstances elsewhere. For example, is the definition in the Civil Contingencies Bill more appropriate than the definition in the Emergency Workers (Scotland) Bill?

Anne Keenan: I had a look at the definition in the Civil Contingencies Bill, which is obviously wider. I wondered whether the people who are listed as emergency workers would operate in all the circumstances listed in the Civil Contingencies Bill. In some situations, if the definition of emergency circumstances was extended to the definition in the Civil Contingencies Bill, the definition of emergency worker would also have to be extended to cover people working for the Scottish Environment Protection Agency and so on. The provisions might have to be extended to cover situations relating to interference with telecommunications or the provision of food and health care, for example. The definition of emergency circumstances in the Civil Contingencies Bill is extensive.

Mr Maxwell: I ask because there is that other definition of emergency circumstances. We have a lot of evidence before us from people who have submitted that they should be included as emergency workers. If we included them, should we also have a wider definition of emergency circumstances? I am concerned about the vagueness of the definition of emergency circumstances, who would be included and where the lines are drawn. Am I correct in saying that you have the same concerns?

Gerry Brown: A policy decision has been made to include a number of emergency workers. There is an issue about whether other people should be included, which would make the bill more complex. Extending the definition of emergency circumstances would make it more complex still. If that were done, we would have to have another consultation on the bill, because that would make the bill more radical. As I see it, the aim is to bring to the fore the deterrence aspect, to which Margaret Smith referred, and to give emergency workers comfort that something will happen if there is a conviction.

Mr Maxwell: I accept what you are saying. Deterrence is important, and we all treat assaults on emergency workers with a great deal of seriousness. Do you believe that if the bill is passed, whether in its present form or slightly amended, it will have a deterrent effect on those who carry out assaults on emergency workers?

Gerry Brown: No. I do not think that anyone thinks of the Emergency Workers (Scotland) Bill when they impede a police officer or fire officer who is doing their duty. As I said to Margaret Smith earlier, the deterrent comes in when someone is caught and, if the evidence is supportive, is convicted and dealt with. You will know from our responses that we have slight concerns about whether the bill makes that easier or more difficult.

Michael Matheson (Central Scotland) (SNP): I turn to the issue of how the bill, if enacted, would work in practice to deal with someone who is arrested and charged under its provisions. I refer in particular to the evidential requirements for proving that the accused person knew that the emergency worker was an emergency worker. The definition of emergency workers covers GPs, but GPs who pay house visits do not tend to wear a white coat or a badge that says, "I'm a doctor". Someone turning out for a lifeboat would not have their equipment on; they would put it on once they had mustered in their muster room. I wonder how demonstrating that the accused person knew that the emergency worker was an emergency worker would work in practice.

Anne Keenan: I am sorry, but I am about to bore you with the issue of the subjective and objective test. We are concerned about the definition of an emergency worker and how it will apply in relation to the accused person's knowledge.

We submit that to have committed an offence under section 1(1) of the bill, which refers to

"A person who assaults, obstructs or hinders an emergency worker",

someone would have to know that the person whom they were assaulting, obstructing or hindering was an emergency worker, as has been indicated. The prosecution case is helped slightly by section 2(6), because only one source of evidence is needed to establish that. However, it is not clear from the bill whether it is necessary to demonstrate that the accused had knowledge that the person was an emergency worker or whether it is enough to show that that would be known by a reasonable man in the street. If the accused says that they did not know that a person was a doctor because he did not have a bag and was not wearing a white coat or a sticker, can he escape conviction on that basis, or are we saying that because the person had a stethoscope around his neck, was assisting a person lying on the ground and had a bag next to him, a reasonable man in the street would infer that he was a doctor?

The bill is silent about the test that must be applied to prove that the accused knew that someone was an emergency worker, so we must return to analogous case law relating to the police. To prove an offence under the Police (Scotland) Act 1967, one must show that the accused knew that the person concerned was a police officer, acting in the course of his duties. I refer to the case of Annan v Tait—1982 SLT (Sh Ct) 108—in which the accused was trying to rescue someone from custody. The sheriff held that the accused's knowledge of the character of the victim was central to the offence. It did not matter that everyone around the accused knew that his friend was held by a police officer—because he did not know, he was able to escape liability. The proposition of the defence in Annan v Tait was that the accused had made an honest mistake. The case suggests that if legislation is silent we must assume that Parliament intended that the accused had to have a guilty mind in order to be convicted.

One could almost assume that the same test applies to the offence that the bill would create, but the test that must be applied under section 2(5) in the case of someone who is assisting an emergency worker is that

"a person is to be taken to be assisting an emergency worker only if a reasonable person would have grounds for believing that to be so."

That takes us away from the subjective element and back to the reasonable man test. I am concerned that, if the bill is passed as it stands, cases would be taken to the High Court to get a decision on that issue, as the same bill applies two conflicting standards to two different offences. In our submission, we suggest that if the committee wants to clarify the situation, it could amend section 2

"to establish *the accused's knowledge* as to whether the person is an emergency worker."

It would be more difficult to establish the accused's knowledge if the victim were not wearing a uniform, but their identity could be inferred from the facts and circumstances of the case.

I will take the argument a step further. Section 2(6) makes it easier to demonstrate that a person is an emergency worker, because the Crown is required to establish that on the basis of only one source of evidence. That is a departure from the normal rule. In the case of statutory offences, the prosecution must usually prove every crucial fact by corroborated evidence. In a case under the Police (Scotland) Act 1967, it would have to establish by corroborated evidence that the victim was a police officer acting in the course of his duties. However, there is no reference in the bill to whether corroborated evidence is needed to demonstrate that a person was assisting an emergency worker under section 2(5). Would it be more difficult to prove that the accused had assaulted, obstructed or hindered someone who

was assisting an emergency worker than it would be to prove an offence against an emergency worker?

Gerry Brown: Earlier we tried to think of a situation in which this problem might arise. I will be corrected by Morag Jack and Anne Keenan if I am wrong. Let us say that there is a disturbance or a problem in a third-floor tenement flat in Maryhill and someone phones for the emergency doctor. The father is in the house and he has discrete knowledge that the doctor has been phoned. The doctor arrives, but he is not robed in any particular way. The father goes downstairs to meet the doctor and an argument takes place. Those observing it do not know who the doctor is. Unless evidence was led that the father actually knew that the person he had argued with was the doctor, what happened outside could give an opportunity for a get-out on the basis of the reasonable man test, which is an objective test. We initially thought that this was a straightforward matter. However, having discussed the matter with the three of us on the panel, members can now see that it is less than straightforward.

10:45

Anne Keenan: Perhaps I can summarise the matter. In a case of an assault against an emergency worker, the Crown would have to prove that the accused himself or herself knew that the person was an emergency worker. The Crown would need only one source of evidence. Therefore, a subjective test and one source of evidence would be required.

To prove an offence against someone who assisted an emergency worker, the reasonable man test would be used in connection with the accused's knowledge, but that evidence would have to be corroborated. However, we are talking about establishing only that a person was an emergency worker or was assisting an emergency worker, which would have to be done before the Crown considered whether it could prove that the emergency worker was responding to an emergency.

The Convener: Before this gets any more complex, can I check what you just said? If a subjective test is used, you are happy that only one source of evidence is required.

Anne Keenan: I am not necessarily saying that we are happy, but that is what the bill says.

Gerry Brown: We are never happy.

Anne Keenan: It is a departure from the Police (Scotland) Act 1967.

The Convener: So a subjective test should still have two sources of evidence.

Anne Keenan: Under the 1967 act, the requirement is for the subjective test and two sources of evidence.

The Convener: You would prefer that to remain the case.

Anne Keenan: That is the norm for a statutory offence.

The Convener: Right. You went on to say that the reasonable person test requires corroboration, which means two sources of evidence.

Anne Keenan: It would appear that, to show that someone is a person who is assisting an emergency worker under section 2(5), the reasonable person test would be used. However, because there is no provision on there being a single source of evidence in such a case, it would appear that that evidence would need to be corroborated.

Michael Matheson: You are saying that, under the 1967 act, two sources of evidence are required for the subjective test, but that, under the bill, only one source of evidence is required for the subjective test. Is that correct?

Anne Keenan: Yes.

Michael Matheson: Therefore, under the 1967 act, if a police officer was resisted in a situation in which there was only one witness, action could not be taken to address that offence, but if the bill is enacted, action could be taken in such circumstances.

Anne Keenan: In such a situation, it might be more advantageous for the Crown to prosecute. If a police officer responding to emergency circumstances was resisted and there was only one source of evidence to show that the person was a police officer and that the accused knew that he was a police officer, it would be better, in my opinion, to prosecute under the bill's provisions rather than under the 1967 act, not only for evidential reasons but because, in my view, there would be a higher penalty under the bill's provisions than under the 1967 act. The bill would give the court the opportunity to sentence a first-time offender to a maximum of nine months' imprisonment. My reading of the 1967 act—I will be corrected by others if I am wrong—is that the nine months' custodial sentence is available only for a second or subsequent offence. Under the 1967 act, if a person has committed a second or subsequent offence and has had a similar conviction within the previous two years, the nine months' sentence would be available; otherwise, it would be a maximum of three months.

Gerry Brown: So, under the bill, there would be additional protection for a police officer who was involved in an emergency.

The Convener: It would also be easier to prove an offence if only one source of evidence is required, whereas, under the 1967 act, two sources of evidence would be required.

Gerry Brown: Yes.

Michael Matheson: Not long ago, I was considering the Criminal Procedure (Amendment) (Scotland) Bill, which is a complex piece of legislation. On seeing the Emergency Workers (Scotland) Bill, which is only four pages long, I thought that it would be relatively straightforward. Sadly, you have let us down about that this morning. I am in danger of making the situation worse, but does the Faculty of Advocates have a view on the issues that I have just raised with the Law Society witnesses?

Morag Jack: I had the opportunity of speaking to Gerry Brown and Anne Keenan before we came into the committee room this morning. What Anne Keenan has said is also the faculty's position on what the evidential problems with the bill might be.

Michael Matheson: Do the witnesses agree with the bill's omission of "resists" and "molests" as offences? Under the Police (Scotland) Act 1967, the offences are

"assaults, resists, obstructs, molests or hinders".

Are you of the view that "resists" and "molests" should have been included?

Gerry Brown: "Molest" is a word that we do not use in daily parlance as much as we used to—perhaps you have used it more frequently in your time, Michael.

I have read some of the evidence on the matter, and "resists" normally applies when a police officer is carrying out his duty to deal with an individual. The debatable point is which emergency workers, other than constables, would carry out an activity in such a way that someone might resist them.

Anne Keenan: The convener made a point about a situation in which someone receiving treatment could themselves resist the emergency worker. Having read the evidence, I got the impression that the Executive would consider the matter, which I think is worthy of consideration.

Michael Matheson: The bill team said that they left out "resists" because they felt that the term only really applied to police officers carrying out their functions, rather than to the emergency workers whom the bill covers. They left out "molests" on the basis that the provision in the 1967 act has never really been used. However, if we consider the application of the provisions to prison officers, I would have thought that the "resists" provision could be applied to them, as it would be to police officers acting in the course of their duties.

Gerry Brown: Would that extend to people who are not prison officers but who are working in private prisons or who are carrying out other duties with prisoners, such as those who work for Reliance Secure Task Management?

Michael Matheson: Section 1(3)(d)(ii) refers to "a prisoner custody officer". I imagine that that would cover staff who work in private prisons, although I am not entirely sure about the designation of prison escort staff who work for Reliance.

Gerry Brown: From my reading of the bill, such staff would be covered. I presume that the argument is that, because such staff have duties within a detention structure, "resists" might be a useful term to include.

The Convener: On the same question of the interaction between the bill and the 1967 act, we have discussed potential differences in evidential matters, but do you think that there are further conflicts with that act? For example, the bill covers constables, to whom the 1967 act refers, but omits "resists" and "molests".

Anne Keenan: The only real differences between the bill and the 1967 act are the evidential aspects and the differences in penalty, which we have already highlighted.

Mr Maxwell: You mentioned that, under the 1967 act, someone cannot be sent to prison for a first offence; they can be sent to prison only if they are convicted of a subsequent offence within a specified time period.

Anne Keenan: They can be sentenced to three months' imprisonment for a first offence—

Mr Maxwell: That is less than nine months.

Anne Keenan: Yes.

Mr Maxwell: Would it be simpler to amend the 1967 act, to bring it into line with the policy intention behind the bill?

Anne Keenan: That would be possible. It would also be possible to implement section 13 of the Crime and Punishment (Scotland) Act 1997 to extend the sentencing powers of sheriffs generally. That would afford greater sentencing powers in relation to first and subsequent offences, while retaining the flexibility of the common law.

Bill Butler (Glasgow Anniesland) (Lab): If the bill is enacted, do you expect there to be a significant increase in the number of prosecutions when emergency workers are assaulted or impeded, given that only one source of evidence and no corroboration would be needed?

Anne Keenan: In relation to the marking of cases as "no proceedings" on the basis of

insufficient evidence, I do not see a great difference between the sufficiency of the provisions in the bill and common-law provisions, because under the common law only one source of evidence is needed to prove aggravation.

Bill Butler: Do you expect the bill to result in a significant change in sentencing in cases in which emergency workers are assaulted or impeded? For example, would more or longer custodial sentences be imposed?

Gerry Brown: That would be a matter for the judiciary.

Bill Butler: Would the bill create a tendency to impose more or longer sentences?

Gerry Brown: There is anecdotal evidence of a tendency towards increased sentencing if that is available, but I understand that, under the chairmanship of Lord MacLean, the Sentencing Commission is considering such matters.

Bill Butler: Does the bill implicitly tend towards such a situation?

Anne Keenan: It is difficult to answer that question because, at present, if a procurator fiscal thinks that a case does not merit existing common-law powers, they have the option of charging the accused on indictment, if the case is sufficiently serious.

Bill Butler: Would that mean that a maximum sentence of 12 months could be imposed?

Anne Keenan: In solemn procedure, the maximum sentence from the sheriff court is now five years, but that would be applied under the common law, so it is difficult to say whether the bill would change the sheriff's discretion in the way that you suggest.

Gerry Brown: At common law, if someone is convicted for the first time, the maximum sentence is three months' imprisonment. For example, if someone was convicted of a common assault and then five years later was convicted of an assault on an emergency worker, the maximum sentence for the second conviction would be six months' imprisonment. The bill would increase that to nine months. However, if section 13 of the Crime and Punishment (Scotland) Act 1997 was invoked, such offences could be dealt with more extensively.

The Convener: I am interested in examining the bill's scope. I am not trying to draw you into expressing a view on the policy intention, but I want to establish whether it is possible to distinguish in law between different groups of workers who require protection.

The bill's purpose is to protect workers, whoever they are, who put their own safety on the line to protect other people. Can we frame legislation that has such a narrow scope? Should there be further legislation to deal with workers who face violence or physical intimidation in the course of their duties but who do not put their lives on the line for other people? Is it important to distinguish between the two situations?

11:00

Gerry Brown: The link that we should have is that between the emergency worker and the emergency. Section 6 provides for the Scottish ministers to add other workers. Perhaps I am missing the point, but I wonder how, for example, a teacher in a rowdy classroom or at a rowdy parents' night—someone who is not an emergency worker in an emergency situation—would fall within the definition. Would the definition not have to change?

The Convener: That is the concept that I struggle with. If the bill's central test is to identify people—whether they are nurses, doctors or others—who put their lives on the line and who risk their safety to protect someone else because that is their job, the wider the scope, the more we must lose that central focus. If social workers or shop workers are included, that is fine if they risk their safety to protect someone else. I wonder whether the central test should focus on that. That would allow anyone to be included.

Anne Keenan: The important provision is section 6(2), which makes it a criterion of addition by the Scottish ministers that a person's "functions or activities" mean that they are

"likely, in the course of"

their duties,

"to have to deal with emergency circumstances."

That must be an integral part of a person's job before they can be added to the list. If we wanted to cover people whose jobs would not make them routinely or in any circumstances likely to be involved in emergencies, we would change the nature of the bill. Changing it in that way would indicate that we wanted the bill to cover public service workers in the course of their duties. That would be a much wider measure and would mean that the central provision of the bill would have to change.

The Convener: If the scope were widened, the bill's purpose would have to be widened.

Gerry Brown: Yes.

The Convener: We talked about the flexibility in the common law and the implications of a statutory offence. I presume that the Crown could libel the statutory charge and the common-law charge.

Anne Keenan: Yes. The Crown could libel them as alternative charges.

The Convener: As members have no more questions, would the witnesses like to add anything in conclusion?

Gerry Brown: I will say thank you.

The Convener: Do you mean that?

Anne Keenan: And good night.

Gerry Brown: Cheerio.

The Convener: I thank the witnesses from the Law Society and the Faculty of Advocates. As usual, the experience has been invigorating and their evidence has been helpful.

I welcome our next witness, who is from the Scottish Police Federation and is known to the committee. He is Douglas Keil, who is the federation's general secretary. I thank you for giving evidence to the committee again, and for your helpful submission.

Mr Maxwell: Good morning. Police officers are already protected to a great extent by existing common law and statute. In particular, I am thinking of section 41(1) of the Police (Scotland) Act 1967, which deals with assault. Given that there is both statutory and common-law protection, do you think that the bill, if it were enacted, would provide police officers with greater protection?

Douglas Keil (Scottish Police Federation): No, I do not think that it would. I am not a lawyer, but my reading of the way in which the bill deals with assaults on any person is that it would not add anything. The common law is sufficiently flexible to cover any assault.

As I said to the committee in my letter,

"If we leave the police and fire-fighters on one side for the moment, there is currently no common law offence or statute which specifically makes it an offence to obstruct or hinder other workers",

by which I mean workers who are not police officers or firefighters. That element of the bill would be new, but we believe that in no circumstances would the bill add anything, certainly as far as the police are concerned. In relation to firefighters, the current law deals with circumstances in which they are fighting fires, whereas the bill proposes to expand the circumstances in which the offence applies. Although the bill contains something new for firefighters, we do not think that it contains anything new for police officers.

Mr Maxwell: You probably heard the Law Society of Scotland's evidence about the fact that the bill seeks to expand the range of the sentence from three months on a first offence to nine months—I think that that is what it said. Surely that provision provides extra protection for police officers. Do you agree with the Law Society's view that we should implement section 13 of the Crime and Punishment (Scotland) Act 1997?

Douglas Keil: It is fair to say that the members of the Scottish Police Federation have a concern about the concept of legislation in and of itself providing protection, although I can understand why people might hold that view.

It is extremely difficult to nail down statistics on assaults—even assaults on police officers, on which records are kept. Margaret Smith has referred to that. In the 10 years between 1993 and 2004, there were, on average, 9,500 assaults on police officers each year. Those annual figures were constant until about 2000, when they seemed to fall back slightly for the following two years. We think that that had something to do with better training and better protective equipment for police officers. It is worrying that the figures are on the way back up again. Her Majesty's inspectorate of constabulary for Scotland is examining how we keep statistics and how we share information on best practice, but, in general, there is a lack of robust statistics in Scotland.

As I said in my letter, we studied assaults in a Strathclyde division—a division in Glasgow city centre. The statistics for that division show that, in 2002, there were 495 assaults on police officers. In 2003, that figure rose by 5.4 per cent to 518. Again, we think that there is evidence that the number of assaults is increasing.

I will answer your question directly by citing our examination of the disposals in some of those cases. We considered 161 cases of assault on police officers in 2001. In only 12 per cent of those cases was a custodial sentence imposed; the average sentence was 3.7 months. In only 22 per cent of the cases was a fine applied; the average fine was £152. Among other things, the McInnes report, which was published recently, covered fines. It showed that the average court fine was £277. Comparison of that figure with the average fine for assaulting a police officer supports our view that the current legislation does not provide protection for the police.

I was impressed with the Scottish Executive's consultation paper, which laid out details of how the Lord Advocate's guidelines were being applied in practice. It provided some fairly impressive examples of sentences that had been passed on people who had assaulted ambulance drivers, train drivers and bus drivers. Our plea is that we should receive similar treatment, but we do not think that that can best be done by implementing new legislation; instead, it can best be done by treating convictions under current legislation more seriously.

Mr Maxwell: I would like to summarise. I hear what you are saying. In your view, a new act is not

required, but the current law should be properly applied in order to defend police officers who are going about their duties.

Douglas Keil: We have an issue with charges of assaulting police officers being plea bargained away and marked "no proceedings"—I did not mention that previously. Some sentences certainly seem to us to be lenient. I want to be clear. I agree with the Executive that the issue must be addressed and I was impressed by the examples in the consultation paper. The Lord Advocate's guidelines were issued some time ago and courts were advised to take such charges seriously. The examples of sentences that have been passed down indicate the types of sentence that we would like to be applied in cases that involve assaults of police officers.

Mr Maxwell: Are you saying that things can be managed through the guidelines and that that would be the best way of tackling the situation?

Douglas Keil: In our view, that would be by far the simplest way of doing things. We think that the Executive's aims could be achieved by that method as opposed to through a new statutory offence.

Mr Maxwell: Earlier, and in your letter, you mentioned firefighting duties. I agree with what you say in your letter that a simple amendment to the Fire Services Act 1947 could provide firefighters with full cover as opposed to cover only when they are engaged in firefighting duties. Such an amendment seems sensible.

I would like to deal with a slightly different, but related, topic. Would the bill provide other emergency workers with greater protection against assault? Obviously, protection of the police is to some extent underpinned through the Police (Scotland) Act 1967 and the common law, but would the bill give other emergency workers added protection?

Douglas Keil: Not in relation to assault. As I said, the common-law charge of assault can be applied in any circumstances. The bill would create additional offences in relation to obstruction and hindrance at work, but, as I think the previous witnesses said, it would not be impossible to charge someone who obstructs or hinders an emergency service worker with a breach of the peace. I think that that has been done, as the police service is obviously keen to deal with such incidents. It has never been brought to my attention that we have failed to bring a charge because of a lack of statutory offences.

Mr Maxwell: So you cannot think of a situation in the past in which a police officer has been in attendance when someone has impeded an emergency worker from carrying out their duties and the officer has not intervened or arrested the person because no offence was committed.

Douglas Keil: I cannot think of such a set of circumstances.

Margaret Smith: I was interested by what you said about why there seemed to have been a falling back in the number of assaults over a number of years. You put that down to better training for police and the introduction of different types of equipment, but have you done any work on why the number has picked up again?

Douglas Keil: HMIC has just carried out what it calls a thematic inspection of protective equipment. Around 1993, we changed the type of handcuffs that we used from flexible handcuffs to rigid handcuffs. Since 1993, there has been closer examination of the type of protective equipment that is issued to police officers—I am talking about longer batons and protective vests. At the same time, the training that every police officer has received in non-verbal communication and self-protection in general has definitely improved.

Like HMIC, we cannot definitely say that those factors have been the cause of the drop in the number of assaults against the police, but there seems to have been a correlation. I cannot think of any other reason for the figures falling back, although I can think of a number of reasons for the figures rising again. Although the statistics that I have given the committee can be found in HMIC reports and they are undoubtedly correct, the way in which forces record information is not satisfactory. HMIC is addressing that matter and I hope that from now on we will have a much more accurate picture of precisely what is happening.

11:15

Margaret Smith: My next question is on deterrence. Despite your reservations about the bill, do you agree with the argument that, if enacted, it would send a clear message that attacks on emergency workers and the police are not acceptable, which might help to deter some of those attacks?

Douglas Keil: I would like to think that that is a knock-on benefit of the legislative process. I do not know whether the type of person who is in the habit of assaulting emergency service workers will pay much attention to the announcement that a new law has been enacted, but the Executive properly addresses other issues in the consultation paper. As previous witnesses have said, education has a role to play. The courts also have a role to play, in ensuring that instances of assault on and hindrance of emergency service workers are dealt with appropriately. Again, one page of the consultation paper laid out some excellent examples, which should be given further attention.

Attention should also be paid to premises where emergency service workers work. I am sure that members will have seen notices at airports indicating that BAA plc takes a dim view of assault on its staff. That is the kind of thing that the public sector could learn from. I suppose that there would be a mild knock-on benefit, but I do not know—and it is a matter of policy—whether we should use the law to publicise problems.

Michael Matheson: Are you satisfied that the bill sufficiently covers emergency workers and those who are assisting them?

Douglas Keil: I agree with the Executive's recognition, in the consultation paper, that there would be a problem defining the range of workers to be covered by the legislation. I have no suggestions as to who should or should not be covered. The Scottish Police Federation's general point is that any assault on any person is unacceptable. An assault on someone who is carrying out his or her work is somehow less acceptable and an assault on an emergency service worker, particularly while dealing with an emergency, is especially reprehensible. However, I would not care to address whom precisely the bill should cover.

Michael Matheson: Does the bill sufficiently cover staff who may be working in support of the police, such as special constables and other support staff?

Douglas Keil: Special constables are defined in legislation as constables, so there would not be an issue there. Support staff would fall into the category of other workers who were not immediately identifiable, unlike workers who were wearing a uniform, for example. As members have heard this morning, there are evidential issues relating to that. However, I do not know how we can get around that problem, because it is fair that an accused person is charged only with an offence that he knows to be an offence. The issue is a bit like the one involving a police officer in civilian clothes. Before someone can be charged with a contravention of the Police (Scotland) Act 1967, it has to be clear that the officer identified himself in a satisfactory manner.

Michael Matheson: On that point, how would a police officer in plain clothes normally identify themselves in a satisfactory manner?

Douglas Keil: He or she would have to do it verbally and they would have to produce the warrant card that identifies them as a police officer. To an extent, circumstances play a factor, but identification would simply be by the person declaring that they were a police officer and showing evidence of that.

Mr Maxwell: As I asked the previous witnesses, do you agree with the focus of the bill on emergency circumstances?

Douglas Keil: The Police (Scotland) Act 1967 covers police officers when they are on duty—full stop. It does not go on to define what the police officer is doing while he or she is on duty. It would have been much simpler to draft the bill or to amend existing legislation to include other workers in the same way. If we have to consider what the emergency service worker was doing when he or she was assaulted or hindered, more evidence than is currently required in respect of the police will be necessary. We are probably talking about more witnesses and we are certainly talking about more police time spent at the locus of an offence to establish the circumstances. As we have heard this morning, that opens up the possibility of more and longer argument in court.

I understand the Executive's motivation for focusing on emergency circumstances. However, I have some difficulty in distinguishing between circumstances where, for example, a firefighter is assaulted when checking a hydrant or carrying out some other non-emergency duty and circumstances where a firefighter is assaulted while working on an emergency. Society should take both sets of circumstances extremely seriously. That view is backed up by the fact that we are having so much debate and a degree of difficulty in agreeing precisely the definition of an emergency.

Mr Maxwell: It is fairly simple to define someone who is on duty—during working hours, they carry out their normal work as a police officer or firefighter and that would be covered by the bill. However, would a firefighter or police officer be on duty technically if they were travelling to or from work and still wearing their uniform—I know that firefighters do that—when they came across a fire, road accident or some other offence in which they intervened to save somebody's life?

Douglas Keil: As far as the police service is concerned, when one decides to act as a police officer in such circumstances—even when not on duty—one has the ability, power and authority to call oneself back to duty. Provided that the officer was in uniform, that should not be much of an issue. The same would apply to a plainclothes officer. They would have to declare themselves as an officer before the existing legislation would apply. I do not know about the fire service.

Mr Maxwell: Do you know whether that would apply to other emergency service workers?

Douglas Keil: I do not know. I cannot speak for the courts, but from experience I have no doubt that the courts would take cognisance of the fact that the person was following their occupation in emergency circumstances.

Mr Maxwell: You said earlier that there are degrees of seriousness with which we treat

situations. You seemed to indicate a ratcheting-up of an offence—for example, an assault on a police officer as they happened to be walking down the street is less serious than an assault on or impediment to somebody who is carrying out their duties in an emergency situation and trying to save lives. However, in your answer a moment ago, you seemed to suggest that the offence was the same whether the person was in an emergency situation or not on duty. Will you clarify your view?

Douglas Keil: It is absolutely the case that the offence is the same regardless of what the individual is doing. From the point of view of the individual involved, what is the difference between the half-brick that is bounced off their head when they are checking a fire hydrant and the half-brick that hits them when they are dealing with a fire?

The court takes a view on the circumstances of an assault. When a police officer receives a complaint of an assault, part of what we report to the court is the circumstances. If a nurse were simply taking somebody's blood pressure on a ward and they were assaulted, that would be reported to the court, which would take a particular view of the circumstances. If that same nurse were dealing with an emergency admission at the accident and emergency reception and was assaulted, that would also be reported to the court. I think that the court would take a dimmer view of the latter example. That is what I meant earlier.

Mr Maxwell: Do you have a view on the definition of emergency circumstances as outlined in the bill? You probably heard me asking earlier about the difference between the definition in the bill and the definition elsewhere.

Douglas Keil: The definition in the bill tries to cover emergency circumstances in a non-complicated way. It comes down to the perception of the individual. I can understand why the Executive has taken that approach, but I cannot suggest a definition that would make life easier. When I read the definition, I accepted it as the way in which the Executive wanted to take things forward. I cannot think of potential improvements to the definition.

The Convener: I suppose that the argument that you have given Stewart Maxwell is that the common law deals with the issue because it is already an offence to assault or hinder an officer in the course of his or her duty. However, if the officer was trying to save someone's life in the course of his or her duty, could the court take account of those circumstances and sentence appropriately?

Douglas Keil: That has been my experience.

The Convener: This morning, we discussed evidential questions about how the offence that is proposed in the bill would be proved. Notwithstanding your evidence about the 1967 act, do you foresee any practical difficulties in obtaining sufficient evidence to prove, for example, that the accused person was aware that the victim was an emergency worker?

Douglas Keil: I am not sure to what extent that would be an issue for the police. We would establish whether the emergency service worker identified themselves as such at the time and that would give us sufficient material with which to proceed. The issue that you raise would be considered in court at a later point. I agree with the evidence that was given earlier by the witnesses from the Law Society of Scotland. I certainly do not feel qualified to contradict what they said.

Bill Butler: If the bill is enacted in its current form, will it significantly increase the number of incidents in which police officers charge people for attacking or impeding emergency workers?

Douglas Keil: No. Currently, the police do all in their power to deal with such incidents. Few, if any, such cases fail to proceed because of a lack of a charge to employ. I think that there will be no increase in the number of offences that are reported to the courts.

Bill Butler: So, in your view, the bill's effect in that respect will be nil.

Douglas Keil: Yes, for the reasons that I have just given.

Bill Butler: You said that education undoubtedly has a role to play. What steps should the Executive and other bodies take in using wider measures such as education to improve the protection of police and other emergency workers?

Douglas Keil: I have not given much consideration to that. I welcomed the consultation paper's suggestion that the Executive would address the wider issues, so I would welcome the opportunity to participate in that discussion. I agree with the Executive that it has a role, along with education authorities and others, in raising awareness of the issue.

Whenever I mention the number of assaults on police officers, people are amazed. There are around 10,000 assaults on police officers, which is an incredible figure. We have just over 15,000 police officers in Scotland, but the police officers on the street account for about one third of that number. By and large, they are the ones who are assaulted. In any year in Scotland, each police officer on duty on the street can expect to be assaulted twice. That is quite incredible. People draw their breath whenever I mention that figure, because it is quite stunning.

The Convener: Can you give the committee an idea of the range of circumstances in which police

officers have been assaulted. For example, would resisting arrest be included as an assault or is that in another category?

11:30

Douglas Keil: The offences are dealt with under the same section of the 1967 act. I believe that section 41(1)(a) deals with assault and section 41(1)(b) deals with hindering. However, I would need to check before I could say that I was 100 per cent sure about that.

Assaults range from being shot or stabbed to being spat on or bitten. The work that we did on assaults in Glasgow city centre showed that 26.9 per cent of all assaults involved spitting and 7.4 per cent involved biting. Of course, that type of assault carries the risk of the transmission of infectious diseases. That is another significant concern for us and we are addressing that worrying and dangerous situation through our petition to the Parliament, which is currently being considered. Resisting arrest is different from assault. Although they are dealt with under the same act, they are two different charges.

The Convener: I presume that, if an emergency worker was assaulted and could not get on with their duties, they would call the police to assist them, given that the police are the last line of defence.

Douglas Keil: Yes.

The Convener: But the police cannot call anybody—you are the last line.

Douglas Keil: No. We are the last line of defence.

The Convener: Do you think that the police should receive special protection under the law in recognition of that difference?

Douglas Keil: I have to repeat myself to some extent. I think that the Executive is absolutely right to consider a wider category of worker. However, the police hold a special position in society, as we have to put ourselves between the public and society's most violent individuals. We are content to do that as part of our duties but, in return, society owes us whatever protection it can give us and a large part of that protection is to be given through the courts. In that regard, we hold a special position and should be especially protected.

The Convener: It has been suggested that the police might want to have the power of arrest without warrant. Is that the view of the Scottish Police Federation?

Douglas Keil: Yes, it is.

The Convener: We have no further questions for you. Thank you very much for your evidence and your written submission, which have been very helpful.

I welcome our last panel of witnesses, who are from the Association of Chief Police Officers in Scotland and the Association of Scottish Police Superintendents. Assistant Chief Constable Ricky Gray is the secretary of the road policing standing committee and Chief Superintendent Clive Murray is the vice-president of the ASPS. Thank you very much for coming along to the committee this morning. We will begin our questioning.

Mr Maxwell: Good morning. I know that you have been listening to the evidence that has been given, but for the sake of completeness I will ask you the same question as I asked the two previous witnesses. Do you believe that the bill provides additional protection for police officers to that which is provided in the common law and the statutory provisions in the Police (Scotland) Act 1967?

Assistant Chief Constable Ricky Gray (Association of Chief Police Officers in Scotland): As Douglas Keil said, the Police (Scotland) Act 1967 gives police officers a considerable amount of protection in allowing them to arrest people who assault them and to place those people before the courts in the appropriate circumstances. I reiterate what he said about sentencing. The work that our officers do is often taken for granted and the penalties that are imposed by the courts do not always reflect the seriousness of the offence that has been committed when one of our officers has been assaulted.

Mr Maxwell: Would it be reasonable to suggest—as I did to the previous witness—that the use of guidance for the courts would be the most effective and simplest way of dealing with that perceived problem? Douglas Keil read out some statistics that seemed to show a lower fine level in cases involving assault of a police officer.

Assistant Chief Constable Gray: Absolutely. If the bill is enacted, there should be consistency across the board for emergency workers who are assaulted during the execution of their duties. Guidance would be welcome to ensure that consistency.

Chief Superintendent Clive Murray (Association of Scottish Police Superintendents): I have a point about the implementation of the 1967 act and plea bargaining. While the full weight of that act might be applied initially, on occasions, come the court appearances, plea bargaining has been used in significant cases that pertained to the 1967 act.

Mr Maxwell: Do you agree that the guidance that is issued to courts could in effect remove the right to plea bargain?

Chief Superintendent Murray: One would certainly hope so.

Mr Maxwell: The Law Society witnesses made the point that the existing legislation allows sentences of up to only three months on a first offence and then higher sentences on second and subsequent offences and that an amendment to the Police (Scotland) Act 1967 or the implementation of measures in the Crime and Punishment (Scotland) Act 1997 may be appropriate. Do you agree?

Assistant Chief Constable Gray: If the bill became law, there would be potential for increases in sentences that are given by the courts. However, a simple way to increase the potential sentence would be an amendment to the Police (Scotland) Act 1967.

Mr Maxwell: Would that be a better way in which to achieve the aim?

Assistant Chief Constable Gray: It would certainly give the police better protection. However, the thrust of what we are discussing is to ensure that all emergency workers receive that broad support.

Mr Maxwell: Would the bill provide emergency workers other than the police with greater protection than they have at present?

Assistant Chief Constable Gray: Absolutely. Again, I agree with what Doug Keil said on behalf of the Scottish Police Federation. Any emergency worker who comes under attack when they are going about their business should be afforded special protection. At present, protection exists under common law, but such attacks are without doubt an aggravation of the common-law offence.

Mr Maxwell: Do you agree with that, Mr Murray?

Chief Superintendent Murray: Yes. However, the issue of what constitutes the execution of duty is down to individuals' perceptions. We heard the earlier discussions about what constitutes an emergency situation. The matter comes down to the individual's perception of the situation with which they are dealing. A situation can initially appear to be an emergency, but as it develops it can become less significant. Notwithstanding that, if an emergency service worker intervenes in the belief that they are dealing with an emergency situation, they deserve full protection. The problem is how we define an emergency situation.

Mr Maxwell: If the bill were passed, how would it provide additional protection to emergency workers other than the police that is not present in the common law or does not arise as a result of other statutory offences? We heard from the Law Society that a number of measures can be used, such as the offences of culpable and reckless conduct and breach of the peace. The Law Society does not think that the bill would add to that protection, but you seem to be saying that it would.

Assistant Chief Constable Gray: We believe that the bill would add to the protection and would give emergency workers confidence that their special position is recognised. We hope that the message that would be sent out to members of the public who wish to impede emergency workers in the execution of their duties would be that they are likely to receive significant punishment for doing so.

Mr Maxwell: There is no disagreement that we should send out a message about how seriously we view the matter, but if the issue is about public relations or simply sending out a message, is legislation the appropriate way in which to do that?

Chief Superintendent Murray: Experience shows that it is. In the past few years, additional training has been given on hate crime and racist crimes. New legislation serves to raise awareness among those who apply it and, more generally, in the community. It may seem a convoluted way of adopting a marketing strategy, but if legislation is enacted specifically to deal with an issue, what better way could there be to prioritise that element of the law and attract the attention of those who apply it in the criminal justice system?

Mr Maxwell: I hear what you are saying and I understand the aspects that you are talking about, but it seems to me that there is no added protection, as such, in the bill. We already have statutory offences and the common law is already in place. I accept absolutely that we should send out a strong message to society about how we view nurses, police officers or firefighters being assaulted or impeded in emergency circumstances, but I am trying to get to the bottom of whether you believe that any additional protection can be provided in law. Would any additional offences that we do not have at the moment be created if the bill were enacted?

Assistant Chief Constable Gray: Douglas Keil said that he is not a lawyer. Neither am I, but my understanding is that, if a first-time offender becomes engaged in an act of violence on an emergency worker, the sentence that a court can impose in summary proceedings is limited to three months. Under the proposed legislation, that sentence could be nine months. That is a significant difference. However, as with all legislation that is introduced in the hope of dissuading people from becoming involved in such behaviour, the bill does not stand on its own. It would have to be married to education and to the punishment that the courts actually hand out. The bill is not a standalone proposal; a number of things would have to be done to ensure that it was effective.

Margaret Smith: I am happy that my question has been answered. It was about deterrence and you have answered it in response to other questions.

Mr Maxwell: I was hoping that you would ask the question, because I am not sure that it has been fully answered.

Margaret Smith: Mr Murray, do you agree with the argument that enacting the bill would send out the clear message that attacks on emergency service workers are not acceptable and that that would help to deter such attacks?

Chief Superintendent Murray: I think that it would, but I suspect that we might find, some time from now, that the effect of enacting the bill has diminished over time as new legislation and new priorities come into being.

An earlier question was about protection. I think that protection will come from employers paying more attention to workers' safety, because the matter is receiving more publicity. One of the points that we made in our response to the consultation document is that we hope that what we perceive as a level as under-reporting will move to increases in the reporting of assaults on staff and, in particular, on emergency workers. If people were encouraged to report, the police would have more information about the incidence of assaults in specific areas and we and the courts could do more do deal with the problem.

The Convener: Do you agree that the deterrent value lies in what the public see as the outcome of a case? You have outlined your concerns about assaults on the police being plea bargained, and there appears to be no guidance to the contrary. Is not it quite important to resolve that kind of issue? It is all very well having the legislation, but if fiscals are prepared to plea bargain it away, and if that is common knowledge among defence agents, it will not be a deterrent at all.

Chief Superintendent Murray: Absolutely. That is another point that we made in our written response. We are creating a public expectation, particularly among those emergency workers to whom the bill will apply if enacted. It is important that we do not sell them short and fail to meet their expectations by making the process over-convoluted and complex. This morning we heard the witnesses from the Law Society of Scotland discuss some of the complexities.

11:45

Michael Matheson: Is there a danger that, if the bill is passed, some employers will see it as an opportunity to reduce the safety precautions that they take at the moment, on the basis that staff will have legal protection? According to the evidence that we took this morning, it should be easier to prosecute under the bill, because only one witness will be needed. Might employers say that they can be more relaxed about the safety precautions that they take, because staff will have legislative back-up?

Assistant Chief Constable Gray: We will probably stray into the area of health and safety legislation. Every employer has a duty of care to their employees—the police service is no exception. The fire service sets great store on the health and safety of its staff. I do not think that employers will hide behind the legislation. Given the litigious society in which we live, employers know their full range of duties.

Chief Superintendent Murray: The bill will provide us with an opportunity to focus attention on the priorities that I discussed earlier.

Michael Matheson: Having listened to the earlier discussion, I am not convinced by your argument that the bill will deter people. It is often put to me that those who assault police officers are not thinking about the provisions of the Police (Scotland) Act 1967 when they do so. I suspect that the types of individuals who are inclined to impede or assault emergency workers will not necessarily think about the consequences of their acts, as set out in the bill. I suspect that there will be headlines on the day that the legislation is passed, but that the story will then drift away.

I accept that it is necessary for a package of measures to be built around the bill, instead of our relying on the bill itself. Based on your experience, do you think that the range of emergency workers that the bill covers is right and that a sufficient number of workers will be protected?

Assistant Chief Constable Gray: Michael Matheson's observation about what people are thinking when they assault police officers is probably correct. People worry about the consequences of their actions later, during court proceedings. However, let us take the situation that officers from Strathclyde fire brigade faced last year in Coatbridge, when they attended a wheelie bin fire in a lane. It is clear that youths lured the fire service to the scene. If specific legislation had been in place to protect fire service personnel, with the punishments for which the bill provides, the youths might have taken a slightly different approach and might not have set about doing what they did.

Each incident must be considered on its merits. I doubt that the public or youths understand the complexities that the Law Society of Scotland and the Faculty of Advocates have highlighted, such as single-witness corroboration and the relationship between different pieces of legislation governing breach of the peace and common

assault. Those issues become very complex in the court environment. However, we have the opportunity, with one piece of legislation, to provide blanket cover to protect all emergency workers who are going about their duties in emergency situations. Obviously, a bit of work will have to be done to define what an emergency situation is and to define what a court should be happy, or not happy, to accept as corroborating evidence. However, provided that the measures in the bill are married to education and publicity—including publicity about sentencing—we have the opportunity to protect all emergency workers.

It may be possible to widen the range of emergency workers who are covered by the bill. At the Maryhill incident a couple of weeks ago, there were medical teams and people from the Scottish National Blood Transfusion Service. We should also consider coastguards. Then, if we consider—as we should do, in this day and age, when there could be acts of terrorism—the wider world of consequence management, we should consider the whole range of organisations that we might expect to turn up in an emergency.

Michael Matheson: So you would like several different organisations to be included in the bill.

Assistant Chief Constable Gray: Yes. They would include the SNBTS, the Maritime and Coastguard Agency, the Royal National Lifeboat Institution, mountain rescue teams, and utility workers on an emergency scene.

Michael Matheson: Are not some of those organisations discharging their duties on behalf of the police? For example, when mountain rescue teams are called out, they are linked to the police, they operate under the control of the police, and they have police insurance. Is it the same for coastguards?

Assistant Chief Constable Gray: No; the Maritime and Coastguard Agency is an agency in its own right. In the event of a big response to an emergency, the police co-ordinate that response. We do not command and control anybody else's resources; we only co-ordinate so that there is a joined-up approach at the scene. Each individual agency commands and controls its own resources.

Michael Matheson: As a member of a mountain rescue team, I know that it could be argued that those teams act in support of the police.

Assistant Chief Constable Gray: Absolutely.

Michael Matheson: The teams might therefore be covered by the bill.

I want to cover another point that I raised with Douglas Keil. Are you satisfied that the bill protects police support staff sufficiently? Some of your support staff are not uniformed, but they could be working in an emergency situation. Do you have any concerns about the bill's provisions in relation to such staff? If so, how can we overcome those concerns?

Assistant Chief Constable Gray: The bill could be extended slightly to cover anybody who works in support of any emergency agencies in an emergency situation. I think that that would be quite simple.

Chief Superintendent Murray: A good example to give is that of a scene-of-crime officer. If there has been a violent incident on a Friday or Saturday night, that officer will attend to collate evidence and will often find that some people are still around who might choose to behave differently from normal members of the public.

The Convener: Do you think that the scene-of-crime officer will be covered by the bill?

Assistant Chief Constable Gray: An amendment might be needed to include people who work in support of emergency agencies.

The Convener: I wonder about the definition of an emergency if there has been a death at the scene of a crime.

Assistant Chief Constable Gray: We have to consider the stage before that, and consider simply the definition of an emergency. Committee members will have seen our submission, in which we talk about people having reasonable cause to believe that they are dealing with an emergency situation.

The Convener: The problem is that the bill says:

"For the purposes of this Act, circumstances are 'emergency' circumstances if they are present or imminent and … are causing or are likely to cause … serious injury … serious illness … serious harm to the environment … a worsening of any such injury, illness or harm"

or if they

"are likely to cause the death of a person."

As a result, the scenario that you describe, in which a scene-of-crime officer arrives after all that has happened, would not be covered by the definition of "emergency circumstances".

Michael Matheson: Based on the example that you gave, widening the definition of "emergency circumstances" might bring in a range of individuals who are directly and indirectly involved in an event. The question is whether it is necessary to include people such as civilian staff carrying out communication work in the control room, who might be involved indirectly.

Assistant Chief Constable Gray: We suggest that the definition should cover the scene of the incident.

Chief Superintendent Murray: The scene of the incident is where emergency workers are more likely to be exposed to violence, danger or whatever. The control room would not necessarily come into that category, unless we were talking about a mobile control room that was situated at the locus. After all, the control room worker would be remote from the incident.

Michael Matheson: So you are talking about workers who are directly involved with the incident.

Assistant Chief Constable Gray: Yes.

Mr Maxwell: You have now stipulated that the provisions should cover workers who are at the scene of the incident instead of those who are remote from it. Should they also cover fire brigade video units, which attend not just fires but other emergency situations such as road traffic accidents and collapsed buildings? They work among fire crews and video the incident scene for fire investigation, training and other evidential purposes.

Chief Superintendent Murray: That brings us back to the question whether those workers are executing their duty in an emergency situation.

Mr Maxwell: But they are non-uniformed staff.

Chief Superintendent Murray: But a detective officer is also in plain clothes. If they have identified themselves, they are given the same protection as a uniformed officer. As a result, we suggest that a member of a fire brigade video team who was subjected to violence or danger should benefit from the same protection as a uniformed colleague in an emergency situation.

Assistant Chief Constable Gray: Members of a fire brigade video team might not be dressed exactly like the firefighters, but they still wear protective clothing and would be fairly easy to identify as a part of the emergency response.

Mr Maxwell: That is fair enough.

You probably answered my next question when we discussed the phrase "emergency circumstances". Do you agree with the bill's focus on emergencies rather than on situations that are not necessarily emergencies but which involve the same staff?

Assistant Chief Constable Gray: We have wrestled with that question. Given that our officers are protected by the provisions in the 1967 act, how do we implement the proposed legislation? We concluded that a line should be drawn between general policing duties, which would be covered by the 1967 act, and an emergency situation, in which we would have the opportunity to implement the bill's provisions.

Mr Maxwell: What about emergency workers other than police officers? You might have heard our earlier discussion about nurses who work in or near an accident and emergency unit. Do you accept that there is vagueness about what the provisions cover in that respect? If so, would that create difficulties for officers who attend a scene when it comes to charging an individual?

Chief Superintendent Murray: That might well be the case. It would also create difficulties for the victim, who might find it hard to understand at the time which piece of legislation was being applied. Indeed, the situation might be made even more difficult if one piece of legislation covers what happens halfway down a corridor and nearer an emergency scene but not what happens at a slightly more remote location such as, for example, at the door of the premises in question.

The Convener: We have discussed at length the evidential requirements of proving that an offence has been committed. Do you have any concerns about whether, from a police point of view, the bill will make it difficult to collate evidence?

12:00

Assistant Chief Constable Gray: When it comes to cases of assault on police officers, ensuring that there is a sufficiency of evidence on which to proceed is always an issue, especially in relation to officers who do their duties in plain clothes. Doug Keil outlined eloquently the circumstances in which officers give verbal warnings of their identity and produce their warrant cards. As far as officers in uniform are concerned, that is where corroboration to the offence comes in.

If the provisions are extended to other emergency workers, proving that the attacker knew that the person was a general practitioner, for example, will always be a difficulty. Each incident would need to be considered on its own merits, taking into account the available evidence and corroboration and how that would be presented to the procurator fiscal.

The Convener: From the police point of view, requiring only one source of evidence to establish that somebody was an emergency worker would be the most helpful way forward.

Assistant Chief Constable Gray: Absolutely. Doctors who operate outwith normal hours as part of a GP response will often leave the vehicle in which they have been chauffeured to the scene and enter the high-rise block of flats on their own. In such situations, a source of corroboration will be absent in many instances.

Chief Superintendent Murray: Requiring just one source of evidence would be fundamental to the operation of the legislation. I can envisage

many an occasion on which, if corroboration were required, it would not be available. The outcome of the bill would be that a judge could apply the credibility test on either the GP or the accused person. We would support a move towards requiring one source of evidence.

The Convener: So if a doctor says that they are a general practitioner who is going to assist in an emergency, and if they are hindered in that act, should that be enough? Would more than that be required?

Assistant Chief Constable Gray: That is often all that we would have to go on, unless we traced other witnesses; that is our job, of course, and we amass what evidence we can. I can see no other way round the situation, but I have no doubt that some of the legal minds might take a different view.

Chief Superintendent Murray: There might be additional circumstantial evidence. The doctor might be carrying a bag, and they might be dressed differently from others in the area. Although it might seem to be a case of somebody simply having to say, "I'm a GP"—

The Convener: That is what I am driving at. I do not have a difficulty on this point if there is some other evidence that indicates that the person is a general practitioner. However, I would be worried if one source of evidence amounted to the person simply saying, "I am a GP", and the witnesses having to testify whether they had thought at the time that that person was a GP. The one source of evidence requirement should perhaps be clearer with regard to what would be needed to test it.

Bill Butler: I will ask the same questions that I asked Mr Keil. Do you expect the bill in its current form, if enacted, to lead to an increase in the number of occasions on which charges are laid by the police against those who have assaulted, attacked or impeded emergency workers? Mr Keil thought that the effect of the bill would be nil. What is your view?

Chief Superintendent Murray: My view is slightly different. I expect that some increase in reporting would occur, for the reasons that we rehearsed earlier, particularly the raising of awareness in certain places of employment, especially within the health service. There would be an onus on employers to ensure that employees had the protection of the legislation.

Bill Butler: Would the direct consequence of an increase in reporting be an increase in the number of instances where charges are laid?

Chief Superintendent Murray: I am thinking back to legislation that has recently been enacted—one example is the legislation on mobile telephones. There has certainly been an increase in the reporting of those offences. As I said, the impact tends to tail off and it is up to the enforcing authorities to prioritise and push on if a piece of legislation is not being used as effectively as it might be. I anticipate that there would be an increase, for the reasons that have been given.

Bill Butler: Does Mr Gray concur?

Assistant Chief Constable Gray: I would to a degree.

I am here to speak on a national basis, but in my force area we have had to enter into agreements with the fire service and the ambulance service in relation to incidents where they feel that they are under threat. That has led to a much more focused response from us to incidents in which fire service and ambulance staff come under attack. There has been, as a result of that strategy, an increase in the number of reports. If the bill is successful in achieving its aim I hope that over time the number of incidents will drop off.

Bill Butler: I will turn to wider measures to protect emergency workers, such as public education, employer awareness, training and so on. What wider measures would you like the Executive and other bodies to implement to improve the protection of the police and other emergency workers?

Assistant Chief Constable Gray: Doug Keil mentioned in his evidence the introduction of personal protective equipment since 1993—around the time of the murder of PC Lewis Fulton—and described how the Scottish police service has progressed significantly with the provision of equipment and training.

Perhaps there is a requirement for greater awareness of what people can do in an emergency scenario through the use of open-hand or conflict communication, when they are confronted with people who wish to do them harm, to take the heat out of the situation before it develops into an assault. Perhaps there is potential for such a training opportunity to be afforded within other emergency services. I do not know what the cost implications of that would be, but like any training initiative it would have some costs. There is already significant experience of such training within the police service and we would be happy to share that with any local organisation.

Chief Superintendent Murray: I do not disagree with that at all. I have no doubt that issuing protective equipment—quite advanced protective equipment in comparison to what officers had previously—including CS spray, has given officers more of a menu of options to deal with individuals, keep them at arm's length or incapacitate them. I am not suggesting that other emergency workers should be issued with CS

spray, but the point is that if employers look at the whole package in the context of health and safety that can only provide benefit.

The Convener: I ask you to elaborate on the view expressed by ACPOS in its submission. It states:

"the offence of assaulting, obstructing or hindering an emergency worker, which includes a constable and a member of a Fire and Rescue Service ... would result in direct conflict between the proposed legislation and the Police (Scotland) Act 1967 and the Fire Services Act 1947."

ACPOS suggests that there could be some "ambiguity" in determining

"the circumstances under which the legislation will require to be enforced."

Assistant Chief Constable Gray: I think that I touched on that earlier, in as much as there is already legislation that provides for the protection of police officers and fire officers in their day-to-day duties. The issue is, at what point is there an emergency situation in which the new legislation could be used to arrest without warrant, if the circumstances required it? When is the line crossed between day-to-day duties and an emergency situation?

The Convener: So it is not uncommon for the police to assist because an emergency worker is being obstructed or assaulted. In such cases, the charge would be libelled in relation to the assault against the police and the emergency worker, but in the case of the police it could be libelled under the 1967 act or the bill.

Assistant Chief Constable Gray: Yes. The charge might be libelled for the emergency worker under the bill, but it is not necessarily an emergency situation for the police, because it would be part of their day-to-day duties. We are looking at the large arena of the emergency situation with a multi-agency response to save life and protect property, as opposed to the day-to-day duties of a constable.

The Convener: So the police may end up having less protection in the same circumstances, because there are higher penalties in the bill for assaulting an emergency worker who is carrying out their emergency duties than there are in the 1967 act for assaulting a police officer who is performing their day-to-day duties in protecting that emergency worker.

Assistant Chief Constable Gray: That goes back to the amendment that Mr Maxwell talked about earlier.

The Convener: Thank you both for your evidence, which has been helpful and clear.

Civil Partnership Bill

12:12

The Convener: For item 4, on the Civil Partnership Bill, which is UK legislation, I refer members to the note prepared by the clerk on the written representations that have been received. I ask members to note that we did not put out a call for evidence, but we have received correspondence, which I took the view that members should see. However, I make it absolutely clear that we did not solicit any representations. Members will have a chance to see what those who have written to us had to say.

Further, petition PE737 has been lodged by Stephen Harte, on behalf of Holy Trinity Metropolitan Community Church. I thought that it would be appropriate to take the petition now, so that members could consider it in the context of the report on the Civil Partnership Bill. Members will be aware that normally we group petitions and take them every quarter, but PE737 would be out of sync if we took it at the appropriate point. Members may wish to raise particular issues in relation to the petition, but it would be appropriate to consider it in the context of the Sewel motion and the Civil Partnership Bill. I invite members to comment.

Margaret Smith: I welcome the fact that you have allowed the petition to be examined now, convener. Given the evidence that we have taken and the discussion that we have had as a committee, clause 89(2) clearly is contentious—in fact, it is probably the most contentious of the devolved provisions in the bill.

I have a great deal of sympathy with the views that are expressed in the petition. There is a wider issue, which was touched on by Michael Matheson in questioning the Deputy Minister for Justice, which is that there has not been widespread consultation with the churches on the issue. My understanding is that in the meetings that the Executive had with faith groups prior to the publication of the bill it did not consult on the issue. There has been no consultation with anybody since the bill was published, but as the provision is on the face of the bill it has become more of an issue. My own point of view is well known: I am quite supportive of the view that is expressed in the petition and do not think that the provision should be in the bill. I would prefer to see it in regulations and for it to be down to individual churches, local authorities, registrars and the individuals concerned to decide, rather than for the state to prescribe on such religious matters.

12:15

We can take the petition into account at this stage, but possibly only in a limited way. Yes, this church has exercised its right to petition the Parliament on the matter; however, I would prefer us to take clause 89(2) out of the bill and deal with the matter in regulations in exactly the same way as civil marriage is decided upon. The Executive has told us that the policy intention is for the provisions to be the same as those for civil marriage. If we dealt with the matter through regulations or a statutory instrument, that would allow time for the Executive to consult the churches properly, in a more general sense, on this issue. It is not just the Holy Trinity Metropolitan Community Church that is interested in the matter, but we do not know what the other churches feel about it.

I would prefer the matter to be dealt with in regulations for a number of reasons, one of which is that that would allow the period up to the enactment of the bill for the Executive to consult with Scotland's churches on the matter. It would also allow some parliamentary scrutiny if the matter were dealt with through a Scottish statutory instrument. At this stage, all that we have is the view of one church. Although I am sympathetic to that, it is the view of only one church. It is unfortunate that we are in this situation because the matter is dealt with in the bill, which I believe is far too prescriptive and ties us down too much.

The Convener: We have the views of a church, Christian Action Research and Education for Scotland, and an individual.

Margaret Smith: Some of the letters that we have received have followed press interest in the petition that was submitted by the Holy Trinity Metropolitan Community Church. However, my understanding is that, although the church has received correspondence from other churches that support its view, it has also received letters from churches that say that they have not considered the issue and cannot say what their views are.

The Convener: Let me make the position clear: the committee cannot make up for the fact that there has been no consultation on this point. You have had correspondence on the issue, which the committee should see. I would not want a petition to have any more weight than correspondence on the matter, for the very reason that you have given; however, the alternative was not to put anything on the agenda. Like you, I am concerned that we are not hearing from people who have different views because there has been no invitation. That is the situation with which we are faced.

Margaret Smith: That is exactly what I am saying. I do not think that we should not have regard to the letters that we have received or to the petition. I am not saying that the petition is any more important than the letters. What we have is only a snapshot of opinion from those people who have chosen to express their views. There is a need for wider consultation, and to allow that we must change the bill. There has been no consultation on the matter in advance of the publication of the bill or, indeed, since its publication.

The Convener: Okay. We understand. I interrupted you only because you were going on to talk about representations that the Holy Trinity Metropolitan Community Church has received. That is a matter for that church, not for us.

Michael Matheson: The committee can deal with this only in the light of where we are now in the consideration of the matter. We have taken evidence on the Civil Partnership Bill and we have a draft report. We must decide what will be contained in the final report. On that basis, I do not believe that we have any choice but to go for option b in paragraph 8, which is to note the petition, unless we decide to carry out a full inquiry and call other people to give evidence. I do not see what the petition adds to the evidence that we have already received on the matter—that is my view, given the stage that the committee has reached. If the committee decides to consider the petition in more detail, that will involve opening the matter up and inviting other organisations to submit evidence. That evidence will have to be considered, and that will delay our report. Given what is happening in the House of Lords, I do not think that we can afford to do that. When we write to the petitioner, it might be worth while advising him that he should direct his resources to the House of Lords, where consideration of the bill is taking place. It is, in effect, too late for us to consider the matter in greater depth.

The Convener: Are you arguing that we should close the petition, but that the point that it makes should be included in our report?

Michael Matheson: The issue is already rehearsed in the report. The petition should be closed and we should advise the petitioner that, because of the stage that we are at in considering the matter, he might wish to focus resources on the House of Lords, where the bill is being considered in detail.

Mr Maxwell: I agree with Michael Matheson—we should note the petition and close it. We should treat it in the same way as the correspondence that we received from individuals and from CARE, and we should go on to deal with the draft report. Michael Matheson is quite right—we cannot open up the matter from scratch as there is not enough time. Personally, I have sympathy with the petitioner's argument, but that

is neither here nor there. We should note the petition, write to the petitioner and move on to the draft report.

The Convener: Is anyone otherwise minded?

Members: No.

The Convener: We will take agenda item 5, which is also on the Civil Partnership Bill, in private. We will put together our draft report on the bill but, as members know, there is a tight timescale. I think that our decision on evidence was the right one. Due to the public holiday, the report has to be sent for publishing tomorrow, which means that a revised draft will be sent to members on Wednesday evening for comment by 12 noon on Thursday. We made a good start last time, so we will see how we get on today.

12:22

Meeting suspended until 12:27 and thereafter continued in private until 14:15.

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ISBN 0 338 000003 ISSN 1467-0178