

# **JUSTICE 1 COMMITTEE**

Wednesday 9 June 2004  
(*Morning*)

Session 2

£5.00

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## JUSTICE 1 COMMITTEE

23<sup>rd</sup> 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:

David Cassidy (Scottish Executive Legal and Parliamentary Services)

Alan Golightly (Prison Officers Association Scotland)

Andy Hogg (Scottish Prison Service)

Mr Andy Kerr (Minister for Finance and Public Services)

Colin Mackenzie (Association of Directors of Social Work)

Gery McLaughlin (Scottish Executive Justice Department)

David Melrose (Prison Officers Association Scotland)

James Pinkerton (Association of Directors of Social Work)

John Speed (Prison Officers Association Scotland)

Ruth Stark (British Association of Social Workers)

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Douglas Thornton

### LOCATION

The Hub



# Scottish Parliament

## Justice 1 Committee

Wednesday 9 June 2004

(Morning)

[THE CONVENER opened the meeting at 10:11]

## Emergency Workers (Scotland) Bill: Stage 1

**The Convener (Pauline McNeill):** Good morning and welcome to the 23<sup>rd</sup> meeting in 2004 of the Justice 1 Committee. As usual, members should check that they have switched off their mobile phones. That would be helpful.

Agenda item 1 is stage 1 consideration of the Emergency Workers (Scotland) Bill. I refer members to the written submissions that have been received from the organisations that will give evidence to the committee today. Hard copies of the submissions have been provided to members.

I welcome our first panel. James Pinkerton is a member of the Association of Directors of Social Work and manager of the emergency social work service at the City of Edinburgh Council; Colin Mackenzie is vice-president of the Association of Directors of Social Work and director of housing and social work at Aberdeenshire Council; and Ruth Stark is a professional officer for the British Association of Social Workers. I thank all the witnesses for coming to the meeting. We will proceed straight to questions.

**Michael Matheson (Central Scotland) (SNP):** I have had a look at the written evidence that has been provided to the committee and it would be fair to say that you are somewhat disappointed that social workers and social care staff have not been included in the definition of emergency workers in the bill. For the committee's benefit, will you outline the type of risks and problems that social workers and social care staff encounter in carrying out their duties that would provide reasons for their being classed as emergency workers?

**Colin Mackenzie (Association of Directors of Social Work):** I thank the committee for giving us the opportunity to present evidence.

We recognise that there is a much wider argument relating to the whole social work and social care work force, but today, we will talk—as our submission does—about those people who respond to emergency situations and, in particular, staff who deal with mental health, child protection

and a range of what we might call community care responses, all of which are characterised by crisis and are emergency situations for the individuals concerned.

We recognise that, in its current form, the bill will obviously give protection to people working in civil situations because we would be working alongside people in organisations that are already named in the bill. However, staff who are involved in child protection situations, for example, are often in highly volatile positions in which there is no control over their environment. Therefore, they are exposed to considerable risk of assault and injury. If we consider staff who work in mental health situations in which they take compulsory care and treatment measures, it will be clear that they are one of the sets of staff who are most at risk. In tragic but well-recorded cases, members of staff have been killed in such situations and we therefore have particular and well-demonstrated concerns about them. In community care situations, our staff deal with substance misuse crises. People may be fuelled by alcohol or drugs and their reasoning is therefore not terribly clear. Our staff are subject to severe risks in such situations.

That is the general picture. My colleagues may wish to add to what I have said.

10:15

**Ruth Stark (British Association of Social Workers):** I would like to add something, if I may. Perhaps I could give a couple of examples of child protection work in which social workers have been assaulted when taking children into care.

Some of you may remember that when Irene McGugan was an MSP she spoke in one of the Parliament's first debates about violence towards social workers. She gave an example of how she had been out on a child protection case and had faced somebody who had a shotgun. A number of your colleagues were very disturbed by that. I have had a similar experience, in which I was held at knifepoint for a couple of hours until the police were able to rescue me. In that case, alcohol was at the root of the difficulties.

Such situations can happen in people's homes; they can happen when we are working in isolated situations; they can happen in a rural or an urban environment; and they can happen at any time, to any of our colleagues. An article about the issue appeared in the *Sunday Herald* this week, and two colleagues phoned up yesterday to say that it was good to see the issue exposed as one that we have to face. They said that they too had been held at knifepoint. We sometimes find ourselves in very real danger. Such situations can happen

anywhere, and it is difficult to predict when we might find ourselves in one.

**James Pinkerton (Association of Directors of Social Work):** Social workers have clear statutory responsibilities, which have to be delivered 24/7. That work is often carried out jointly with the police and the health services, but not all the time. Sometimes social workers go out into the community singly or in pairs and make assessments in difficult situations. As Ruth Stark says, they are sometimes threatened or assaulted in the course of their duties. It seems to us that the statutory responsibilities of social workers while on duty mean that they should come under the umbrella of the definition of an emergency worker.

**Michael Matheson:** Do you have any statistical data detailing the types of difficulties, such as assaults, that social workers and social care staff encounter in which they are obstructed in carrying out their duties?

**Ruth Stark:** A considerable amount of research has been done. There have been campaigns and information was collected by the professional journal *Community Care*. That prompted us to start considering the issue about five years ago. Professor Brian Littlechild at the University of Hertfordshire has carried out research into the stalking of social workers in child protection cases. He compared the situation to that of social workers in Finland, who experience difficulties that are similar to ours. This is not a peculiarly British phenomenon; it happens throughout the world where social workers are working in child protection. The Health and Safety Executive has carried out significant research into the problem of violence against social workers and social care staff. We can provide the committee with that evidence, if you like.

**Michael Matheson:** From your experience, would you say that there is an upward trend?

**Colin Mackenzie:** In general, violence towards public service staff seems to be on the increase. The HSE compiles information on serious assaults, where the victim has been absent from work for three days or more. Information on those more serious assaults should be available from the HSE. The Association of Directors of Social Work does not compile that information at present and, due to resource implications, does not have any plans to do so. In the main, local authorities will compile information on accidents, incidents and serious assaults on members of staff, but I am not aware of any national method of collating that information at present.

**James Pinkerton:** I could produce information from the City of Edinburgh Council, although not today. We have recorded information on violent incidents against staff for a number of years, so

we could produce a statistical report for the committee if that would be helpful.

**Michael Matheson:** I think that members would find that helpful, as it would provide them with some background details.

In the witnesses' experience, are violent incidents against social work staff more likely to occur in community settings than in departments? Are such incidents more likely when someone is on a home visit than when they are dealing with an appointment in their office? The risk factor is an important issue. In my view, an individual worker who goes into someone's home on a duty visit is at greater risk than someone who is working in the main office. Do such problems occur in greater numbers in community settings?

**Ruth Stark:** I do not think so; I do not think that we can predict where they will come up. I have been at children's hearings at which parents have become extremely violent and tried to attack me or other social workers. Last week, I heard about a case conference that was held in an area team's office in a social work department, at which the senior social worker was thumped by a parent who was unhappy about the outcome of the meeting. It would not be fair to say that such incidents are more common in the community, in offices or elsewhere—they can happen anywhere.

**Michael Matheson:** I am conscious that they can happen anywhere, and I am not trying to predict where they will occur. I asked whether, from your experience, they are more likely to occur in the community than in an office setting.

**Colin Mackenzie:** Assaults occur most frequently in establishments, usually in day services, but sometimes in residential care situations. They occur particularly in children's homes, but also in places where we care for people with varying degrees of mental illness and mental ill-health. The Association of Directors of Social Work wishes to make a distinction between things that we take major steps to try to prevent and reduce and the more unpredictable things that can arise when our staff go out to situations. In the case of the latter, staff might not know what situation they are going into; such situations might be in the evening or at night, but they might be during the day. Our staff go into situations in which the risk assessment procedures that we put in place are variable. For example, in rural situations staff are a long way from any form of help, and the same difficulties can occur in urban areas. It is those staff about whom we are most concerned, and we would like them to have the added protection that the bill affords.

**The Convener:** You opened by saying that you have members who respond to emergency situations, but you went on to talk about staff who

have been in vulnerable situations in the community and who have been assaulted. The bill covers staff who respond to emergency circumstances. Do you accept that there are two distinct issues?

**Colin Mackenzie:** Yes.

**The Convener:** You want to include social workers who you believe to be similar to people who are described in the bill and who respond to emergency circumstances.

**Colin Mackenzie:** Indeed—that is exactly the addition that we seek. We would not limit the addition to social workers, because our outreach staff and social care staff sometimes go into the situations that I mentioned. The definition of social workers that is given by the Scottish Social Services Council might not cover all the staff who might be in vulnerable situations. Social workers are liable for registration by 2005, but we suggest the inclusion of staff who are liable for registration in the future, such as outreach workers—perhaps more work is needed to identify those workers. It is not just social workers for whom we seek added protection.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I want to go over a couple of points that Mr Mackenzie made. A moment ago, you said that you wanted the added protection that the bill will provide for the people to whom you referred. However, earlier you said that the reasoning of people involved in assaults and attacks on social workers and social care staff is not clear, and you mentioned drugs, alcohol and emotional disturbance. Do you think that the bill would deter such people from assaulting and attacking staff?

**Colin Mackenzie:** A degree of caution is required when discussing assaults by people who may be suffering from impairment to their mental health or other faculties. Sometimes staff are attacked not by those people, but by people associated with them, such as family members, relatives and friends. We would not want people whose judgment is impaired to be dealt with unfairly by the legislation. However, if the main policy driver behind the bill is one of deterrence and changing public attitudes and if the bill is coupled with other forms of deterrence, such as public awareness campaigns and education of children in schools, we will support it. That is why we think the bill is important. In many ways, it would be inequitable for our staff not to have protection similar to that enjoyed by others alongside whom they work.

**Mr Maxwell:** Do you believe that if the bill were passed and covered social workers, the people whom we are discussing—even those who are not involved with drugs or alcohol or who do not have a mental disability or impairment—would be

deterred from attacking your staff by the fact that the bill was on the statute book?

**Colin Mackenzie:** I think that they would.

**Mr Maxwell:** Really?

**Colin Mackenzie:** Yes.

**Mr Maxwell:** That is interesting.

**Ruth Stark:** There is another argument that members of the British Association of Social Workers who have experienced assaults would make. At the moment, such offences are classed as normal assaults. It tends to be social workers' experience that when cases come to court there is a degree of plea bargaining. Because the assault has been directed at a care worker or social worker, for some reason the court deals with it less seriously. I do not think that the process is intended to denigrate what we do, but it has the effect of doing so. Social workers feel that they are not seen in the same light as others who experience assaults. If the Parliament said that attacking a social worker was not an acceptable form of behaviour, perhaps the courts would approach such assaults differently.

**Mr Maxwell:** I am interested in this point. In its written evidence, the British Association of Social Workers questioned

"what 'added value' would come from this type of legislation."

Do you think that the existing criminal law provides social workers with adequate protection against being assaulted or impeded? Do you think that the problem is not the law, but the way in which it is or, as in the example that you have just given, is not enforced?

**Ruth Stark:** That is a dilemma for us. At the end of the day, if someone goes through the court system, we will probably have to work with them afterwards, in the context either of a probation order or of post-imprisonment work. We are saying that there is a problem that must be dealt with, but we must also continue to work with people who carry out assaults, probably for some years. We do not want to put up additional barriers to that work, but we want recognition of the fact that it is not appropriate for people to assault social workers.

**Mr Maxwell:** Do you agree that the existing common law on breach of the peace and assault provides adequate protection and that the problem is that guidance to the Procurator Fiscal Service and the courts does not give sufficient weight to the issues that we are discussing? Do you agree that we require the Lord Advocate to provide strong guidance to those organisations to ensure that people who carry out assaults on social

workers are prosecuted in the court system to the full extent of the law?

10:30

**Colin Mackenzie:** The Lord Advocate gave that guidance some time ago, and we welcomed that. Under the common law, it is open to interpretation whether an offence is a breach of the peace or an assault, and that affects the way in which a case is dealt with as it moves through the criminal justice system. The bill affords added protection through the evidence that is required to secure a charge in the first place, and that is an important aspect of the bill. It is a welcome addition that will clarify the law.

**Mr Maxwell:** Can you expand on what added protection you believe that the bill provides?

**Colin Mackenzie:** If we are seriously trying to protect public service workers—in our case, social workers—we need to be clear, as Ruth Stark has said, about the Parliament's statement of the value of those staff and to make that clear in our communities. When staff have been assaulted or threatened with assault and therefore diverted from the important pieces of work that they have been trying to carry out, the law has allowed for a whole range of discretion. The bill will tighten that up and make the situation clearer for those who are involved.

**Mr Maxwell:** Mr Pinkerton, do you have any views on that?

**James Pinkerton:** The remarks that you made about the common law could potentially be applied to the workers who will be encompassed by the new legislation. If that is the case, why do we need the new legislation?

**Mr Maxwell:** That is the question that I am asking.

**James Pinkerton:** You need to bring social workers into the definition of emergency workers alongside health workers, doctors and nurses. The alternative is to go down the line that you are advocating by making the existing guidance much more stringent and following it up much more assiduously.

**Mr Maxwell:** You mentioned a couple of times the need to send out the message that it is unacceptable in our society for social workers to be attacked when they are going about their normal duties and helping to protect people—often children—especially in emergency circumstances. We all want to send out that message; however, do you believe that it is appropriate that we use legislation to send out a message? Could we not just send out the message without putting more laws on the statute book?

**Colin Mackenzie:** The message has already been given regarding the protection of public service workers. The bill focuses particularly on those in emergency situations, and that will help. It gives a clear signal and I think that it is appropriate. However, we would not want a lot of people to be drawn into the criminal justice system unnecessarily. We are talking about serious incidents rather than low-level incidents. That is key.

**Margaret Mitchell (Central Scotland) (Con):** Inevitably, there is overlap in everything, but I will try to pin you down a little bit on who you think should be included in the definition. You said that you would like the definition to be extended to include social workers in crisis situations, such as mental health workers and those who are involved in child protection and community care. Would you prefer all social workers to be included in the definition?

**Colin Mackenzie:** There are two parts to the definition: the classification of an emergency worker and the classification of an emergency situation. Those two things need to come together. That is where the distinction becomes important. To have too narrow a definition of social work and social care staff in the bill would cause difficulties, as a range of our staff go into and deal with emergency situations. The definition of an emergency worker has to be linked to the definition of an emergency situation. You might want to return to that point in later discussion.

**Margaret Mitchell:** So, you do not want blanket coverage for all social workers. You would confine the definition to those in emergency situations. That is helpful.

In the witnesses' opinion, will social workers be given greater protection under the statutory offences that the bill will provide? Perhaps your silence says it all.

**Ruth Stark:** Guidance has been given to the courts about the need to take things more seriously, but we have seen no real results from that. We will need to see whether the bill works.

**James Pinkerton:** As Colin Mackenzie said, if the bill is linked with a publicity campaign to heighten awareness of the issue, that will help to deter attacks on public sector workers.

**Colin Mackenzie:** I agree. A very clear statement will help to influence and change people's behaviours.

**Margaret Mitchell:** That brings me to an issue that we have already explored a little: whether we need legislation to bring about that change. Plea bargaining seems to be part of the problem with the implementation of existing law. If a clear message was given that plea bargaining was

frowned upon and that such common-law offences should be dealt with severely, would that be sufficient if it was accompanied by a high-profile campaign to raise awareness about the work of emergency workers? Could added protection be provided without the need for legislation?

**Colin Mackenzie:** We would certainly welcome such a campaign. We have seen the beginnings of a much wider approach to using media campaigns to change public attitudes on the whole antisocial behaviour agenda, but perhaps the jury is still out on that.

One problem is whether we want more pieces of legislation on the statute book that might simply draw more people into the criminal justice system. Nevertheless, if the bill's intention is to send a clear message that is reinforced by judicial measures, we will support it. I think that the bill can make a difference.

**Ruth Stark:** Social workers can be fairly self-effacing about such assaults. They want to see the minimum amount of fuss and the minimum amount of legislation. I suspect that that is perhaps the background to our submission. However, objectively speaking, I think that the bill provides the Parliament with an opportunity to show social workers that they are valued and that violence against them is taken seriously. I suspect that, on its own, such a message would be helpful to social workers and social care staff who are involved in emergency situations.

**Margaret Mitchell:** To what extent will social workers be given added protection under the category of assisting an emergency worker?

**Colin Mackenzie:** Our staff will be covered by that provision when they are in situations such as civil disasters and civil crises. We welcome that, but we seek a similar provision to protect them when they are working by themselves in such situations rather than alongside emergency workers.

**Margaret Mitchell:** Do you think that the bill already provides protection for civil situations?

**Colin Mackenzie:** No. As I understand it, the bill provides protection to those who assist the police, the fire services and so on to carry out their role. Our staff will be covered by the bill when they assist emergency workers in local disasters such as a flood or a fire in residential establishments, but I think that they will be covered only when they work alongside other emergency services.

**Margaret Mitchell:** I understand that. I just wanted to clarify that you are quite happy that the bill would provide you with extra protection when you assist an emergency worker who is dealing with an emergency. Are you happy with that?

**Colin Mackenzie:** Yes.

**The Convener:** Ruth, you said that the Parliament should send out a message to social workers that they are valued. I do not think that anyone would disagree with that, but I want to be clear about what you meant. Would we send out that message if we amended the bill to include social workers in the way that Colin Mackenzie described and defined them as emergency workers in emergency circumstances, or did you mean something different?

**Ruth Stark:** Such an amendment would do a lot to improve morale in social work, which is pretty low, as you know. It would send out a strong message to social workers that they are supported in what they do on behalf of society. At times they do a very difficult job.

**The Convener:** Would that be enough?

**Ruth Stark:** I would like a lot more to be done.

**The Convener:** I have concerns about legislating simply to boost morale in a profession. I would have thought that you would want the legislation to be effective.

**Ruth Stark:** The legislation would be effective when a case reached the procurator fiscal's desk and the fiscal said, "Oh, this is an assault against a social worker. We must take it seriously." Of course the bill would make a huge difference.

**Colin Mackenzie:** We are mainly talking about assaults, but the bill would cover other situations, such as those in which workers are impeded. As drafted, the bill will create a strange situation in which three services that respond to the same incident will be dealt with differently by the courts system. That does not make a lot of sense, which is why the bill must afford the same protection to all concerned.

**Margaret Smith (Edinburgh West) (LD):** I think that the questions that I intended to ask have already been covered by colleagues, so I come back to the points that Ruth Stark made. We have considered the issue in the past—I think that my first members' business debate was on the protection of social workers. What is the normal practice when social workers enter people's homes for child protection purposes or to deal with an emergency referral under the Mental Health (Care and Treatment) (Scotland) Act 2003? Is it normal practice for a social worker to go in on their own or would two social workers go in? Are they normally accompanied by a police officer or is it quite normal for a social worker to go alone into a situation in which they have to remove a child from a family?

**Ruth Stark:** Normally two social workers go in. It is unusual for the police to be present. Sometimes a social worker goes in for a normal visit but discovers, for example, that they need to

take out a child protection order. In such circumstances they might be alone. They might be part of a team but unable to find someone to accompany them on a visit, so they might go alone to ensure that the child is all right.

**Margaret Smith:** Would it be right to assume that social workers who are fulfilling a child protection role should be covered by the bill on the basis that they are assisting a police officer, because more often than not a police officer would not be involved in such situations?

**Ruth Stark:** Absolutely.

**James Pinkerton:** Social workers do not always work in pairs and, even when they do, they are often in risky situations, particularly when they are out in the community dealing with the kinds of circumstances that you describe. Two social workers who were conducting a child protection investigation might find that the situation changed and became quite hostile. It might be difficult for them to extricate themselves from such a situation.

**Margaret Smith:** Colin Mackenzie said that risk assessment varies. I presume that you would say that further work can be done on risk assessment in such situations.

10:45

**Colin Mackenzie:** It is good practice to undertake a risk assessment before responding to such situations, but that varies according to the information that is available, which is different in each situation. If a clear element of risk and danger is present when our staff go out, they are accompanied by a colleague whenever possible. However, as the committee has heard, that is not always practical and sometimes something just happens. If we ask the police to assist us, they usually wait outside in case a breach of the peace occurs. That brings us back to the common-law issue. It is not so much that we assist the police as that they might be on standby if we require assistance. The two situations are different.

**Bill Butler (Glasgow Annie'sland) (Lab):** Good morning. What steps would you like the Executive and other bodies such as employers to take on wider initiatives to improve the protection of emergency workers and other workers? I am thinking of public education, employer awareness raising and training.

**Ruth Stark:** Practical solutions are possible. For example, Fife Council staff and BASW members are entitled to use the guardian scheme, which allows people to summon help by pressing a button on a mobile phone if they enter an emergency situation. That must be paid for, but it is a good scheme to provide security if staff can

assess that they might be entering a risky situation. That facility allows help to be summoned. It is not available to all social workers in Scotland, but it should be. That is one practical solution that I can think of immediately.

**Bill Butler:** How effective is that system and how often does it have to be employed?

**Ruth Stark:** The system is relatively new, so we are still researching whether it is effective. However, it reassures social workers before they go into a difficult situation that help will be on hand. Somebody can take a kitchen knife out of a drawer and put it into someone pretty fast. The scheme will not alter such situations, but usually a lead-up to something happening occurs, if a social worker is lucky.

An education programme is also needed to inform people that we are public servants who are doing a job out there to help vulnerable people in the community, including children and people with mental illness. An education programme that is a bit like some health programmes could be undertaken.

**Bill Butler:** Do other panel members concur?

**Colin Mackenzie:** I will take the measures in the order in which you described them. The Executive needs to continue to develop the initiatives that it is undertaking to reduce antisocial behaviour in our communities. As we have said, the bill is a small part of that.

Employers are adopting a range of measures. I share the commitment to developing electronic schemes that assist workers. As Ruth Stark said, such schemes help to reassure the worker, but they are not necessarily of great assistance when someone is in a crisis and their nearest colleague is 25 or 50 miles away. Nevertheless, in some situations, such schemes can help. Several councils are developing such systems, which also help if staff are detained against their will, rather than subjected to violence. Some of those systems are electronic and some are manual.

Education of children in schools will certainly help, as will education of the public at large. I understand the concerns about the effect of media campaigns, but those campaigns help to convey a message. Somewhere down the line, the media's treatment of incidents and the fact that the press might vilify people who are undertaking their statutory work would be worthy of attention from us all, because it does not help to have the media portray social workers as snatching children away from parents or detaining people against their will. We sometimes see such descriptions in the press.

**Mr Maxwell:** What is your view of the general philosophy behind the bill? We have talked about providing added protection for some workers and

you are here to talk about social workers and social care staff in particular. Is it reasonable to suggest that some public service workers should be given added protection while others who are not given that added protection could also face assault in going about their normal duties?

**Colin Mackenzie:** The distinction is the link between the emergency worker and the emergency situation—a situation that is more likely to be unpredictable than other situations. There is a much wider issue, which is the protection of public service workers. That perhaps needs attention, but it is not the main focus of the bill.

**Ruth Stark:** The other issue is the nature of what we are doing when what can be classed as an emergency situation happens—it is generally about affecting somebody's liberty in the community, which is a big distinction between our role and that of many of our colleagues in the public service.

**The Convener:** That was the very point on which I was going to finish. It is important to ascertain where exactly you think the emergency circumstances in your work arise. You mentioned child protection orders, but it is not immediately obvious to me, because I do not have a social work background, in what way those relate to emergency circumstances. Would you confine the term “emergency circumstances” to cases where a child has to be removed from the home and the situation is likely to be more volatile? Will you expand on what you regard as emergency circumstances?

**Ruth Stark:** A protection order.

**The Convener:** Any child protection order?

**Ruth Stark:** Yes.

**James Pinkerton:** One of the recommendations in the Laming inquiry into the case in London—those recommendations have been picked up by the Scottish Executive in its review of child protection—is that any child that is suspected of having been abused should be seen within 24 hours of being referred. That is part of an emergency response. It might well be that, after we have seen the child, we need to take decisions about whether to go for a child protection order. If that recommendation is built into guidance, social work departments will have to see a child within 24 hours, sometimes with very little information about the case. That is potentially a very risky situation to go into. Social workers will not automatically ask the police to accompany them or to stand outside when they are teasing out a situation. However, there is a clear implication that that change will be required of social work departments.

Under the Mental Health (Care and Treatment) (Scotland) Act 2003, emergency and short-term detentions have to be carried out within a very short timeframe—indeed, emergency detentions have to be carried out within a matter of minutes. We have to be out of the office and saying that we will provide an emergency response to assist health colleagues in making an emergency assessment.

**The Convener:** That is what I really wanted to know. If we take child protection orders as a starting point, you are saying that there is a timeframe involved. That is important. The social worker has to act in a timeframe.

**Colin Mackenzie:** Yes.

**The Convener:** It is similar, I suppose, to the timeframe of a 999 call. That is obvious. You are saying that there is a similar timeframe attached to—

**James Pinkerton:** It is not quite the same timeframe, but there will be local agreements on response times.

**The Convener:** You must act.

**James Pinkerton:** Yes.

**The Convener:** And you do not know what situation you are going into. The decision that a social worker might have to take, which is to remove a child or to take some action, puts that social worker in a volatile situation. Is that the heart of the matter?

**James Pinkerton:** Yes. The situation is not dissimilar to those in which other emergency workers, as defined in the bill, might find themselves.

**Ruth Stark:** It might be that a social worker has been monitoring a situation for three months and then they suddenly think, “Gosh, this is the point where we really are in an at-risk situation.” It is difficult to give a timescale for some situations. A situation might suddenly deteriorate after a three-month monitoring period; it would not just be within 24 hours of a new referral coming in.

**Colin Mackenzie:** As the convener said, the important issue is that something has to be done in a certain timeframe. That is true of child protection and mental health work.

**The Convener:** What I am driving at is that, if we expanded the definition of emergency worker to cover social workers, we would have to consider the definition of emergency circumstances. At present, they are defined as circumstances that are

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

That is the test. That is why I asked about the circumstances that would be relevant if social workers were included in the definition of emergency worker.

**Colin Mackenzie:** Serious injury would be relevant for child protection and mental health work, given that that is a ground on which a child can be removed or a person can be taken to a hospital or detained in a mental health facility. The definition of emergency circumstances also includes serious illness. However, that is too narrow; it would be better if the definition was widened to include serious health risk. Illness and health risk are not the same; health risk is a wider term and would clearly encompass mental health and substance misuse issues.

**The Convener:** As there are no more questions, I thank the witnesses for their oral evidence and written submission, which have been helpful.

**Colin Mackenzie:** Before we finish, I would like to make a point that has not arisen. The financial memorandum envisages that no additional expenditure will be required; indeed, it states that there might be a reduction in expenditure. The ADSW does not believe that. As soon as new legislation is created, it will be used and people will appear before the courts. In some cases, that will require social inquiry reports and it may well result in community sentences, rather than prison sentences—we hope that that will be the case, but even so it will create more work. If children are referred to the children's hearings system, which is possible under the bill, there will also be additional work for local authorities to create children's hearings reports and to supervise children in the community. The bill is not a nil-cost proposal.

**The Convener:** The committee notes what you say.

Our second set of witnesses is from the Prison Officers Association Scotland and the Scottish Prison Service trade union side. David Melrose is the chair of the Prison Officers Association Scotland and John Speed and Alan Golightly are national officers. Andy Hogg is the secretary of the Scottish Prison Service trade union side.

**Michael Matheson:** Good morning, gentlemen. It would be helpful for the committee if you gave us illustrations of the difficulties that prison officers experience in carrying out their duties—for example, when prisoners resist, obstruct or assault officers.

**David Melrose (Prison Officers Association Scotland):** The Scottish Prison Service and prison officers are probably unique simply because of our clientele and the nature of our job. We all realise that prisoners are non-conformists, purely because they have been committed to prison and

have broken the laws of the land. Prison officers are vulnerable in carrying out their duties.

Not all prisoners are violent—some are good people who have unfortunately strayed from the straight and narrow for whatever reason. However, we must remember that some of the most violent people in the country are under our care in the establishments that we work in. Day to day, for whatever reason, there may be conflict between an officer who is carrying out his duties and a prisoner who is upset about family contact or has other grievances, for example.

The only person whom the prisoner sees and can respond to is the prison officer and unfortunately those responses can be violent. There are often outbreaks of violence and assaults against prison officers, some of which are serious and some of which are minor. As far as we are concerned, as workers and as public servants, violence is unacceptable in any workplace and it should not be tolerated.

11:00

**Andy Hogg (Scottish Prison Service):** Some events that occur in the prison environment involve not violence or assault but obstruction—for example, a prisoner might prevent an officer from accessing an alarm system or a radio to call for additional measures to be put in place in the event of an emergency. We think that the bill should pick up on such obstruction.

**Michael Matheson:** Are staff more likely to experience a threat when they respond to an emergency situation than when they deal with normal, routine duties?

**David Melrose:** Normal, routine duties can easily lead to an emergency situation. To give a hypothetical situation, if a prisoner strikes out at an officer during a dinner or lunch time and other prisoners respond in a violent way, that can quickly lead to a concerted effort of violence from a group of prisoners. I would class that as a serious emergency situation.

**Michael Matheson:** Would you say that prison officers are more likely to be subject to a threat when they respond to an emergency situation?

**David Melrose:** The fact of the matter is that, within the confines of a prison, violence is part of emergency situations. Notwithstanding the fact that staff are trained in various tactics to protect themselves, they are open to regular violent attacks.

**Andy Hogg:** When an emergency situation is up and running in a prison, staff come under considerable pressure from inmates in the surrounding area. If there is concerted indiscipline, such as the loss of control over a hall, a number of

inmates will be involved and staff will experience a lot of resistance. Prisoners might drop pieces of furniture on staff who are trying to bring the situation under control in riot teams. The measures and procedures that we put in place to bring such situations under control are good; we have no problem with them, as they usually bring the situation to a head fairly quickly. However, there is often a degree of resistance. People might set fires in front of prison officers who are trying to regain control. A number of factors can exacerbate the situation, which will boil over for a considerable time. It is rare for there to be just one incident that goes away; usually, a number of incidents will be attached to a single act.

**Michael Matheson:** In your experience, is the number of threats that prison officers experience on the increase?

**Andy Hogg:** Do you mean the number of serious assaults, according to the key performance indicator?

**Michael Matheson:** I will come to that. I want to know, in general terms, whether staff are subject to more threats than they were in the past.

**David Melrose:** Some prisoners afford very little respect to prison officers and on occasions they do not think that to lift a hand to a prison officer and commit an act of violence is anything out of the ordinary—they think that being assaulted is just part of the prison officer's job. That is why I think that the bill could prove fruitful.

**John Speed (Prison Officers Association Scotland):** There are probably more verbal threats than physical assaults against staff—I do not know what the figures are. There is a lot of frustration among prison officers over the fact that they cannot deal with discipline matters internally—for example, the remission system has been taken away—and a lot of verbal threats to staff are unreported.

**Michael Matheson:** The KPI, to which Andy Hogg referred, suggests that there has been a considerable increase in the number of recorded serious assaults, from an average of about 13 per year in the period 1999-2002 to 29 in 2002-03. Why has there been such a sudden increase? Are more assaults taking place, or has there been a change in recording procedures?

**Andy Hogg:** Probably more assaults are taking place. I do not think that there is a scientific explanation for the increase. The current overcrowding in Scottish prisons is the obvious area for consideration. I think that you mentioned the figures for 1999—

**Michael Matheson:** In 1999-2000, 13 serious assaults were recorded. In the following year, 14 such assaults were recorded and 12 incidents

were recorded in the year after that. However, in 2002-03, the figure rose to 29.

**Andy Hogg:** I was trying to pin down the year so that I could determine what the prison population was at the time. If I recall correctly, there was a point in 1999 at which some prisons started to close, before the prison estates review was carried out and the Justice 1 Committee of the Scottish Parliament became involved in work on prisons. The SPS argued at the time that the prison population had reached a plateau of about 6,000. There are now about 6,500 to 7,000 inmates. Overcrowding raises the temperature in the prison environment, so—anecdotally—we might expect assaults to be more likely. We certainly do not think that that is acceptable.

**David Melrose:** The increase in the number of assaults is not just related to overcrowding. John Speed made it perfectly clear that some of the awards that governors used to be able to make through the orderly room procedures have been taken away, so inmates believe that nothing will happen to them in the orderly room if they commit an act of violence. There is a lack of consideration, shall we say, for staff because inmates know that they will not lose remission, for example, if they assault a member of staff. They know that what was done in the past no longer happens.

**Michael Matheson:** The bill creates three categories in which an offence would be committed. An offence would be committed if a person

“assaults, obstructs or hinders an emergency worker”

who is carrying out their emergency function. The Police (Scotland) Act 1967 provides that an offence is committed if a person “molests” or “resists” a police officer—so there are only two categories. I understand that the decision not to include the word “molests” in the bill was made because the provision in the 1967 act has not really been used. However, I have raised concerns about the omission of the word “resists”, because I would have thought that prison officers might quite often have to deal with a situation in which prisoners resist their actions in the course of their emergency duties. Do you concur with that?

**David Melrose:** I certainly do. Prisoners can resist in many different ways and for many different reasons. For example, recently there was an incident when prisoners were informed that a trade union meeting was to take place and so, although they would be returned to their cells at the normal time, the cells would be opened a wee bit later. A prisoner decided not to move from the exercise yard, where they were enjoying the recreation period after lunch. There was a major emergency situation within the establishment, because the prisoners refused to move.

**Andy Hogg:** There can be a degree of resistance on a number of occasions. The bill addresses matters that may have been covered in the Police (Scotland) Act 1967 in relation to obstructing an officer in the course of his duty. The bill might have been drafted a bit more widely, to cover the environments in which a prison officer might find himself. I am thinking in particular of the provisions in the bill on “emergency circumstances” and which circumstances would be classed as an emergency. I certainly do not want to discuss the current escorting difficulties, but I will say that prison officers will still be called upon to escort prisoners in public or watch them in hospitals—what we term “hospital watch”—until such times as other people step in and take over those duties.

The three definitions of “emergency circumstances” in the bill would not necessarily cover those occasions, whereas had wording been used that was specific to the escape of a prisoner or which took a broader-brush approach and referred to obstructing a prison officer in the course of his duties, that would have encapsulated such circumstances. Although we welcome the addition of prison officers to the bill, we feel that the definition could have been widened.

**Michael Matheson:** Would you like to see “resisting” included within the categories in which an offence would be committed under the bill?

**David Melrose:** Yes.

**The Convener:** I seek clarification on what David Melrose said about prison officers who are assaulted. Are you saying that currently no action is taken? Are assaults not reported?

**David Melrose:** I am not saying that no action is taken. On some occasions officers are advised not to report it to the police. As far as I am concerned, under common law anyone who is assaulted at any time has the right to report that assault to the police and let them deal with the matter accordingly. It has been recorded and has come to our attention that on some occasions prison officers have been advised by their managers or their governors in charge not to proceed down that line.

I was referring to the fact that when there are acts of indiscipline or when staff are assaulted, the orderly room procedures that are currently in place are less effective than they were five or 10 years ago.

**John Speed:** I suggest that minor assaults and many verbal assaults are not reported.

**Mr Maxwell:** What is your view on the adequacy of the protection that the existing criminal law provides workers against being assaulted or impeded in carrying out their duties?

**David Melrose:** I am not a legal expert, but I think that the common law is there to protect every member of the public in Scotland and the United Kingdom and that there are certain public sector workers who must be afforded additional protection because of the job that they carry out on behalf of the public and of the Government. As prison officers are covered by the bill, it will afford them, if you like, additional help and assurance in carrying out their duties.

I welcome the fact that prison officers are included in the bill, because as far as I am aware, they have not been considered in any way to be emergency workers in the past and I am pleased that they have been given that consideration. In general, prison officers will feel more secure that there are laws of the land that give them added protection.

**Mr Maxwell:** I am extremely interested in the idea of the bill in some way giving additional protection. What do you mean when you say that? Could a longer sentence be imposed?

11:15

**David Melrose:** I can give examples in which the common law was applied and was not effective. The most recent example that comes to mind is of the assault of an officer in one of our establishments on the west coast. The assault was reported through the proper channels and to the police under the common law, but the PF decided not to proceed with the case because the prisoner who committed the assault was coming to the end of his sentence and it would not have been in the public interest to prosecute. If the bill emphasised the need to protect public service and public servants more, I would welcome it.

**Mr Maxwell:** I am surprised that the fiscal provided reasons for the decision, but I will put that aside.

Are you saying that if the bill was passed and somebody was reported to the fiscal under it, the fiscal could not do what you described and decide to take no action?

**David Melrose:** I am not implying that. However, I feel that such cases would be given more consideration if the added protection of the bill were provided.

**Mr Maxwell:** Is your concern that the current statute and common law are not being applied properly, or do you believe that the current law cannot deal with such situations? In the example that you described, the PF’s office did not pursue a case, but it could have done so if it so desired. Is the situation that the common law is all right but is not being enforced and implemented properly, or does the law have a gap?

**David Melrose:** As I said, I am not an expert in the common law and I do not wish to criticise the legal system. However, on occasions, the law is not applied properly and should be applied more rigorously for public servants who undertake a public duty. My opinion and that of my colleagues as public servants and workers in this country is that it is unacceptable in any walk of life to be assaulted while carrying out duties.

**Mr Maxwell:** I take it from that that you believe that all public service workers should be protected.

**David Melrose:** I do.

**Margaret Mitchell:** My questions will repeat and overlap with other questions a little. We are examining the justification for the bill, so will you define clearly why the offence as it covers prison officers will give you added protection?

**Andy Hogg:** I will talk about a point that seems to be overlooked. We are talking about the protection of workers, but the bill will also have a fundamental deterrent impact on people who might become involved in such situations. There is no doubt that under the summary and solemn procedures, the common law can deal with assaults on or violent acts against public sector workers. I heard my social work colleagues make a valid point about value, which I will speak about shortly.

The bill will be a deterrent. If a prison officer is prevented from reaching an alarm, experience suggests that that is unlikely to be pursued with the police or through identification of the individual who prevented the prison officer from reaching the alarm. The focus would be on the incident—perhaps a prisoner stabbed another prisoner. The perpetrator and victim of that incident would be the focus and the prevention of reaching an alarm to obtain assistance would be overlooked. I have no doubt that it would be mentioned, but it would not be treated as seriously as the other matter.

In many ways, the bill is a deterrent to prisoners in such a situation, who may feel that it would be appropriate or useful for them to obstruct an officer in that way and that they could get away with it. The bill highlights a route to challenging that thinking. The bill has great value because it offers deterrence as well as protection.

**David Melrose:** I agree. The prisoner who commits acts of violence against prison officers as a matter of course would perhaps think twice about doing so if the added protection in the bill existed. The bill would provide not only added protection but assurance that public servants are being treated more favourably because of the job that they carry out, as a result of which they may be assaulted at work more often than other workers are.

**The Convener:** The issue is fundamental. The problem that we have had all along is that although no one disagrees with the statement that nobody—I go further than just public sector workers—should be exposed to violence at work while carrying out their duties, the bill may not cover the situations that you are talking about because it will apply specifically to prison officers who are involved in emergency circumstances. I want to ensure that we are clear that the bill will not cover every worker who is assaulted—I presume that the present law will take care of other cases. Is that accepted?

**David Melrose:** I am perfectly clear on that point, but I am concerned about normal day-to-day working, which is when many assaults take place. The common law provides cover for that, but in emergency situations—

**The Convener:** You are not arguing that the bill will cover all situations.

**David Melrose:** No.

**Alan Golightly (Prison Officers Association Scotland):** The emergency situations with which we deal involve not only prisoners acting against staff, but prisoners acting against prisoners. As Andy Hogg said, if prisoners are fighting and are armed, there is a clear danger to life. If we are impeded in rectifying such a situation, there is little that we can do to the people who impede us. The bill would give us protection in those situations.

**Margaret Mitchell:** Is it your position that the bill highlights situations in prison that are becoming routine and which are not being accorded the severity that they deserve? You have mentioned under-reporting. The bill will send out a clear message to prisoners that they are in a special category. If an assault leads to an emergency situation, the bill will kick in, but is there a problem with under-reporting and with the prison culture, in which officers are discouraged from reporting incidents? We can have all the legislation that we like, but if the culture is such that officers are discouraged from reporting incidents, it will have no effect.

**Andy Hogg:** I do not know whether prison officers are actively discouraged from reporting incidents—that is probably a step too far. However, you are right about the culture of the organisation. Officers are inclined to—

**The Convener:** I apologise for interrupting, but I wrote down earlier that you said that officers were told by management not to report assaults.

**David Melrose:** I said that, convener. My point was that staff are sometimes discouraged from reporting incidents to the police or to the governor of the prison. I have no doubt that that happens, although I am not saying that it happens all the

time. The cases might be isolated, but they happen.

**Andy Hogg:** Margaret Mitchell asked about the culture. Incidents that happen in prisons are viewed as having varying degrees of severity. In some cases, prison officers focus on the main event. I return to the example of officers being prevented from accessing an alarm. We must consider the degree to which that might have had an impact on the main incident, such as a prisoner-on-prisoner assault, by delaying the arrival of aid, which might mean a paramedic. If the incident had a minimal impact, in that the aid arrived in five minutes instead of three, some officers might overlook that because, in the greater scheme of things, it was not all that serious. However, if there was a considerable delay that resulted in a fatality, the incident would take on greater significance.

Prison officers have to make a judgment call. Margaret Mitchell is right about the culture in the organisation, which is such that officers just deal with such incidents according to their degree of severity. The bill would have a deterrent effect if it meant that prisoners did not think that they would get away scot free after preventing an officer from reaching an alarm. The bill will help us if it makes prisoners think twice before they act in such a way.

**Margaret Mitchell:** I understand that it is currently difficult to pin down which part of the common law would be used to prosecute a prisoner who impeded an officer who was trying to raise the alarm. That is a good example. However, there is a wider issue about how incidents in prison are dealt with. There might be a better way to highlight what is and is not acceptable.

**Margaret Smith:** Would the definition of "emergency worker" in the bill and the provisions that protect someone who is assisting an emergency worker cover every person whom you would expect to be involved in an emergency situation in a prison context?

**Andy Hogg:** I think so. The proposals gave us some food for thought when we first considered them. The consultation document did not refer to prison officers and we made a pitch for them to be included, so we were more than pleased to see that they had been included in the bill.

I am the secretary of the SPS trade union side, which is the wider, collective group of trade unions in the service, so I represent workers who are not represented by the POAS. In a prison, there might be people from social work and education and other civilian workers—that is the term that we use for people who are not in uniform. Such workers would certainly not be expected to be involved in controlling a situation—that is not built into our

procedures—but the nature of prisons is such that a riot or incident of concerted indiscipline might occur in the education department, so a teacher or social worker might become involved in an emergency. If a social worker came to the aid of a prison officer who was being attacked or obstructed as they tried to raise the alarm, the bill would cover them. We were relieved and grateful to find that workers who might not necessarily be in uniform would be adequately covered by the provisions.

**Margaret Smith:** This is probably a stupid question, but do prison officers accompany prisoners at all times? Would civilian staff always be in a situation in which they were assisting a prison officer?

**David Melrose:** The situation might be reversed. The education department might be carrying out its function and an officer might be there for security reasons—

**Margaret Smith:** But would a prison officer always be present?

**David Melrose:** A prison officer might well be present, but there are occasions on which only civilians—as Andy Hogg said—and no officers would be present, depending on the circumstances. Nursing staff might be present, for example.

**Andy Hogg:** A prison officer would always be in the vicinity, but the prisoners might not be under their direct supervision.

**Margaret Smith:** So a prison officer would always be in the vicinity. You gave the example of an educationist who works in an educational facility in a prison; that person would not be defined as an emergency worker and would be covered by the provisions only if they were assisting an emergency worker. That would not help them if the prison officer—the emergency worker—was not in the vicinity. I am just trying to establish whether a prison officer is always close to other workers.

**Alan Golightly:** In an education unit, half a dozen teachers might be working in individual classes and just one prison officer might be present for security. If a prisoner-on-prisoner fight were to break out, the prison officer, not the teachers, would intervene initially. The teachers are not there to intervene, but if they were trying to raise the alarm and were being hindered, they would be covered, because they would be assisting in an emergency.

11:30

**John Speed:** One officer might cover six different areas as a peripatetic security man. He cannot be in all the different areas at the same

time, and he might have to answer an alarm that a teacher has raised.

**Andy Hogg:** I think that Margaret Smith is right. I am not sure that the bill would cover the circumstances in which the person concerned—the teacher, in this example—was directly attacked by a prison officer—[*Laughter.*]

**The Convener:** It is all coming out now.

**Andy Hogg:** Sorry, I meant attacked by a prisoner. I am not sure that the bill would cover those circumstances, because the teacher would be the direct victim of the action as opposed to an assistant in an emergency.

**Margaret Smith:** That is a grey area that we might investigate with the minister, because if such a person was the direct victim of an attack, they might be covered under common law rather than under the bill.

Should the bill be limited to emergency workers and those who assist them or should a similar bill be introduced to cover all public sector workers, as Mr Melrose said?

**Andy Hogg:** As David Melrose said, it would be ideal for the bill to cover all public sector workers, although I would not like to speak for individual areas in the public sector because I have neither the remit nor the experience to do so. The convener made an overall point about whether any worker, in the public or private sector, should expect to be the victim of an assault or act of violence. We must consider whether, by creating the impression that public sector workers are specifically protected, we create the illusion that we have less concern for private sector workers. That is a dilemma, and I would rather that the bill covered all workers.

**David Melrose:** If I could answer—sorry, convener.

**The Convener:** The minister is waiting. Is your answer different from Andy Hogg's?

**David Melrose:** It is, because it relates to the prison environment. We discussed the position of civilian employees in the prison. An incident that involved a civilian employee, who is a public servant, could lead to a concerted act of indiscipline by a number of prisoners due to the nature of the job that the employee does in the prison. For example, civilian employees work in the reception areas where the prisoners are brought in from the court, and they look after warrants. There might be occasions on which those individuals have to approach a prisoner or group of prisoners to ask questions or clarify points. Incidents can arise from such situations and emergencies can arise from those incidents, so I would like consideration to be given to

covering those who work in the prison environment.

**Bill Butler:** What wider measures would you like the Executive and other bodies, such as employers, to take to improve the protection of emergency workers and other workers? For example, would you like there to be public education, employer awareness training or electronic schemes?

**Alan Golightly:** We went to the consultation with the Scottish Trades Union Congress at which we discussed the various measures that we could take. A media campaign to educate and raise awareness would be worth while, because people do not consider an assault on a prison officer to be a big thing; they think of it as par for the course—something that we should expect in our work. That also applies to many other public sector workers, particularly in emergencies. A huge amount of education needs to be done, whether through a media campaign or other means, and the dangers need to be highlighted.

**John Speed:** When we were at the STUC consultation, we mentioned the television campaign on domestic abuse, which made that issue high profile. We thought that it would be a good example to follow.

**David Melrose:** More and more employers are becoming aware of the dangers and of the risk of assault and acts of violence against their employees. I am no expert on the amount of equipment that can be used just to identify assailants, but there is a great deal. For example, bus drivers have been given DNA sampling kits, which has increased the number of convictions for assault on them or bus conductors. That is a simple and effective piece of equipment that employers can supply. There must be a great amount of equipment on the market that could be provided to public servants—personal alarms, for example.

**The Convener:** That ends our questions. Thank you very much. You have given us some very useful information about the range of staff whom you represent and who are involved in operating our prisons, and we are grateful for that.

I think that a two-minute comfort break would be agreeable to members.

11:36

*Meeting suspended.*

11:41

*On resuming—*

**The Convener:** I reconvene the meeting and welcome the Minister for Finance and Public

Services and his two Scottish Executive officials. Gery McLaughlin, from the criminal justice division, is the bill team leader and David Cassidy is a legal officer in the Scottish Executive Legal and Parliamentary Services. It is nice to have them here for the closing evidence session. I was just saying to members that things seem to have been over in a flash. There have been four weeks of evidence, but this session will bring us to the close of evidence taking.

I want to begin by giving you the opportunity to tell the committee about the policy intention behind the bill. If you have been reading the *Official Report*, you might have read about some of the issues that the committee has had to wrestle with, including some of the confusion about what is at the heart of the bill and what people would like to see in it. It might be useful to allow you for a few minutes to give the Executive's point of view about what is the heart of the policy.

**The Minister for Finance and Public Services (Mr Andy Kerr):** At the heart of the policy are the Executive's focus on antisocial behaviour and the wider acceptance of the need to address such behaviour. The bill is part of the debate that we are having in Scotland about that matter and the partnership agreement commitment to

"make communities safer, and people feel safer."

The proposals are part of our overall strategy.

On the policy intention, the bill singles out workers in the public services who do a different job from other workers in the public services—I mean those who protect our health, possessions, property and environment. I have read as much of the evidence as I can and I listened to some of the previous evidence session, and I know that that has been a difficult issue for many people who are involved. However, we are reflecting the public mood. If the public were asked what an emergency worker is and who those who are involved in emergency situations are, I think that they would come up with a list that is fairly similar to the Executive's list. We can deal with such matters differently to pursue the same policy intention, and the committee has discussed a number of common-law issues, but the bill sets us down the road of making it a specific offence to assault, obstruct or hinder an emergency worker.

We are trying to level up the protection that currently exists in different ways for the police, the fire service and other services that have developed over the years—I refer to, for example, Customs and Excise officers and inland fishery and inshore protection workers. A number of services have developed over the years that have, by virtue of particular legislation, developed their own levels of protection.

The policy intention is to ensure that services that are considered to be emergency services get the same level of protection across the board. That intention has been recognised, although others have commented on the difficulty with making definitions, and I am sure that that will feature in your questions. We understand that, to some extent, legislation is the wrong end of the process. It is just one part of an overall package that the Executive is trying to introduce. We will move on to wider issues such as public awareness campaigns, training, resources and other efforts by management and workers to ensure that all workers in public services receive both protection and recognition for the role that they play. People mentioned the Lord Advocate's recent intervention and the instructions that his office issued about how such matters should be dealt with, which are having an effect. In terms of the policy intention, there are other aspects; the bill is just one subset of a wider suite of measures that the Executive intends to take and it should be recognised as part of that overall process.

11:45

The harder line that the bill takes will change sheriffs' powers at a summary level and will increase possible sentences from three months to nine months. The bill allows us to deal with cases that fall between two stools in relation to the common law and the protection of emergency service workers. If there is an assault without substantial injury, where does that fit in the process and how would it be dealt with under common law? I would argue that the common law would deal with it inadequately. What about people who enter into situations without a track record of crime or where no adverse circumstances arose as a result? As well as the high-level policy intention to level up the amount of protection that is given to the emergency services, there will be effects on sentencing powers and on the way in which the summary and solemn systems work in Scotland.

**The Convener:** In the evidence that we have received so far, there seems to be a tendency for people to look to the bill for general protection. Violence against workers has been raised, whether that involves physical or verbal abuse. Do you think that there is confusion among those who want such protection and who look to the bill to provide it? In fact, the bill's scope is much narrower than that.

**Mr Kerr:** Before the consultation, I spent a considerable length of time going through those difficult issues with trade unions and professional bodies. I, too, started with the wider perspective on the legislation, but as I examined its intentions I considered what would happen if we spread the

provisions to cover every worker in public services. That is an interesting point—what would we do about shop workers, taxi drivers, bus drivers and others? The intention is to protect emergency workers because, to be blunt, the work that they do for us merits a different level of protection. Many of your witnesses represent workers, as I used to do when I was the manager of a local authority service in which cleansing workers were frequently abused by the public in relation to their status and role and there was physical violence and intimidation in some of the more difficult areas of Glasgow.

We seek to recognise that the work of the emergency services is about life and limb and the protection of the community, the environment and property, and that a different level of protection is therefore merited for workers in emergency services. That does not mean that we cast aside other workers with no duty of care, and that is why a wider package of measures sits within our proposals, which I hope will come out fairly soon. Those measures address the areas that I mentioned earlier, such as public awareness, training and skills, and guidance to managers and staff about how to report incidents properly.

Where does the confusion about the definitions come from? All public service workers are, of course, valued, but there is a core of workers who do a different job, which is to protect us in emergencies. I do not expect trade unions to come to a parliamentary committee and say, "Do not protect our workers in the same way." I expect them to ask for that protection, but I also expect them to understand—as I think that they have done in many discussions that I have had with them—that if we were to use such protection across the board, it would become no protection at all because the effect of the legislation would be diluted. Also, they should not ignore the fact that common law has, and will continue to have, a role to play in that area.

**The Convener:** The bill's policy intention is clear. To quote the policy memorandum, the protection that it will provide is

"in recognition of the fact that these workers perform a vital service to society in difficult and often dangerous circumstances."

Although you want to attach a higher penalty in law to offences that affect those workers, I presume that that does not exclude the point that other people make, which is that measures that deal with violence at work and physical threats should be included in the package; it is just that those measures will not be in the bill.

**Mr Kerr:** We will work on the wider package of measures with all our public sector partners. That will involve promotional campaigns to increase awareness and education in our schools. When I

met, among others, the Fire Brigades Union, we heard about some excellent examples. In Northern Ireland and in Liverpool, efforts have been made from which we can learn. The health and safety at work organisations will be involved in education and consideration of how we can provide better training and back-up. If members visit their local hospital tomorrow, they will see posters on the wall about recognising the role of, and showing respect for, public servants.

The bill is a subset of all the work that we intend to do for public service workers. In fact, we are already doing such work. The further into the issue that one gets, the more interesting and challenging it becomes. We are examining closely the idea of a zero tolerance campaign. In schools, we might want to provide a specific message—both to pupils and at parents evenings—vis-à-vis the people who work in hospitals and accident and emergency units and those who work on the front line in the community in responding to fire and other incidents. Although we can all sign up to a generic campaign, there needs to be a degree of sophistication to ensure that we get the message right and target it appropriately at those parts of the community to which we need to talk.

**Mr Maxwell:** I want to clarify what you said about the fact that the bill would increase the sentence that it is possible to impose from three months to nine months. What, specifically, were you referring to when you said that?

**Mr Kerr:** The bill will give sheriffs the power to pass such sentences in the summary system; we are acknowledging that more severe sentencing will be possible at summary level. It will be possible to deal with cases that might have gone up to the higher levels of the court system and been dealt with under the solemn procedure at that level, because there will be additional powers of sentencing. That is what I meant when I referred to the additional powers in the bill.

**Mr Maxwell:** I am sorry. I am not clear on that point. What restrictions are you referring to when you say that the current maximum sentence is three months?

**Mr Kerr:** In the summary system, the general limit on sentencing is three months. We are changing that so that, in the situations with which the bill deals, it will be possible to impose sentences of nine months.

**Mr Maxwell:** I just wanted to clarify that you were not referring to the Police (Scotland) Act 1967, which originally provided for the imposition of a sentence of three months on a first offence. That was amended to allow a sentence of nine months to be passed.

**Mr Kerr:** I was not referring to that act; I was referring to the general powers in the summary system.

**Mr Maxwell:** Okay; that is fair enough.

We have had a great deal of evidence, some of which you have already mentioned, from people who could not understand or explain what the bill would add to the existing common law and the current statute. For example, witnesses from the Law Society of Scotland, the police and the fire service said that they could not identify any additional measures that the bill will implement, other than that it will send out the message that such behaviour is unacceptable. Will you clarify for the committee exactly what additional measures in law you think that the bill will provide?

**Mr Kerr:** I have already mentioned one such measure, which relates to the summary system. I think that one can argue that one of the statements that the Law Society made in its evidence to the committee supported the Executive's position that the Law Society was behind the bill's policy intentions, even though it made other comments about the bill.

I start from the premise that, on some occasions, there are overlaps between statutory legislation and the common law. The present case is an example of such a situation. The common law represents a catch-all, whereas the Police (Scotland) Act 1967 and the Fire Service Act 1947 provide specific provision. Acts contain specific policy intentions which, along with the common law, affect how the courts deal with cases. It is not unusual to have the two areas of law operating in tandem.

I view the assault of emergency service workers as serious enough to be marked as a specific offence, and that is one of our intentions. The ability to label and stigmatise such assaults and to add the offence to the armoury of the court system is useful. Under the bill, the more serious sentences can be dealt with differently in the summary system. The higher sentences and fines that will be available through the bill differentiate the offence from what is available in common law. That escalation reflects our recognition of the difference between unacceptable behaviour directed towards any citizen of Scotland, an emergency worker, a private sector worker or anybody else, identified under the common law, and such behaviour directed towards the people who risk life and limb to protect our lives, our communities and our property.

Those who wanted to extend protection under the bill to everybody have in fact always excluded somebody in their responses to us. Unfortunately, I am the person who has had to attempt to draw a line around those who are to be stipulated in the

bill—that is not a nice position to be in, as we obviously want to support as much as we can every public sector worker, shop worker, taxi driver and bus driver. I would argue that we are helping that process, given the work that the Lord Advocate has been doing, and given our escalation of how such offences are considered in the court system.

At the heart of all this, we are saying that emergency workers are different. They respond to situations involving houses on fire and lives, possessions and the environment being in danger. We are recognising that difference. There are overlaps of statute and common law. I think that the offences under the bill are serious enough to be marked as different types of offence. If we can work with that as part of the overall package, that takes us in the right direction.

**Mr Maxwell:** You covered a lot of ground there and I would like to pick up a couple of points from your answer. You said that we should protect

“people who risk life and limb”.

When various representatives of the medical profession came before us, we asked them about that. One response from a doctor, which I will paraphrase, was that, in all the years of their experience in an accident and emergency unit, they had never come across a nurse or a doctor risking life and limb. Given what you have just said, how would you respond to that answer? I accept what you have been saying about the police and firefighters, but it is not necessarily the same with doctors and nurses.

On the point about the ability to prosecute people who carry out such assaults, surely the procurator fiscal's office is able to ascertain the seriousness that it wishes to place on an offence and to take the matter to a higher court and prosecute it there if it so desires, which would result in an increased sentence. Surely the motivation of increasing sentencing powers is not really the issue, as in effect the PF's office can act accordingly under the current arrangements.

**Mr Kerr:** I read with interest the comments that were made about accident and emergency units. It is not just about doctors and their own life and limb, albeit that that is incredibly important; it is also about the fact that they have patients lying on a table or sitting in a waiting room whom they need to deal with. Any obstruction to their doing that has a consequence on individuals. Essentially, everybody who is involved in an accident and emergency unit is on standby for an emergency. A lot of interesting dialogue has been had on this matter, and perhaps some misunderstanding, which is probably largely the fault of the Executive, in the way in which we explained why accident and emergency units were

covered. Essentially, we view such units as standby areas for emergencies, and we therefore feel that it is appropriate to mention accident and emergency specifically. However, that does not rule out including other parts of hospitals.

**Mr Maxwell:** I do not wish to interrupt. I accept entirely what you are saying. However, I wrote down exactly what you said. You referred to

“people who risk life and limb”.

However, the accident and emergency doctors were asked about that specifically and they said that they did not risk life and limb.

12:00

**Mr Kerr:** I found that a surprising statement when I read it in context. Having seen the drama unfold in certain fly-on-the-wall documentaries and having a sister who worked in accident and emergency at the Victoria infirmary for many years and who has personal experience of the difficulties with which staff have to deal, particularly around alcohol abuse and events such as football matches, I believe that the system does not adequately protect staff. We are trying to recognise that.

I found the evidence to which you referred counter-intuitive to advice that was given to us. That evidence was not raised with me during my pre-consultation discussion with representatives. I will happily check my notes from that discussion. Arguably, what that individual was saying was, “Well, we don’t actually risk life and limb,” but I think that there is evidence to suggest otherwise. I have spoken to people throughout the health service and know that they do risk their own personal safety on many occasions. For example, the situation in geriatric wards was graphically described to me. Elderly people who have lost some of their senses and values can lash out.

**Mr Maxwell:** That is not an emergency circumstance.

**Mr Kerr:** That is correct. That is the point that I was going to make to you: the bill does not cover such situations. That was understood by those I spoke to because, bluntly, they would not want to take somebody of that ilk to court. Such situations are outwith the bill’s definition, so that substantiates the case for a narrow definition, which we have tried to pursue in the bill.

**Mr Maxwell:** What about the question about the PFs right to choose?

**Mr Kerr:** Your point is correct. However, I tried to point to cases that might not get to higher-level courts but which cannot be dealt with adequately by lower-level courts. When a serious offence occurs—for example, if a receptionist or a doctor

in a general practitioner’s practice is seriously attacked—it will go through the higher system. However, we are trying to tackle an area in relation to such individual workers that I believe is currently not adequately dealt with. If an assault, such as a slashing, stabbing or other serious assault, is a higher-level offence and the PF judges it so, it will go through the higher-level process. However, that process will miss other offences.

**Mr Maxwell:** This is an interesting debate around a legal point. Many witnesses gave evidence on, or we discussed with them, the current law and its application. Many people feel that the problem does not lie with the law as it stands, but with its implementation. A number of issues were raised—for example, plea bargaining. Emergency workers feel disappointed and let down by the PF’s office when a plea bargain is entered into or when a court does not treat an offence seriously enough. Is it not the case that the issue is more about the application of the current law than about a lack in the current law?

**Mr Kerr:** No. I will answer that in two ways. First, I think that it was recognised that there was a problem—hence the Lord Advocate’s guidance, which was issued to all those involved. I think that we have seen the product of that in that much longer sentences have been awarded. I cannot remember the individual cases, but people are giving evidence to the effect that the guidance is working within the system to ensure that courts treat cases involving attacks on emergency workers much more seriously. The guidance has bolstered existing common-law arrangements.

The bill’s original principles were that those who are involved in emergency, life-and-limb services deserve a different level of protection. That is what the bill is about. It is not intended to denigrate those who are outside its provisions. It recognises that emergency workers do a different job in a different way in responding to emergencies. Therefore, the bill will make higher levels of sentencing available within our court system. However, to get back to another point, the bill also gives recognition to a separate crime of assault on emergency workers and gives it a different level of attention within the justice system. The bill will also give attention to such a crime outwith the justice system in terms of public awareness. I think that the public will understand why we want to single out emergency workers for different recognition within the justice system.

**Michael Matheson:** Could you explain to the committee your main reasons for deciding that emergency workers require greater legal protection?

**Mr Kerr:** It arose from our focus on antisocial behaviour and the recognition of a series of

events. You will know that every now and again in the media we see coverage of attacks that we consider to be outrageous and irresponsible. It was in response to that that we introduced the bill.

Every bonfire night—although thankfully not last bonfire night—we see the increasing misuse of fireworks and increasing attacks on fire service vehicles and others. We also recognise—sadly and unbelievably—that those in our communities who choose to operate in that way are deliberately setting ambushes and using techniques to attack our emergency service workers. Incidents have been reported to me, and I am sure to you, of false calls being made, ambushes being set and attacks taking place.

Our approach reflects two issues. First, the police have protection under the Police (Scotland) Act 1967 and the fire service has protection under the Fire Services Act 1947, but such protection does not apply to other emergency workers. We think that it is right that that protection should apply to them. Secondly, attacks are happening more and more, unfortunately, and as part of our activities we want legislation to recognise that. In addition, we want to have a wider and deeper package of measures. We want to improve education, awareness, training, skills, management, and health and safety.

The motivation for the bill comes from a change in society, which we have all seen in our communities, and from a recognition that legislation that applies only to members of the police and fire services should apply to other emergency workers.

**Michael Matheson:** If the bill is enacted, do you anticipate that it will reduce the number of threats to which emergency workers are subjected?

**Mr Kerr:** On its own I hope that the bill would do that, but it is not on its own; it is part of a wider package of measures. I think that the number of threats will reduce, because the offence will be viewed as much more serious in the eyes of offenders and those who wish to copy them, as sentences will be greater. The stigma that will attach to somebody who is done for committing a crime against an emergency service worker is a significant part of what we are seeking to create.

Prevention measures are at the heart of all this. We need to get our emergency service workers into our schools and to educate people about the conduct that will be tolerated when they are dealing with all public service workers, but particularly emergency service workers. That is the motivation behind what we seek to do, and it is why we are here.

**Michael Matheson:** You referred to press reports about attacks on emergency workers—who were primarily, if I recall, fire service

personnel—at particular times of the year. What evidence is there that emergency workers are being subjected to an increasing threat?

**Mr Kerr:** I do not have the statistics on me just now, but there has been a change in the way that people perceive those who serve us in emergencies, which we need to deal with. I will provide the convener with correspondence on the data that I have on attacks, which show an increasing trend.

**Michael Matheson:** It would help the committee if we had clear evidence that there has been an escalation in the number of attacks on or threats to emergency workers over a sustained period of time, which would support your argument that the bill is necessary.

**Mr Kerr:** That is a fair comment.

**Michael Matheson:** Your view is that there has been an escalation.

**Mr Kerr:** Yes, and that has been a determining factor in what we want to do. In addition, fire and police service workers are protected in some way, but other emergency service workers are not. We have sought to expand protection by lifting the measures from the 1947 and 1967 acts and applying them to other emergency service workers, which is the right thing to do.

**Michael Matheson:** Are threats to and attacks on the police on the increase?

**Mr Kerr:** I would need to get you the stats on that. I am unsure. My recollection is that that is the case, but I would want to provide you with the evidence. There is clear evidence of an increase in such incidents in the health service.

**Michael Matheson:** I understand that threats and attacks on the police are on the increase. The fact that you have lifted provisions from the Police (Scotland) Act 1967 to use in the bill suggests that the key to the problem is a preventive approach in which we work in communities and educate young people not to attack emergency workers. I question the benefit of legislating to deal with the problem.

**Mr Kerr:** You are advocating that we accept that only the police and fire services are singled out for special protection. That is the corollary of your argument.

We want to give the fire service the same level of protection as is afforded to the police. The level of protection for firefighters is currently below that for the police, because the relevant provisions of the Fire Services Act 1947 cover only members of the fire brigade who are on firefighting duties, or some similar wording. Firefighters are therefore covered when they attend a fire, but not when they attend a road traffic accident, assist at an event or

carry out any of the other functions in which the fire service is involved. The bill also, quite correctly, draws in people who provide other emergency services, such as health service workers—you are familiar with the areas that the bill covers.

**Michael Matheson:** I do not suggest that only the police and fire service workers should have additional protection; I suggest that all workers should have a right to work without being subjected to violence or threats in any form, whether they work in the public or the private sector.

**Mr Kerr:** Indeed.

**Michael Matheson:** If anything, I would go further than the bill.

It has been suggested to the committee that in deciding to single out emergency workers you are in danger of creating a two-tier system for the protection of workers. Because the bill focuses on emergency workers, it does not deal with vulnerable workers. For example, a home help who enters someone's home and a bus driver who operates in a rural area are vulnerable because they work on their own. However, the bill would afford such workers no extra protection.

**Mr Kerr:** We are creating a system that recognises that the role that emergency workers play is different from the role of other workers in the public services. That was a difficult conclusion for me to reach, but it is one that I can justify. Emergency workers are out in the community protecting life and limb. They are out there to protect us and any hindrance to them puts other people's lives at risk.

We are not somehow putting other public service workers into a second division—I agree that we must not do that. We are developing a package of measures that will generate a public debate around other public service workers. As you know, we could amend the bill if a case were made to include other workers.

I was the manager of a cleansing department for five or six years and although I was a public servant and had every right to expect to be treated with tolerance and respect at work, I did not provide an emergency service. I recognise that workers in the blue-light services and the health service and others who are out there protecting life and limb are doing something different. We are not creating a two-tier work force, but we recognise that people who save lives and property and who protect the environment do a different job. That is what the bill is all about. The wider package that we will develop, which we hope to bring to the Parliament fairly soon, will address the issues that you raise about home helps, bus drivers, cleansing workers and so on—and rightly so,

because we value the contribution that those workers make.

In the parliamentary debate on the protection of emergency workers, your colleague Linda Fabiani eloquently said:

“There is a clear case for certain defined workers, such as firefighters and ambulance workers, to be included in the provisions that we are discussing.”—[*Official Report*, 15 January 2004; c 4935.]

Each of us sitting around this table is a public servant, in some shape or form. We have every right to be treated with respect in our workplace, but we can deal with problems through the common law. Emergency workers are intrinsically different: they save lives; they operate rescue boats; they save people in hospital; they protect property and the environment in cases of industrial spillage. That different role should be recognised.

**Bill Butler:** Why did the Executive settle on only the nine groups of workers that are set out in section 1(3) when producing the proposed definition of an emergency worker?

12:15

**Mr Kerr:** We reached that definition through much discussion and consultation with those who are involved in the public services and through an examination of the levels of protection in legislation. We considered who needed the added protection, what legislation protected or did not protect those individuals and how to reflect how society is changing. Those considerations supported the broad principle that emergency service workers do something different.

**Bill Butler:** Are the groups that were chosen those that are most at risk according to the latest trends and statistics?

**Mr Kerr:** That is one reason for the choice. The workers who were chosen provide a service. If that service is not provided adequately, the result can be death, industrial pollution or other problems. Those people work in a risky environment, as do many other workers. The difference between the workers to whom the bill refers and other workers is that obstructing the workers in the bill puts other people's lives at risk.

**Bill Butler:** This morning, we heard from representatives of social worker organisations about social workers who serve child protection orders or who have to make an emergency detention under the Mental Health (Care and Treatment) (Scotland) Act 2003. Do you plan to extend the list in section 1(3) to such workers in such situations?

**Mr Kerr:** I have no plans to do that at the

moment and I will explain why. On many—but not all—of those occasions, the police may accompany the individuals who do those jobs. Workers who do those jobs need to assess the situation on their own. The judgment is based on the individual risk that may be borne.

The workers that you mentioned are exposed to risk, but that is not the result of obstruction. That is also important.

**Bill Butler:** I did not interrupt you, but we heard evidence about social workers who enter those difficult situations. Unless my memory serves me ill, we were told that an emergency detention order under the 2003 act is served very quickly, if not immediately, and that at best the worker is unlikely to be accompanied by any police officer. Will you consider giving us your thoughts on that evidence later? The example that was given struck all committee members as a matter that must be explored. That should at least be considered to be an emergency situation in which the worker is an emergency worker. Will you promise to reflect on that?

**Mr Kerr:** I have no difficulty with that. That action is mentioned for good reason, because it could have a consequence. The point is valid, so I am happy to reflect on it.

We have taken powers to add people to the definition, because we do not consider what is in the bill to be the end of the list. I will return to my opening comments. I started with the big list that the committee started with, but I saw the difficulties with applying that. I considered whether extending the bill to everybody would be good or bad law. Having been through the whole process over several months, my view is that it would be a bad law if we were to expand it to cover everybody. I am happy to examine that situation in greater detail at a later date.

**Bill Butler:** I am grateful for that answer and I am sure that the committee is as well. No one here would wish to expand the list of workers so that it dilutes the legislation because that would be absurd.

However, let us consider the definition of emergency worker at section 1(3)(b). Does that definition include all employees of a fire brigade? I refer you specifically to paragraph 7 of the explanatory notes, where it says that section 1(3)(b)

“covers not only members of a fire brigade but also persons who render services for fire-fighting purposes and who are variously referred to as retained, auxiliary or part-time fire-fighters”.

That seems to cover only those who are uniformed operatives. In its evidence last week, the Fire Brigades Union Scotland questioned whether a hydrant operator would be covered. Those

operators are not uniformed, but it could be argued that they are absolutely essential to ensuring that there is maximum operational capability in order to protect life and limb, the environment and property. Those are the very issues that you emphasised. Would you consider looking at that particular case?

**Mr Kerr:** I am happy for David Cassidy to answer that question, but I understand that the definition is a technicality to cover the fact that, if somebody is not directly employed by a fire board, they are still covered by the proposed legislation.

**David Cassidy (Scottish Executive Legal and Parliamentary Services):** The definition of members of fire brigades means full-time officers—that is a technical point to do with the language. The additional words catch those in the Highlands, for example, who are part-timers and, strictly speaking, not members of fire brigades.

**Bill Butler:** With respect, I hear what you are saying, but the committee is still concerned about that particular example. Another example is people who operate the video units that are attached to fire services. Is it acceptable to the minister to go back and look at those particular examples? Although Mr Cassidy said that the explanatory notes go into detail about those who are in rural areas, part time, retained or whatever the definition, I would like it to be investigated whether the legislation would cover the hydrant operator and the person or persons working in the video unit; I am sure that the committee would too.

**The Convener:** I think that it is clear that the definition refers to uniformed fire officers.

**Mr Kerr:** It also depends on the situation. Anybody who is involved in an emergency situation is covered and that includes members of the public. If somebody were dealing with a hydrant in an emergency situation, they would be covered by the legislation; if it were not an emergency situation, they would not be.

That applies equally to the people who might be recording in the video unit. I will be happy to clarify that in correspondence with the convener. It is the definition of the emergency situation that is important, as well as the broader definition that is in the proposed legislation, which covers those people who assist in an emergency situation. That means the hospital porter, the fire hydrant operative in the fire service or whatever—those people are covered. It is not the fact that they have a uniform on; it is the fact that they are participating and assisting in an emergency situation.

**Bill Butler:** I am grateful for that answer, but I am also grateful for the promise that you have just made to clarify the specific examples of the hydrant operator and the people who work in the

video unit. That clarification in correspondence would be more than helpful to the committee when it considers its stage 1 report.

**Margaret Smith:** Much of what I was going to ask has just been covered—again.

Earlier, we heard about how staff in the prison service—for example, teachers in the educational units—might be attacked or might intervene in a fight between two prisoners without the emergency worker, that is the prison officer, being present. Could you clarify the issues that relate to that sort of situation?

**Mr Kerr:** I was trying to listen to what was being said by the previous witnesses but I did not catch all of it. In the scenario that you describe, it is the situation that matters rather than who is involved. I will come back and clarify that more fully for you.

**Mr Maxwell:** Bill Butler talked about the video unit that is attached to the fire brigade and whose non-uniformed staff are called out to film emergencies for evidential, training or other reasons. If they are assaulted, would they be classed as assisting the fire brigade? They are employed by the fire brigade and are present in an emergency situation, after all.

**Mr Kerr:** They would be. Again, I will clarify that in writing for you so that you can have that evidence. If they are assaulted at the scene of the incident, I would consider them to be covered.

**Mr Maxwell:** Yes, but the issue is to do with whether the person is assisting in the response to the emergency situation. Would simply being present at the situation amount to assisting? They are not involved in saving life and limb or any associated activities; they are simply filming the event.

**Mr Kerr:** I think that, as they are in the environs of the incident, they would be considered to be assisting. Again, however, I would need to reflect on that. I am happy to do that.

**Mr Maxwell:** You can understand that there is a problem about where to draw the line.

**Mr Kerr:** Absolutely. I have struggled with that for a year or so.

**Mr Maxwell:** If those workers are included, a number of other types of workers who could be seen as assisting emergency workers could also be included. I am just trying to narrow the definition.

**The Convener:** A lot of clarification is required about how the bill is constructed. We are clear about your interpretation of section 1(3)(b), minister. However, we need clarification of who is covered by section 1(2), which talks about a person who is “assisting an emergency worker”.

The FBU's evidence suggested that all the people who affect the operational capability of the emergency workers' response to an emergency from the very beginning of the process should be included. There is a certain logic to that because, as you say, minister, the purpose of the bill is to identify those workers who are directly involved in putting their lives at risk to protect the safety of others. I would have thought that it made sense to suggest that all the people who were involved in that process might be included in the bill.

**Mr Kerr:** Yes, there is a chain of people involved in the response to an emergency situation.

**The Convener:** The question is which workers in that chain are judged to be affecting the operational capability of emergency workers. I am simply laying that issue before you for consideration, as it has come up in evidence.

I am clear about the sentencing powers, but how would they apply to someone who is obstructed while assisting an emergency worker? Would the sentencing be the same, or would assaulting an emergency worker who is directly involved in carrying out their duties be judged worthy of a higher level of sentence?

**Mr Kerr:** It would be the same, because they are involved in the situation. The situation is the key determining factor here. In other words, if I am a hospital porter assisting in an emergency situation, and you are the consultant, we are both treated the same.

12:30

**The Convener:** So when it comes to determining the sentence, there is no difference, as far as the bill is concerned, between an emergency worker and a person assisting an emergency worker, if the circumstances are the same.

**Mr Kerr:** It is the situation that counts.

**Margaret Smith:** I want to ask about the kinds of issues that we have just been considering in relation to the fire service, with reference to the national health service. Imagine that we are dealing with an emergency situation in a hospital. Let us say, for the sake of argument, that we are talking about the accident and emergency department—let us not complicate it any further at the moment. In the health service, when somebody is in an emergency situation, the operational capability—the chain that you have just described in relation to the fire brigade—involves the consultant, the nurse, the porter, the lab technician, the person providing blood and, potentially, the pharmacist who supplies any drugs required. Would the operational chains that you have just outlined in relation to the fire brigade be

just as likely in an NHS capacity or a police capacity?

**Mr Kerr:** It is proximity and role that count here. Section 3(4) says that a person is assisting an emergency worker

“only if a reasonable person would have grounds for believing that”

that person was involved in that situation. So the hospital porter would be covered if they were involved in such a situation. At the other extreme, while window cleaners are important, the window cleaner who comes every six months—or two months, or whatever the cleaning schedule is—would not reasonably be involved.

In a big emergency, radiography and pharmacists and so on are under pressure; they are all drawn in to the proximity of the emergency and therefore they are all covered by the legislation. It is about reasonable judgment, and that will develop as the courts interpret the law in such cases. It is about proximity, role, job description, and what a person's function was on the particular day and at the particular time of the emergency.

**Margaret Smith:** So if an emergency blood transfusion is needed, the proximity and role of anyone who works with the blood, or transfers it to the scene of the emergency, mean that they would be covered?

**Mr Kerr:** Yes. The legislation asks whether a reasonable person understands their role, and that needs to be established in law.

**Margaret Smith:** I move on to the assault or impediment of health workers in hospital accident and emergency premises. You said earlier that that department is covered because it is on standby for emergencies at all times. Presumably you would accept that, in high-dependency units, intensive care units, neonatal units and special care baby units and so on, emergencies go on all the time. That is taken into account in staffing levels and so on. Why have you decided on accident and emergency and not on units that cover on-going emergencies?

**Mr Kerr:** It is an attempt to recognise the different role that accident and emergency plays within the hospital, but other departments may be included, depending on the situation and the circumstances. I cannot remember who gave this evidence, but the Executive was asked to include accident and emergency departments for good reasons. Accident and emergency departments are obviously on standby for emergencies and there was a valid argument for their inclusion. However, the bill will not set up an exclusion zone that draws a ring round accident and emergency to the exclusion of every other part of the hospital.

**David Cassidy:** When we considered the issue, we recognised that other places in hospitals that are not labelled as accident and emergency departments also deal with the reception of emergencies, although those may not be the general public's everyday emergencies. For example, bespoke support is provided for emergencies in natal situations. Those situations are also meant to be covered by the definition.

**Margaret Smith:** Arguably, we need further clarification of that. My local general district hospital no longer has an accident and emergency department, but the blue lights take people into what is called the acute receiving unit. Every hospital in the country might call such units different things. Is a further definition perhaps required?

**Mr Kerr:** Such units would be covered when they deal with an emergency situation. The situation is what matters.

**Margaret Smith:** I take what you have said on board, but I return to my earlier point about the chain of people involved in the health service. Any successful prosecution under the bill will require the individual's state of knowledge to be proved. It will need to be proved that the defendant was aware of the person's status as an emergency worker who was involved in an emergency situation at the time. For example, if a person walking along a hospital corridor to take blood to an emergency in another part of the hospital was assaulted for some reason or other, how would such a person be covered by the bill in the way that you claim, given that it would need to be proven that the individual who carried out the assault knew that, on the journey in question, the person was involved in an emergency?

**Mr Kerr:** I refer you to what I said previously. Any reasonable person would assume that the person whom you mentioned was playing a role in an emergency situation. The reasonable person would have grounds for believing that to be so.

**Margaret Smith:** With respect, the person could simply be wheeling a pile of blood along the corridor from one fridge to another. There might be no on-going emergency at that time. There would need to be a state of knowledge on the part of the attacker that the person was in the middle of an emergency situation.

**The Convener:** In considering how the law should be applied, the committee must consider some important technical issues. As Margaret Smith has pointed out, how would the Crown prove mens rea on the part of the accused? What would the Crown point to in order to show mens rea in such an incident?

**Mr Kerr:** The proof would be based on the evidence that the court heard on what actions the

individual who was at the receiving end of the assault, obstruction or hindrance took to ensure that the critical nature of their role was understood. If I push my way through a crowd saying, "Excuse me, I'm a doctor" and I am carrying a bag and I start dispensing treatment to a patient, it is reasonable to assume that I may be a doctor. Such matters will have to be dealt with by the courts, but we have tried to define things as well as we can in line with what a reasonable person would understand such a situation to be. However, we are speculating about what are, I acknowledge, extremely difficult situations.

**The Convener:** I realise that we are speculating, but was no consideration given to how the Crown would prove the offence? That is perhaps a question for David Cassidy.

**David Cassidy:** It is difficult to deal with hypothetical situations because people can envisage different things. If the scenario that Margaret Smith envisaged was that the officer involved was gently pushing the bag of blood across the corridor rather than rushing along with it, there would probably be no reasonable grounds to establish in law that we were dealing with an emergency situation. On the other hand, the minister envisaged a situation where there is a mass of ambulances gathered at the scene, someone is carrying blood and there is a general furore—that is recognised as emergency. An example is the recent explosion in Glasgow's Maryhill. Everyone knows that there is an on-going emergency and someone is rushing with the bag of blood—

**The Convener:** Can I just stop you there? I think that we can all see that situation quite clearly. Margaret Smith's example was useful because that is where I can see some difficulties in the application of the law. How would someone know the difference? If the person carrying the blood was assaulted, how does the Crown show the difference between a common-law assault and an offence under the bill?

**Margaret Smith:** What kind of evidence do we need? Do we need two pieces of corroborated evidence or one?

**David Cassidy:** We need only one piece of corroborated evidence of the status of the person, otherwise the general rule of corroboration applies. Whether there were reasonable grounds would be established from all the evidence in the case. That might be the evidence of one witness that there was a 999 call or a collection of officers from the emergency services at the scene. Other circumstantial evidence would corroborate whether there were reasonable grounds. May I just return to an earlier point?

**The Convener:** I will let you do that, but we have to be clearer about this point.

**Michael Matheson:** The Executive's written evidence includes a helpful letter from Katie Beattie, who is a member of the bill team—the letter was sent to the Scottish Parliament information centre and is now part of the committee's written evidence. Katie Beattie illustrates that only one person has to state in evidence that someone is a medical practitioner. However, they then have to corroborate the evidence that an individual was obstructing or threatening that person. We need two individuals to say that they were being obstructed or threatened—

**David Cassidy:** That is a misapprehension. We do not need two individuals. The law of corroboration requires not two independent witnesses, but two sources.

**Michael Matheson:** I am sorry. Two independent sources have to say that the person had told the individual that they were an emergency worker—

**David Cassidy:** That is another misapprehension. It is not a requirement that the emergency worker must have told the person that they were an emergency worker. The emergency worker might be recognisable in a variety of ways. Most obviously, he might be in uniform—that would be the most simple and straightforward situation. If he was not in uniform, he might have identified himself. Even beyond identification, there might be other circumstances. The minister gave the example of someone holding the bag of blood. The emergency worker might already have identified himself and be known to the accused as an emergency worker.

**Michael Matheson:** I will read out what is in the letter from the bill team.

**The Convener:** Before you do, I should clarify that two distinct points are being debated. We started off with the mental element of the crime—how do we prove it? Michael Matheson has made a separate point about corroboration. There are two distinct issues.

**David Cassidy:** Yes.

**Michael Matheson:** The letter says:

"The prosecution will also have to prove that A knew or ought to have known that B was an emergency worker. Proof of this fact must be by corroborated evidence (i.e. from at least 2 independent sources). So, for example, the Crown might lead evidence from two independent sources that B was wearing a green uniform with 'doctor' printed on the back, which was clear for all to see."

What happens if a GP is responding to an emergency situation and they do not have the green uniform on?

**Mr Kerr:** At the lowest level, the matter could come down to verbal identification, with the doctor saying, "I am a GP. I am coming to assist this individual." Identification may be made by use of a card or by visual impression—the worker might be carrying a doctor's bag, for example. It is about a reasonable person's understanding of the situation and of what they determine the worker to be.

**Michael Matheson:** If someone obstructs an off-duty GP who is responding to an emergency in a public situation and the GP turns to that individual and says, "I'm a doctor," but the individual continues to obstruct the GP, is it your view that the bill would be sufficient to bring that individual before the court?

**Mr Kerr:** That would depend on how it was done, but I would argue that that could be the case, although some issues need to be resolved with regard to how the legislation is applied.

12:45

**Michael Matheson:** Can you see where I am coming from? Someone could just come up and say, "I'm a doctor," although they might not be a doctor. How do they demonstrate that they are a doctor if they do not have a uniform?

**Mr Kerr:** In that case, it might be unreasonable to assume—

**Michael Matheson:** They could say, "I'm a health visitor." Health visitors do not wear uniforms, so how would someone be able to demonstrate that they were a health visitor? When they went to court, how could they show that they had demonstrated that they were a health visitor?

**Mr Kerr:** They may be carrying identification, as many people do. The issue comes back to reasonableness and to people's understanding of a situation. However, the question that we need to ask is, "What the heck were they doing interfering with them anyway?" if someone was being told clearly in front of others in an emergency situation, "I am a doctor. Let me through. I'm trying to deal with this situation." It is up to the court to decide these things but, by virtue of the bill, the court needs to determine what was reasonable. If I were involved in such a situation, I would reasonably understand that someone was a doctor. The odds on a person kidding on about being a doctor—although I do not know what the odds are and should not speculate on that—are a relevant consideration, but ultimately what must be considered is whether it was reasonable for anybody in that situation to assume that the person was a legitimate emergency worker.

**The Convener:** I have no difficulty with what the bill says about requiring one source of

corroboration. As you say, that would stand the test—

**David Cassidy** *indicated disagreement.*

**The Convener:** I see you shaking your head, Mr Cassidy.

**David Cassidy:** That is a different situation. One source is needed to establish—

**The Convener:** To establish the identity of the worker?

**David Cassidy:** One source can be used to establish that the person is an emergency worker. If someone's status as a doctor required corroboration, the doctor's evidence would not be sufficient. The registrar of the General Medical Council might have to come forward and say, "Yes, that doctor appears on our register." We are talking about confining sources of corroboration to what is reasonable. The Crown requires only to lead a doctor's evidence. Of course, it is open to the defence to say, "That man is an impostor. I know him to be an impostor."

**The Convener:** I think that we understand that.

**Mr Maxwell:** I am sorry to have to go on about this, but the idea of somebody having knowledge of a person's status is central to the debate. Obviously, it is easier if the person wears a uniform, carries a doctor's bag or even is running about carrying blood. I can accept all that has been said about that. However, I will outline another scenario. If somebody who is not wearing a uniform is running down a corridor or across a car park with a box, is that person assisting in an emergency? I do not see how anybody could know whether such a person was or was not assisting in an emergency, even if they were running through a hospital car park. They could just be running across with a bag and have nothing to do with any emergency, or they could be carrying an organ that is going to an aeroplane that will fly halfway across the country to save a life. It seems almost impossible for someone to have prior knowledge about that person's involvement or assistance in an emergency situation.

**Mr Kerr:** If there is sufficient weight to the argument that a reasonable person should have understood that the person crossing the car park with a box was involved in an emergency situation, it is up to the prosecution to put that point to the court when it argues its case. The issue is all about the situation.

**Mr Maxwell:** Can you therefore really protect people who are assisting emergency workers? Apart from the obvious workers, I find it difficult to see how everybody else involved could be identified.

**Mr Kerr:** To be fair, I think that the obvious ones are the absolute majority.

**The Convener:** In the debate that we have just had, which is important from our point of view, it has become clear that the corroboration element is separate from the mental element. As Stewart Maxwell has said, proving that someone knew that the person whom they attacked was assisting in an emergency is much more difficult. We are looking for information from the Executive that convinces us that there is a way of proving that. If one cannot prove it, one will not be able to show the offence.

**Mr Kerr:** To put it bluntly, if the person is assaulting somebody randomly, or if the person is just a bad person—

**The Convener:** The issue touches on a fundamental principle of Scots law. In these circumstances, one must be able to show that the accused person knew that they were assaulting a person in the course of an emergency. Otherwise, the offence is just a common assault.

**Mr Kerr:** As I was trying to say, if the person is just a bad person who likes assaulting people and did not understand—or could not have understood—that the person whom they were assaulting was involved in an emergency, the case would not come under this legislation. We have to consider evidence and burdens of proof. We have struggled with these issues as well, but—

**The Convener:** You do not think that the Crown will have any real difficulty in showing the mental element of the crime if someone who was assisting in an emergency was assaulted or hindered.

**Mr Kerr:** There will be a simple choice of route—the Crown will use the common law or it will use this legislation.

**The Convener:** At last, I will bring Margaret Smith back in.

**Margaret Smith:** Thank you. Minister, we obviously have to prove the mental element of the crime. You have already accepted that section 3 means that, as well as considering the status of the individuals concerned, we can consider the status of the place. One possible way of getting round the scenario that Stewart Maxwell and I have described would be not to limit the place to “hospital accident and emergency premises”.

Instead, the place could be a hospital and its environs, if that hospital is defined by the local health board as being one that deals with emergencies. Any emergency workers there—and any other hospital staff who were assisting them—would be covered. Therefore, if a person

assaulted somebody who was obviously a member of staff as they ran across a car park carrying a box, that person would be caught by the bill because of the status of the place—it is a place that deals with emergencies. Similarly, if that person assaulted somebody who was going down a corridor with blood, they would be caught because of the status of the place. Any reasonable person would at least be aware of the possibility that staff at a hospital that deals with emergencies could, at any time, be assisting in an emergency.

**Mr Kerr:** David Cassidy is bursting to answer that point. I will mop up if any other points arise.

**David Cassidy:** Margaret Smith has raised a broad policy issue about whether the definition should be simply hospitals. Because that is a policy issue, it will be for the minister to field.

In section 3, we were trying to get at the fact that, within hospitals, there is a place that is recognised as dealing with accidents and emergencies. Margaret Smith said that the hospital in her constituency did not have a recognised accident and emergency department. We knew that that was often the case. I attempted to answer this point earlier. We had two ways of going about setting a definition. Either we could attempt to list all the names by which such premises are now called—and risk missing one or two, or risk those names being changed in future—or we could attempt a general description. We did not use the phrase “accident and emergency departments”. The wording of section 3(2) refers to parts of hospitals the purposes of which are

“the reception and treatment of persons needing medical attention as a result of an accident or otherwise as a matter of emergency.”

That wording does not exclude departments that are not called accident and emergency departments. I am sorry to have laboured the point.

**Margaret Smith:** Certain parts of hospitals—such as high-dependency units or intensive care units—would come under that definition. However, the definition does not take us back through the operational chain. For example, somebody could come from an outbuilding or some other building with blood or organs or anything else. That person would be part of the operational chain. So we are still left with the mental test—being able to prove that a person knew that somebody on that journey was involved in an emergency.

My question, to which I would like an answer, is this. What is to prevent you from applying the status not to the individual wards but to the hospital as a whole, if it deals with emergencies? For example, the Western general hospital has

five different sites. Would it not be easier simply to include whole hospitals?

**The Convener:** The minister is clear about what he is being asked to consider.

**Mr Kerr:** I am happy to reflect on everything that has been said because I want the bill to work. I have dealt with many issues as a minister—the bill has been an incredibly difficult one, but at its heart, there is a good and proper intent.

To answer the question, the issue will be about the situation, the proximity and the reasonableness of what happens at a particular moment. I will consider Margaret Smith's point that the policy should be broadened to cover whole hospitals. However, the issue is about whether a reasonable person would understand that an individual was playing a certain role. Otherwise, attacks on such individuals will be dealt with under common law.

**Margaret Mitchell:** You have touched on the wider measures that will accompany the bill, which will involve educating the public, reinforcing the message and raising public awareness. Will you be more specific about those measures?

**Mr Kerr:** I hope in due course to share some of our thoughts on the matter with the committee. We are involved with those who know better than I do how best to organise campaigns. Money and resources have been set aside and the Executive is considering how to support the campaign. I return to my original point about how difficult the matter is—even the campaign is difficult to get right. We need a general campaign to promote respect for workers and zero tolerance of abuse and assault. We must consider how we will conduct the campaign in schools, in the health service and through local government. The work needs a degree of sophistication.

We are taking a variety of measures. We are working with Scotland's Health at Work, an organisation that we intend to support, to put in place training regimes backed up by video and training packages to increase the recognition of what emergency workers do. That will provide a professional approach to reducing the number of assaults. We will also introduce a wider package of education measures to give everybody an understanding of the role of public service and emergency service workers. We are considering how to record, categorise and deal with incidents. We also aim to promote best practice, such as the good models in Northern Ireland, Liverpool and elsewhere. Linda Shanahan, from the STUC and the FBU, has worked with us to ensure that we achieve the right balance of management, worker and Government responsibility.

**Margaret Mitchell:** To what extent do those measures complement the offences that are in the bill?

**Mr Kerr:** The bill is the unfortunate part of the matter; I would prefer it if we did not need to create legislation to separate out such particularly vile acts. The bill is an integral part of the measures, but it is the dirty end of the business. When things go wrong—when education has not worked or when people have no respect or understanding of the role of emergency workers in our community—we need to deal with that separately. However, the bill is a small subset of what we want to do. As I said earlier, we are carrying out education on respect for public service workers to make it clear why attacks on them are unacceptable. That work takes place every day, but we are trying to co-ordinate it to make it more effective.

The bill is arguably the wrong end of the business and it is a small part of what we want to do, but it is important nonetheless. The big aim is to stop the attacks. As my kids did, children should go to the local fire station to speak to firefighters about their job. Firefighters need to get across the messages about their importance to the community, about hoax calls, which could take them to one end of the town when there is a fire at the other end, or about interference with fire appliances or vehicles, which could cost somebody's life. That work already takes place, but we want to do more of it. However, some people just do not get the message. We want to deal with them separately, to stigmatise them and to give greater powers to the courts to deal with them.

**Margaret Mitchell:** That reply was helpful.

Will you comment on the remark in the Finance Committee's report that there was a lack of concrete evidence to support the assertion that there were likely to be fewer prosecutions?

**Mr Kerr:** Perhaps David Cassidy or Gery McLaughlin will respond to that question because—unlike you folk—I am not an expert on the court system. However, I have been trying to get to grips with it of late.

Certain cases involving greater offences that might previously have been transferred to the higher court could, under the bill, be dealt with in the summary justice system. We think that osmosis in the process will result in a levelling off with respect to the cases that end up in the higher courts and the cases that are dealt with in the sheriff courts and the summary justice system. Put bluntly, the experts' projections suggest that movement in the system will allow cases that would automatically have been dealt with in the

higher court to be heard in the sheriff court and vice versa.

Gery McLaughlin has not spoken yet, so he can answer this question.

13:00

**Gery McLaughlin (Scottish Executive Justice Department):** I want to add only that as well as taking evidence on the financial memorandum, the Finance Committee received written evidence from the Crown Office and Procurator Fiscal Service and from the Scottish Court Service that suggested that the bill was unlikely to lead to significant additional costs.

**Margaret Mitchell:** Although the witnesses from whom we have taken evidence accepted that the matter could be dealt with adequately under existing common law, they held out some hope that, by raising awareness and introducing the offences, the bill would at least act as a deterrent. If it is unlikely that more prosecutions will result from raising awareness of additional offences, what is the bill's deterrent element?

**Mr Kerr:** I am not sure that your argument should lead to your conclusion. The bill will act as a deterrent because it seeks to name and shame those who carry out such crimes, and to increase the sentences that are available. If the offence is particularly bad or features a higher-level assault—for example, if someone is stabbed while they are on duty—the court system would deal with that under common law anyway. The bill itself focuses on an especially invidious crime that falls in the middle ground and, despite the Lord Advocate's efforts, has not been treated seriously enough in the system.

**Margaret Mitchell:** We have also established a high incidence of under-reporting of this crime in, for example, the prison service and hospitals. People were hoping that if they were specifically covered by the bill they would be able to use the new offence to pin down something that had been difficult to report before. Will that not lead to more prosecutions?

**Mr Kerr:** We want to receive more information about what is happening out there. In the light of the anecdotal and other evidence that we have received from the services involved, we have retained the ability to add public service workers to the legislation. If better monitoring allows us to evaluate whether a particular situation is valid in the context of the bill, we will deal with it. Indeed, we have introduced the wider package of measures that I mentioned earlier in order to get that level of information. At the moment, we think that the list of workers in the bill is about right; however, the door is not closed. We need to discuss the issue and bring together an evidence

base that will allow us to make further decisions. This might just be the start of a process of adding other services to the list in the bill. In response to your question, if we receive data on particular situations, we will consider adding other services to the list.

**Margaret Mitchell:** We have your assurance that you are trying to beef up and give more substance to your assertion that the bill is unlikely to result in more prosecutions. However, this morning we have spoken to representatives of the British Association of Social Workers and the Association of Directors of Social Work, who say that there is bound to be a cost implication, because more social inquiry and children's hearing reports will be required as a result of prosecutions under the legislation. The bill must have a cost implication, simply because of the community sanctions that may be implemented as a result. That cost implication is not outlined sufficiently in the memorandum.

**Mr Kerr:** I am happy to reflect on that point. However, under the common law the people to whom Margaret Mitchell refers would be in the system in any case. That applies to court proceedings and whatever disposals, social inquiry reports and background reports are required.

**The Convener:** I understand that there may be a tendency for prosecutions to shift around and that there might not be an increase in the number of prosecutions, although that would surprise us. However, we can find nothing in the policy memorandum that tells us that there may be no overall increase in the number of prosecutions. The document tells us that you are creating a new offence and repeats what you said in your introductory remarks—that you are trying to draw a circle around the group of emergency workers. It does not say what you have just said. This is the first time that we have heard that that is part of the policy intention.

**Mr Kerr:** Are you referring to the point that I made about which court deals with which cases and shifts within the system? I do not quite follow what you are saying.

**The Convener:** We have read all the documentation that accompanies the bill, and the committee assumed throughout its evidence taking that there was a deterrent aspect to the creation of two new offences. We were surprised to discover that there will be no overall increase in the number of prosecutions, which you say is down to the fact that there may be shifts in how people are prosecuted. In some cases, people might simply be charged with a more serious offence. That would account for the fact that there will be no increase in the number of prosecutions, notwithstanding what Margaret Mitchell told you

about the evidence of increasing costs that we received this morning from the British Association of Social Workers and the Association of Directors of Social Work.

One of the objectives of the bill may be to make some offences more serious, but that is not specified in the policy memorandum. It would have been quite useful to know that that was the starting point, regardless of whether we agree or disagree with the claim that there will be no increase in the number of prosecutions.

**Mr Kerr:** That is a fair point and I accept what you are saying. Perhaps the evidence that the Crown Office and Procurator Fiscal Service gave to the Finance Committee would be of use. I return to the point that I made to Margaret Mitchell; the people whom we are discussing will still be in the system, regardless of whether the bill is enacted. The financial memorandum says that there will, overall, be a levelling out and that there will not be a substantial additional financial cost. Regardless of whether cases are dealt with under common law or under the bill, there will be a process in play and costs will be incurred as a result.

**Margaret Mitchell:** That does not cover the issue of under-reporting, which has been raised by many witnesses.

**Mr Kerr:** I apologise for not addressing that point. We want to get an evidence base for what is happening. Are emergency workers being subjected to assaults or to abuse? What is the level of abuse? The situation is not clear. It is similar to the situation that existed in respect of assaults on teachers. Quite correctly, the reporting system was changed to enable us to analyse what was happening in our schools. The new system showed an increase of X per cent in the number of assaults. Many of those were verbal assaults, but some were physical. The issue is one of information. I accept that we need to clarify for the committee the data that we are collecting. We may find that there is an increase in reporting of assaults—perhaps verbal assaults—but how does that translate into assaults, obstruction and hindrance that will be dealt with under the legislation?

**The Convener:** That is an important point on which to end. We have heard evidence about the level of under-reporting. Whatever view people take on the construction of the bill, there is general agreement that the Executive's wider objectives in the measures are welcome, especially because of under-reporting. You may have heard the prison officers' trade union side say that prison officers are told that, in effect, assaults are not to be reported.

**Mr Kerr:** I do not know whether I was in the room at the time, but I certainly did not hear that comment. I am happy to reflect on the evidence.

**The Convener:** Perhaps you could pick up the point from the *Official Report*.

**Mr Kerr:** Absolutely.

**The Convener:** At the outset, the witnesses told us that there seems to be a tendency to persuade officers not to report minor incidents of assault. Perhaps that practice needs to be examined.

**Mr Kerr:** Absolutely.

**Margaret Mitchell:** Could I just add something?

**The Convener:** If it is brief. We do not really have time. What is your point?

**Margaret Mitchell:** It is on the financial implications. As things stand, it looks as though the assumption that there will not be a substantial increase in reporting will be negated. Will the minister reconsider the financial memorandum to take cognisance of that?

**Mr Kerr:** Yes—but I am not sure what the statistics will tell us about what would come under the bill, particularly with regard to verbal assaults.

**The Convener:** I agree with what you said earlier: we thought that the bill being short would make this dead simple. It has not been, because many people want it to cover things that it will not cover, which is a serious issue. For the purposes of our stage 1 report, any other information that you can give us about why you have constructed the bill as you have—such as statistics relating to emergency workers and trends that have been identified—would be useful. There might be one or two issues that we have not got round to. I presume that it will be in order for us to drop you some correspondence on that if we need more information for our stage 1 report.

**Mr Kerr:** Absolutely.

**The Convener:** It has been a long evidence-taking meeting, but it has been worth our while. I thank the minister and his team; we have had an interesting exchange.

**Mr Kerr:** Indeed. Thank you.

## Justice and Home Affairs in Europe

13:11

**The Convener:** Before we can go we have to finish on two brief items, which we had to defer from our previous meeting. Item 2 is on justice and home affairs in Europe. I remind members that a note has been circulated and I ask them whether they wish to take action at this stage. We can await the publication of the European Union white paper on divorce and thereafter consider action regarding proposals or seek an update from the Scottish Executive on its plans for implementation of the obligation in the European Council regulations on mutual recognition of judgments on divorce and parental responsibility. We could do a range of things. Do members have general comments?

**Margaret Smith:** It would be useful to find out what the Executive's plans are.

**The Convener:** If we ask for an update on all the matters that are set out in the note by the clerk, we will be able to make a judgment about which we need to prioritise.

**Michael Matheson:** It would be useful if we could in the future pick up on a white paper that is coming out of the European Commission. We could follow it through its formative stages and feed our views and concerns into the process. I think that the time to get in there is when the Commission publishes its white papers, rather than green papers, although I am not entirely sure. Perhaps we can have that clarified. There is a need for us to try to follow through a Commission proposal and feed into the process.

**The Convener:** So you would be happy to agree to write to the Executive to ask for its response to the proposal on alternative dispute resolution.

**Michael Matheson:** Yes.

**The Convener:** I do not know whether members had a chance to read our draft response to the Commission, which addresses Michael Matheson's point about getting in there quickly. I suggest that if members have points to add, they let Alison Walker know by the close of play tomorrow.

## Freedom of Information (Scotland) Act 2002 (Fees)

13:14

**The Convener:** Item 3 is on the Freedom of Information (Scotland) Act 2002. Members have a note by our reporter, Michael Matheson, and the clerk on the Executive's consultation on charging of fees under the act. I invite members to consider the draft response to the consultation.

**Michael Matheson:** I want to thank the clerks for their assistance in drafting the note. I hope that the committee will accept the proposal in paragraph 23.

**The Convener:** Given that some members are not here to express their views, we should simply circulate the note. If no one replies, we will adopt the position that is set out in the note. I think that there is general agreement on what we want to say about charging.

The next meeting of the Justice 1 Committee will be on Wednesday 16 June 2004 in the chamber, where we will conduct our quarterly consideration of petitions, consider a number of statutory instruments that are subject to the negative procedure and consider in private our stage 1 report on the Emergency Workers (Scotland) Bill. Thank you for your attendance.

*Meeting closed at 13:15.*



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