JUSTICE 1 COMMITTEE

Wednesday 26 January 2005

Session 2

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JUSTICE 1 COMMITTEE
2nd Meeting 2005, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

THE FOLLOWING ALSO ATTENDED:

Ian Hooper (Scottish Executive Environment and Rural Affairs Department)
Lewis Macdonald (Deputy Minister for Environment and Rural Development)

THE FOLLOWING GAVE EVIDENCE:

Hugh Henry (Deputy Minister for Justice)
Rachel O'Connell (University of Central Lancashire)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Wednesday 26 January 2005

[THE CONVENER *opened the meeting at 10:14*]

Subordinate Legislation

Land Reform (Scotland) Act 2003 (Modification) Order 2005 (Draft)

The Convener (Pauline McNeill): Welcome to the second meeting in 2005 of the Justice 1 Committee. I welcome the Deputy Minister for Environment and Rural Development and apologise for keeping him waiting—we had important business that we had to finish.

I refer members to the note that has been prepared by the clerk on the draft Land Reform (Scotland) Act 2003 (Modification) Order 2005. Motion S2M-2288, in the name of Cathy Jamieson, was lodged but has subsequently been withdrawn, and a new motion in the name of Lewis Macdonald has been lodged. That is why the minister is here this morning. I invite the Deputy Minister for Environment and Rural Development to speak to and move motion S2M-2293.

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Thank you for inviting me and for your prompt agreement to consider the order, which we are keen should go forward quickly. The order is intended to correct an inadvertent change that was made while the primary legislation—the Land Reform (Scotland) Act 2003—was going through Parliament. That change was made to the definition of what was excluded from the rights of access. The original bill contained a provision to exclude from access land on which crops are growing, the definition of which included

"a plantation of trees which are at such an early stage of growth that they are likely to be damaged by the exercise of access rights in respect of the land in which they are planted, but does not otherwise include woods, forests, orchards and other places in which trees are planted".

At stage 3 of the Land Reform (Scotland) Bill, the Parliament agreed without division to an amendment that had been lodged by Rhona Brankin, who was a back-bench member, to remove the exemption for plantations of young trees. However, the text that was removed included the phrase

"but does not otherwise include woods, forests, orchards and other places in which trees are planted".

That text was lost, which left the legislation ambiguous with regard to whether woods, forests and other places in which trees are planted would then be covered by the access provisions.

That inadvertent deletion is addressed in the modification order to remove any ambiguity from the proper interpretation of the act. It is quite clear from Rhona Brankin's speech in support of her amendment, and quite clear from the responses in Parliament to the debate, that the intention was not in any way to limit the right of access, but to increase it. The purpose of the modification order, therefore, is to make it clear that woods and forests are included in the right of access in the 2003 act.

We consulted on how we might best do that in a way that would also recognise that there are specific and very limited areas of woodland in which one would not want people to walk. We consulted on a formulation that included nurseries and so on. It was clear from the responses to the consultation that we would have to be careful and that any restriction would have to be narrowly defined so that it did not inadvertently exclude from access areas in which, for example, there was natural regeneration of woodland and in which young trees were growing. The form of words that is used in the modification order is:

"land used wholly for the cultivation of tree seedlings in beds".

That is a very specific and limited exemption to the right of access, and we think that it meets both the spirit of the amendment that was lodged by Rhona Brankin and the intention of the original bill.

In summary, the modification order simply addresses an anomaly that has emerged from close scrutiny of the wording of the act as passed by the Parliament in 2003. The consultation that we conducted on our proposal to address that anomaly produced a range of responses, the vast majority of which were in favour of the course of action that we are taking. I hope that members will agree that that is the right way forward.

I move,

That the Justice 1 Committee recommends that the draft Land Reform (Scotland) Act 2003 (Modification) Order 2005 be approved.

The Convener: Thank you for that explanation, minister.

Stewart Stevenson (Banff and Buchan) (SNP): In the light of the debate that took place during the passage of the bill, I am minded to support the order. I recollect that, as part of that debate, Allan Wilson agreed that as long as someone did not walk on the shaws in a field of potatoes but kept to the rigs, they could exercise their right of access. Previously, I thought that that

scenario would apply in this case. The minister's clarification is useful in that respect. Although the order carries the danger of the situation that I have just outlined, I suspect that the way in which it is cast excludes the right of access between young growing trees. However, given the vulnerability of young growing trees, that is probably no bad thing.

The Convener: I endorse what Stewart Stevenson said. There was much debate during the passage of the bill about the specific question of young trees. The Parliament intended to protect growing trees but not to exclude woodlands in general. I am grateful to the person who discovered that an error had been made. The order is welcome: I like the way in which we call it a modification order. I am sure that most people will welcome the fact that the error has been rectified.

No other member wishes to comment on the order. Does the minister have anything to say in summing up?

Lewis Macdonald: No, other than to say that I welcome the comments by Stewart Stevenson and the convener, which indicate that the modification order reflects the will of the Parliament and the intention behind the 2003 act.

The Convener: We were asked to deal with the order as a matter of urgency and we did so. We realised that the issue, unlike some others, would be straightforward.

Motion agreed to.

That the Justice 1 Committee recommends that the draft Land Reform (Scotland) Act 2003 (Modification) Order 2005 be approved.

The Convener: Members are aware that the committee is required to report to the Parliament on the order. Given that there is not much to note other than to say that the committee is satisfied with the order, I suggest that we simply note the order.

Members *indicated agreement*.

Part 1 Land Reform (Scotland) Act 2003: Draft Guidance for Local Authorities and National Park Authorities (SE/2004/276)

The Convener: I am grateful to the minister for agreeing to remain behind for our second item of subordinate legislation.

I refer members to the correspondence that we have received on the subject from the minister, in which he responds to the concerns that we raised at our meeting of 12 January about the introductory section of the guidance. The minister proposes to withdraw the current draft guidance and to lay an amended version before the Parliament. I clarify that we are talking about the introduction to the guidance and not the guidance itself.

Stewart Stevenson: I welcome the fact that the Executive has made a prompt response to the concerns that were expressed in committee. That said, the minister and his officials should reflect on how we got into this situation. The people in Scottish Environment LINK and others were astonished to find that the wording had somehow appeared right at the end of the process. That is what created this particular difficulty. I hope that our comments will inform future approaches to similar consultations; we should not get into a pickle like this again.

Although there remain some issues with the guidance, they are not of the character to inhibit our being comfortable with the document. The only remaining issue of which I am aware, on which it would be useful to hear from the minister, relates to the timescale for putting the guidance into practical use in the local authorities and national parks. There is pretty widespread concern that we should try to move forward as rapidly as possible. That is one of the reasons why I will not make a meal of other issues in the draft guidance, because it can be changed at a later stage in any event.

The Convener: I do not disagree with Stewart Stevenson. The committee could have lodged a motion to annul the order, but we had to make that judgment call. We were reluctant to lodge such a motion because it seemed to be an onerous action and we thought that the problem with the draft guidance could be rectified in another way. I remain unhappy about the language of the draft guidance for local authorities. If there had been another mechanism whereby the guidance could have been amended to reflect more accurately the language of the Land Reform (Scotland) Act 2003, I would have chosen to go down that route. However, there was no alternative.

I appreciate that debate will continue about this area of the law, so the matter will not end here. Given the committee's concerns about the draft guidance for local authorities, I presume that the minister will review the 2003 act at some point because representations have been made about matters such as the definition of the area to be drawn around the curtilage of a building. There are other outstanding issues. Will the minister give the committee a commitment that the guidance will be reviewed at a later date when the other issues of concern about the 2003 act have been reviewed? I would feel a lot happier about recommending the order to Parliament if the minister could give us that assurance.

Does any member wish to comment before I invite the minister to respond?

Mr Bruce McFee (West of Scotland) (SNP): I have a specific question about finance. Would it be useful to ask the minister about that at this stage?

The Convener: Let us come back to that.

Lewis Macdonald: I am happy to give an assurance that we will keep the guidance under review. We immediately recognised the reasons for the committee's concern about the inadvertent wording in the draft guidance and we have acted to deal with it. First, we have tweaked the words in the introduction and we have also made it clear and explicit in the body of the introduction that the guidance is subject to the provisions of the 2003 act and does not in any way supersede it. That is the case anyway, but it is worth putting it in black and white to remove any doubt.

We looked at one or two other aspects that were raised with us and made some small amendments to the wording about core paths, for example, in order to make it clear that we do not expect every path in a core path network to be multi-use.

Stewart Stevenson made an important point about timing. I am grateful to the committee for the way in which it dealt promptly with agenda item 1 today, as well as with this item 2. It is not essential that the guidance to local authorities be in place in order that the provisions of the 2003 act can be implemented, but it is sensible that it should be and we are therefore keen that that should happen. Following today's discussion, and assuming that the committee is content, we will produce a revised version of the guidance and hope that it will be available for the implementation date of the access provisions, which is 9 February. That is the target date towards which we are working.

Mr McFee: I take the minister back to a matter that was raised by Perth and Kinross Council about the availability of resources. In your response to the convener's letter, you wrote:

"A total of £22 million has been allocated to local authorities"

You gave the Perth and Kinross element of that allocation as £178,000 for 2004-05 and 2005-06. I appreciate that it is a matter for local authorities to determine the priorities for their budgets, but will you confirm whether the £22 million was identified specifically in the grant-aided expenditure provisions for all local authorities?

Lewis Macdonald: If you are asking whether the money is ring fenced, the answer is that it is not.

Mr McFee: If the funding was ring fenced, it would not be a matter for local authorities to determine how it was spent. I was asking whether the money is specifically and separately identified in the GAE settlement.

Lewis Macdonald: I assume that it is, but I will ask Ian Hooper to elaborate.

Ian Hooper (Scottish Executive Environment and Rural Affairs Department): I understand that £22 million was included in the calculation of the GAE block. I am not sure whether that answers your question.

10:30

Mr McFee: I think that it does. Was that sum within the GAE block specifically and separately identified?

Ian Hooper: It was certainly identified in the discussions involving the Executive.

Lewis Macdonald: In other words, you are asking whether local authorities know that that was the amount of money allocated. The answer is yes, I think—but in the usual way that applies in such circumstances.

Mr McFee: The minister might wish to reflect on that and come back to the committee on the matter. We have perhaps been getting two slightly different answers on this issue.

Lewis Macdonald: I am not quite sure that I have followed the point of the question.

Mr McFee: The sum might have been identified at Executive level, but was it identified in the GAE settlements to local authorities? For example, does Perth and Kinross Council know that £178,000 of its GAE settlement is supposed to meet the access requirements under part 1 of the 2003 act?

Lewis Macdonald: Those provisions have certainly been made clear to local authorities collectively, through our discussions with the Convention of Scottish Local Authorities. I can come back to the committee on the precise detail of how we or COSLA let individual councils know about that. I am afraid that local government finance is not generally part of my province, so you might well be ahead of me on the precise mechanics of that. "In the usual way" is probably the answer. I will come back to you, if that would be helpful.

The Convener: I thank the minister for remaining behind for this agenda item. The introduction to the draft guidance has been revised, for which the committee is grateful. We are also grateful to Ian Hooper, who made the offer to us when he was last before the committee. We recognise that you have taken on board our concerns, and we look forward to reviewing the implementation of the 2003 act in the months to come.

We must prepare a report to Parliament on the guidance. I suggest that we simply reflect our discussion.

Members *indicated agreement*.

Mr McFee: Will our report to Parliament reflect the question of finance and any correspondence that we receive from the minister? I would hope that my question can be answered relatively simply. Will that be reflected in our report, or do you intend the report to be narrower than that?

The Convener: I will need to check how much time we have to prepare the report.

The guidance that has already been laid has to be withdrawn, given the changes to the introduction. The whole order will then be re-laid, even though only the introduction is being changed. There is no timescale for that as such. If we get a prompt reply from the minister, it might be possible to incorporate that. Margaret Smith originally made the point that there is no reason why we cannot include the committee's issues in relation to core paths in our report.

Stewart Stevenson: I think that I am correct in understanding that the guidance is not, strictly speaking, an order. It is a draft that is laid under a power in the 2003 act. In a sense, it falls outside the normal reporting procedure, even to the limited extent to which we are required to report on negative orders. It is a slightly mysterious thing, this draft guidance. When we passed the bill, I did not twig that we would be dealing with the guidance in this way.

The Convener: If we are interested in the development of the Land Reform (Scotland) Act 2003, it is useful to know what discussions took place between the Executive and local authorities on their obligations on access. It would be useful to get an answer on that point for future reference.

Protection of Children and Prevention of Sexual Offences (Scotland) Bill: Stage 1

10:35

The Convener: We move on to item 3, on the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. I welcome the committee's adviser on the bill, Chris Gane. I also welcome Rachel O'Connell, who is the director of research at the cyberspace research unit of the University of Central Lancashire. I thank her for coming all this way to talk to the Justice 1 Committee and for her research paper, which it has been helpful to have in advance. We have a number of questions on the paper; we will go straight to them.

Margaret Mitchell (Central Scotland) (Con): Rachel O'Connell will be aware that the purpose of the bill is to provide greater protection for children against sexual offences and, in particular, to home in on grooming and to strengthen the law on it. I have read her excellent paper, in which she goes into that in a lot of detail. I ask her to elaborate a little on what grooming is. Having read her paper, I know that that is a huge thing to ask her to do, but it would be useful if she could give some more detail on that.

Rachel O'Connell (University of Central Lancashire): I will be happy to do so, but I will first fill in my background, which is in forensic psychology. I began researching paedophile activity way back in 1996, when I was part of a project that was funded by Europe. We worked with Interpol, the paedophile unit at Scotland Yard and the Garda Síochána in Ireland. At the time, it was not illegal to possess child pornography in Ireland—this was after the Mark Dutroux case—so Professor Max Taylor and I were sanctioned by the Government to look at child abuse images on the internet and to engage in research, during which I integrated myself into paedophile communities in internet relay chatroom environments, some of which were entitled "toddler sex" or "pre-teen sex".

We were also sanctioned to examine grooming activities. I posed as an eight, 10 or 12-year-old, usually a girl, in children's or teen chatrooms for the purposes of finding out how easy it is to groom and what the nature, processes and scope of grooming are in teen chatrooms. The biography that I usually gave was that I was eight, 10 or 12, my parents were always fighting and I was lonely in school. Between 6pm and 9pm, it never took more than 10 to 15 minutes to be picked by an individual.

The process is as follows. There is an initial friendship-forming phase of dialogue such as "Hi, how are you doing?" The individual wants to isolate the child from the public environment and get them into a private chatroom, so they move the child from an environment in which communication is one to many into a one-to-one communication environment. They then go through a relationship-forming phase, in which the adult says things such as "I know what that feels like," and "I want to be there for you." Most individuals pose as being about two years older than their target child—when somebody is 10, that is a big difference—although, almost from the outset, others tell the child that they are 20 or over. If you can remember being a kid, you will remember that anybody who is over 20 is just old; the person is an adult.

There are usually requests for pictures, and my experience of conducting research in paedophile chatrooms indicates to me that individuals refer to the pictures that children post in their profiles as being similar to portfolios. They search through kids' profiles until they find the kid that matches their particular predilections. However, paedophiles have a variety of ways to select a child with a degree of premeditation and planning before they make contact with the child. Some will select children on the basis of their pictures, some will appear to spend a lot of time in a chatroom before they decide to target an individual child and some will come in, announce themselves and see what kind of contact they can make.

Once the child is isolated in a private chatroom, there is an exclusivity phase in which the groomer will use very seductive and manipulative language. For example, he might say, "Oh, I feel like I have really bonded with you", "I feel like you might be my soul mate" or "I love you". In fact, the language is so seductive that, on occasion, I have found myself saying, "Aw" before I realise what I am responding to. As part of the bonding process, the groomer might also send pictures and rose and smiley face emoticons.

The exclusivity phase, which involves language such as "I love you", "This is our secret", and "This is a very special relationship", leads to what might be described as the risk-assessment phase. The adult might ask questions such as "Who else uses the computer?" and "Where is it located?" and might tell the child not to save copies of their conversations. He can disguise such remarks by pretending to have brothers and sisters themselves and saying that it is sometimes difficult to access the internet. However, I found that to be a trigger point; as soon as the person asked such questions or made such comments, I would think, "Right, we've got a live one here." Perhaps at this point I should make it clear that my comments are not solely reliant on my own research but are also informed by a review of actual police cases.

Once the adult has established that the child is malleable, they move on to the sexual phase. At this point, there is deviation. For some individuals, the intention behind the process of online grooming is to meet the child, which is what the bill is intended to address. As members will know, some spend a year engaged in the process, while others reach the stage of "I can meet you" much quicker.

Other individuals engage in online grooming to find out the child's daily routine. They want to know who takes them to school, what their after-school activities are, whether they are latchkey kids and are home alone and so on. For example, in a recent case—I cannot remember whether it was the Turner or Monaghan case, but I can find out the details later—the adult discovered that the girl was home alone on a particular afternoon, came to her house, knocked on the door and then forced his way in when she answered. The individuals in question go through a process of finding the optimum way of getting access to the child.

Although the groomer will typically engage in an intimate bonded relationship with the child, he might manipulate the child into believing that he or she is ultimately in control of the situation. For example, he might pretend to be psychologically weakened by the relationship and allow the child the perception that they are guiding what happens.

The ultimate purpose of such activity is to meet the child. Although circumstances differ from case to case, the adult might engage in cybersex, which basically involves describing to the child what they would do if they were with them and explaining such activity. It is noteworthy that it did not seem to make any difference whether I pretended to be a child of eight or 12; they would still explain in depth particular sexual terms such as masturbation, would ask the child to do it and would want to know what it felt like. That sexual element of the grooming process is used to strengthen the promise of a wonderful blooming relationship in which the person and the child will come to know each other fully. In that particular strand, there is a balance between intimacy and psychological coercion which takes the form of the adult trying to push the child's boundaries by saying, "Do this. Don't you love me? I'm here for you. I think about you all the time. You are the most important person in my life. Please do this for me—you'll make me happy."

Groomers might also request pictures. For example, they might say, "Oh, you have a beautiful face. Can I see more?" which might progress to questions such as "Do you have a webcam? Can you take photographs?"

Increasingly, they are utilising capabilities such as moblogging sites, which allow children to upload photographs that they have taken with their phone. In some cases, they have sent phones to the kids. A groomer might ask for the make and model of a child's phone and send a mirror phone that he says is to be used only for communicating with him or a phone that he keeps in credit. They are expanding beyond fixed internet access and computers to embrace mobile technologies. Computers come in below parents' radar—they are not aware of what is going on—but mobile technology is completely lost on them.

10:45

That describes the typical groomer, but there are also individuals who will engage in coercive activity. They will balance the coercion, but their approach is more aggressive. Having secured some piece of information that the child did not want to divulge or that is really important to the child, they will say things such as, "If you don't do what I tell you to do, I'm gonna post the pictures you sent me on the internet," or "I'm gonna come round and tell your mother," or "I'm gonna see your school friends." Engagement in cybersex can have quite aggressive elements, such as talk about tying up the kid or using whips. It can go to that level.

Some of those aggressive types seem to want to meet the children in the real world, but there is less indication that they will go that far. There is also a minority—granted, they are few, but they exist—who seem to be driven by sadistic desires. They are more aggressive, but it appears that they are the smaller category of individuals who engage in grooming.

Those are the various processes. At the end of the conversations, the groomers say things such as, "Night, night, sweetheart. I love you. Sending roses"—they will use emoticons of roses—"I can't wait to see you; I'll be counting the minutes and hours. I'll send you presents." The aggressive types will try to bring the conversation round so that they are ameliorating the situation by being quite kind at the end.

On cyber-rapists, I am not fully convinced that all the guys who are just into the sexual fantasy are preferential paedophiles. They are just trying to achieve sexual gratification for themselves through the process of coercing an individual and getting a kick out of it. At the end of that, they are gone. As soon as they obtain what they want, that is it—they do not even complete the conversation, but instead just log out of the chatroom. My work with the police in tracking those guys has shown that they might come back on again after a very short time. They seem to be quite prolific; they have a high desire to engage in such activities.

Margaret Mitchell: We have been studying grooming for ever, but you and your paper have opened up new insight into what is going on with the result that we wonder whether the bill covers what we want it to cover, in that we are focusing a wee bit more on what happens after grooming as opposed to focusing on grooming itself and cybersex. Is cybersex, taken in conjunction with the grooming process—the winning of confidence, the intent and the content of the communication—enough in itself to make an offence? Perhaps I am wandering into what Bruce McFee will ask.

Rachel O'Connell: That is a very difficult question, although it is a good one. I am sometimes called in as an expert witness on court cases. Most recently, I was a witness in a case that involved procurement, in which an individual was talking to a law-enforcement officer but thought that he was talking to another paedophile about procuring an 11-year-old. He specified exact characteristics such as ethnic origin. His defence was the defence of fantasy—that he never intended to carry the act out. It is incredibly difficult for a court of law to tease out such issues.

I will deviate slightly. In my experience of researching paedophile activity in paedophile chatrooms, such as toddler sex chatrooms, the chat centres on certain activities. People ask, "Are you here to play or trade?" They refer to the exchange of child abuse images as "trade". "Play" means engaging in cybersex—exchanging details of their sexual fantasies with one another or role playing. One of them will say, "I'll be a four-year-old boy in short pants; you can be the abuser." They generate narratives about what can happen. From a research point of view, the fascinating thing is that other individuals will then engage in the story and embellish it with their experiences. In such environments, narratives are constantly being created about adult sexual contact with children.

Another activity that paedophiles engage in is talk about how they swap kids. Some claim to be fathers or people such as schoolteachers, who have access to kids; that cannot be verified, because they are online. They have nicknames such as "Kidswapper". How much of that is fantasy is difficult to establish. Although we are obviously talking about the creation of text-based child pornography, there have to date been no cases—I am not a legal expert, so I may be wrong—in which such people have been prosecuted under the Obscene Publications Act 1959 because of the difficulties with Nabokov's "Lolita". The defence that such activity is a fantasy will be used regularly.

Margaret Mitchell: Although the fantasy defence can be used, is any account taken of the psychological effect of such play on the child?

Rachel O'Connell: That is difficult. It is important to ensure that we protect people's rights to engage in fantasy and role playing online. The online gaming environment has a massive element of fantasy. It will be incredibly difficult to tease out the issue. The psychological harm to children has not been properly assessed yet, because—

Margaret Mitchell: There is not enough evidence and there has not been a sufficient number of test cases.

Rachel O'Connell: That is right.

Margaret Mitchell: Thank you; that was excellent.

Stewart Stevenson: I notice that in the first and second lines of your paper, and elsewhere, you talk about

"adults or adolescents engaging children in varying degrees of sexually explicit conversations".

What evidence do you have on the age range of the abusers?

Rachel O'Connell: It was clear from operation ore, which identified that 7,000 people were collecting child abuse images, and from operation amethyst, which was the equivalent operation in Ireland, that some teens were engaged in downloading child-abuse images. There was also evidence to suggest that they were engaged in grooming activities. Recent research in New Zealand by David Wilson, a friend of mine who works for the New Zealand Government's Department of Internal Affairs, suggests that there has been an increase in the number of teenagers who view images of child abuse and who engage in child-sex related activities. That is a complex and challenging issue.

Stewart Stevenson: I want to be quite specific, because the bill that we are considering specifies ages. What is the youngest age at which such abuse has been identified? I am talking about the abuser—the potential offender.

Rachel O'Connell: There have been two child abuse cases in the UK—one in the west midlands and one in London—involving teenagers' engagement in downloading images of child abuse. In relation to grooming, I am afraid that I cannot give you an exact age.

Stewart Stevenson: I want to pin down the fact that there is no magic age at which people suddenly start to become a risk to eight-year-old, 10-year-old or 12-year-old girls. There is nothing to suggest that a 14-year-old boy could not abuse an eight-year-old girl using all the mechanisms that you have described.

Rachel O'Connell *indicated agreement*.

The Convener: We will discuss age limits soon. You mentioned that a friend of yours has done research in New Zealand. Could the committee have access to that research? As you will realise from our questions on the subject, we need such research to allow us to make a judgment about the age at which abusers should be identified in law.

Rachel O'Connell: I can certainly get hold of that.

Mr McFee: Your evidence has been illuminating. We have had a number of evidence sessions on the bill, but this one goes into the practices and how offences come about.

We have started to discuss ages, which is a relevant issue to which I will return, but I want to cover other ground first. Of the adults who use the internet to make contact with children—perhaps I should widen that beyond adults, depending on the definition of "adult" that we use—how many go on to meet or attempt to meet a child in person? Of a hundred contacts with children over the internet, what proportion will result in personal contact?

Rachel O'Connell: That is a difficult question to answer, given the present police information set-up, but it need not be so difficult. If there were a central point where the information was recorded in a database and collated, we could begin to answer such questions. However, at present, although the police record cases, the record may not state that the internet was involved, how many victims were contacted, the number of victims who chose to proceed with the case or the number who held back. Until recently, the only way in which we could gather information was to use Google and national newspapers and try to pull out the cases and count them up.

The first case of grooming in England to come to the attention of the media was the Georgina Moscott case, on 9 May 2000. That case came to the attention of the media and, subsequently, the media recorded cases that involved paedophiles, but there has been a lapse in interest in the issue, so we do not know whether the recording is adequate. In an eight-week period, the Accrington police, with whom I work occasionally, were made aware of four individuals who were engaged in grooming. Between them, they had about 32 victims in six months.

We sometimes think that such people operate alone, but if they become integrated into a paedophile community, they receive information from others about how to avoid detection, about where best to post their pictures so that they are not observed by law enforcement and about grooming practices that work well. Some guys work together: one guy will try to seduce a kid and if he feels that the kid has "gone cold"—to use a

paedophile's words—or suspects that something is going on, he will instant-message his friend to tell him that. The friend will then come in and say to the kid, "Oh God, you don't want to talk to that guy. Come over here."

Mr McFee asked what proportion of people who contact children go on to attempt to meet them, but that is difficult to answer. Paedophiles talk about "honing their grooming skills". In the real world, a person would have to invest a huge amount of time on grooming a child and tackling their line of defence—their parents and teachers. Online, a person does not have to go to such efforts. If a kid says, "You're a weirdo, get away from me," they just log out and log into a different chatroom and start again, until they perfect their skills.

That is a roundabout way to say that we are not clear about the answer to the question. One way to address the situation would be to consider how law enforcement bodies might develop a database in which information about such people is entered. We could then begin to get a picture.

Mr McFee: I ask because the bill concentrates on attempts that a paedophile may make to travel to see children or to encourage children to travel to see him or her—it is usually him. I want to establish whether the bill comes at the issue from the right angle. I am starting to have suspicions about that because there are issues about transfer of information between paedophiles that have not been considered until now. Thank you for putting that on record.

11:00

In your paper you break down grooming activity into a number of different stages through which activity progresses—perhaps "regresses" is the correct word. I understand that the timescale is different in every case, but can you give an indication of upper and lower limits? Your paper refers to "hit-and-run tactics". In your experience, what is the minimum grooming time and over what period of time might a paedophile concentrate his efforts on a particular victim?

Rachel O'Connell: That depends on the individual and the psychological motivation that underpins his efforts. In one case, an individual groomed three girls for more than a year—he groomed one girl for 18 months. When the case came to court, it was assumed that the man had been waiting for the girls to reach the age of 13 so that if he was caught—as he subsequently was—the offence would incur a lesser sentence. That is one extreme and the legislation has changed since then. Toby Studebaker, who groomed the girl from Manchester—her name escapes me—was based in the United States and kept the grooming going for more than a year.

In another case, the friend of a girl in Wigan gave the girl's contact details to an individual. That led to a few conversations, which took place over a very short time—within one day. The man arranged to meet the girl by the railway station, walked with her to the park and abused her. The grooming period can be very short or very lengthy.

Mr McFee: In your experience, can grooming continue for more than a year?

Rachel O'Connell: Yes.

Mr McFee: What about the lower end?

Rachel O'Connell: Grooming can take place in a very short timeframe, even within a single day. The shortest period of which I am aware was in the Wigan case.

Mr McFee: Thank you. That is useful.

The Convener: You said that paedophiles tend to be involved in a ring—[*Interruption.*] I always think that it is George Lyon's voice on the fire alarm test message. I will wait to see whether the message stops, because in the past it has got stuck. The test seems to have stopped, so I will continue.

I do not recall asking the police about their investigation techniques. If, as you say, quite a high percentage of paedophiles are involved in rings or are working together, how important is it for the police to use investigation techniques that can identify that someone who appears to be acting alone is part of a network?

Rachel O'Connell: That is a good question, which I can answer with two points. First, West Midlands police have an operational policing unit, the high-tech crime unit, which proactively monitors paedophile activity on the internet. That is one strand. Secondly, by definition, the internet networks people, so as part of the investigative process forensic computing experts seek details of contacts and the people with whom a person has been communicating when they analyse computer hard drives and external storage devices. In my experience of working with the Scotland Yard paedophile unit, I have seen charts being developed that show, for example, that person X connected to and communicated with someone for a period of time. The identification of contacts is part of the investigative process.

The Convener: What success do the police have in cases in which they identify an individual's contacts, given what you said about the nature of the internet? Is there a tendency for the police to charge one or more individuals in such cases?

Rachel O'Connell: There certainly is such a tendency in relation to child-abuse images. In the

Wonderland case there was a swoop on 16 individuals in different countries across the globe. Those people were picked up almost simultaneously, because it was important that no individual had an opportunity to notify the others, who might then clean their computer hard drives.

The search for networks was part of the traditional investigative process in the real world, prior to the advent of the internet. For example, if someone was discovered to be abusing boy scouts, the police would check out all that person's connections. The internet facilitates that.

Mrs Mary Mulligan (Linlithgow) (Lab): My question follows on from your answer to Stewart Stevenson about whether a young person could be involved in grooming. If I recollect rightly, you said that you accept that a young person could be involved and not only an adult who is over 18. Do you have evidence to support that?

Rachel O'Connell: There is evidence to support the view that children are engaging in the collection of child-abuse images and that teenagers are becoming integrated into paedophile communities. From what we know from the real world—the pre-internet stuff—adults co-opt teenagers for the purpose of using them to procure children on their behalf. There may also be teenagers who are interested in children.

David Finkelhor introduced the issue of peer-to-peer abuse, asking how bad it is if a 13-year-old boy is looking at 13-year-old girls. One might presume that it is normal, as the boys will be looking at the girls on the beach, at school and so forth. However, the boy in the west midlands case, for example, was found with over 300 images of abuse on babies in nappies. The difference in age in that case was substantial.

From the psychological perspective, the question is what needs to be taken into account to combat the problem. From the legislative perspective, the question is how the teenager will be dealt with. Such cases have a massive impact. One case that I have been dealing with recently concerns a boy who was accused of having images of child abuse on his computer. His father works at a senior level and it has taken more than 18 months to investigate the case. That is an incredible amount of psychological pressure to place on a minor.

Guidelines need to be drawn up that set out how such an eventuality should be dealt with. Teenagers are very different from adults. We need to ask questions such as what measures should be taken, whether teenagers should be put on the sex offenders register and what kind of support should be available to families as they go through the process. Obviously, families can suffer massive upheaval. Although the number of cases is limited, from my experience or contact with them those are the issues that immediately jump out. The legislative framework is not equipped to deal with that kind of scenario.

Mrs Mulligan: An issue that has been raised with us is whether, when young people are involved, there is an age range beyond which the behaviour becomes oppressive. We have been told that, at that point, it is possible to see a perpetrator and a victim instead of two people involved in the sort of sexual exploration that young people undertake. The age gap applies not only to those who are over the age of 16, but to those young people who are sexually active at a younger age. From the legislative perspective, it becomes difficult to make a judgment on whether a young person is taking advantage of another young person or whether they are engaging in sexual exploration.

Rachel O'Connell: That is challenging. The only guidance that I can think of is that written by David Finkelhor of the University of New Hampshire. Writing about adolescent sexual abuse, he suggested that abuse occurs when there is a five-year age gap between the children involved and that, if the gap is less than five years, a complex range of issues has to be considered. His guidelines say that a five-year age gap is the point at which the activity enters into the domain of abuse.

Mrs Mulligan: That is interesting. The bill sets out specific ages. One of the issues that we have to consider is whether those ages might not be appropriate for individual cases involving children. I suggest to you that an arbitrary figure of five years might not be appropriate in certain circumstances. Should we stipulate such figures in legislation or leave the matter to individual cases?

Rachel O'Connell: I would imagine the latter, because that will introduce the possibility of addressing the issues and drilling down to see what the circumstances are.

Mrs Mulligan: You will have seen that certain ages are stated in the bill—over 18, in the case of perpetrators. Do you think that that is appropriate, or do you think that the bill should be more flexible and should not state ages?

Rachel O'Connell: Given what we have just discussed, I think that it is certainly worth considering including guidance on dealing with individuals below the age of 18. Perhaps, subject to review, the increasing amount of evidence that becomes available can feed into the process. That would be my suggestion.

Mrs Mulligan: That is helpful. Thank you.

Mr McFee: I know that we are asking you to comment on the hoof, as it were, but just to clarify,

does the age of the victim not matter more than the age of the abuser?

Rachel O'Connell: You could approach the matter in that way, also.

Mr McFee: The word "grooming" suggests to me an essential inequality, whether in age or in mental capacity, between the abuser and the victim. We are considering setting an age of under 16 for the abused, but is there not an argument that the age of the abuser does not matter, except perhaps in a case that involves two 15-year-olds, which is a different situation? The important point is the essential imbalance of power between the two.

Rachel O'Connell: That is another way of coming at the matter, which circumvents the issues about the age of the abuser. However, what happens if a case involves two 15-year-olds? We still come back to that basic impasse.

Mr McFee: That comes back to discretion.

Rachel O'Connell: The idea is worthy of consideration, I think.

Marlyn Glen (North East Scotland) (Lab): To continue on the theme of victims, do children disguise their identities when they use the internet, by saying that they are older than they are, for example?

Rachel O'Connell: Yes. We tell children not to give out their personal details—that is what the adverts say. What is the first question when someone goes into a chatroom? If you could not see me, you would want to know what age I was, whether I was a girl or a boy and where I was from. Age, sex and location—ASL—is one of the first questions. One of the other fields of my work involves developing an education and awareness programme for children and young people, which tries to address that issue. We urge them to engage in identity deception.

Our studies—I will make our research findings available to the committee—have involved about 3,000 children and young people so far, of which two samples of about 1,000 consisted of children aged between seven and 11. Typically, about 19 to 20 per cent of them use chatrooms on a regular basis. When we ask them about their experiences, they are reasonably confident, although not as confident as the older age sample of nine to 16-year-olds, who will put their hands up and say, "Yes, we talk to weirdos. We can spot them. We know them. There are weirdos and pervs online all the time. We know what to do." That reflects the invincibility that comes with being a teenager—they think that they know it all.

The younger kids have similar experiences, but in the focus groups it is more likely that they will say, "I was a bit upset because someone was trying to talk to me about sex." Girls will say, "I don't like boys—I don't want to do that." Those are the typical, age-appropriate responses, but children are being put in a position in which they have to navigate such things.

In our awareness campaign, we tell kids to engage in identity deception and not to let anyone know who they really are, but always to be themselves online, so that they can spot when someone is not being themselves. That is an incredibly difficult skills set to inculcate in children.

11:15

Our research findings suggest that boys are more likely to give out their real age, plus two years. The majority of girls do the same, but some pose as being five years older than they are. That is a problematic area. The girls are 12 or 13 and are discovering their sexuality, so they may quickly end up way over their heads. They do not have the skills set or the knowledge to say, "Oops, I should pull back from this, as it is getting scary." There is a big need for education, awareness raising and research into the efficacy of campaigns. We need to consider exactly what we are telling kids.

I was at a recent Federal Bureau of Investigation conference, at which people spoke about compliant victims—girls of 13 who have been seductive in a chatroom, go to a meeting, see a guy who is clearly not 18 but 47 or so and get into his car. In my opinion, that is a worrying trend. Typically, it is girls who pose as being older than they are. That is true not of all girls, but of a proportion.

We wanted to get a psychological profile of kids who take greater risks online. What emerged was no surprise. Those are kids who score highly on thrill and adventure seeking, extroversion and social disinhibition. There are things that normally make a kid think, "Oops, my mum will be really cross if I do that," so that they stop. Because those kids have high social disinhibition, that does not work for them. The more that we run fear campaigns, the more attractive the thing that we are warning them against becomes. When I go into schools and ask how many kids use chatrooms, most kids say that they would not, but there are some who say, "Yeah, I do, because I'm cool and can do the dangerous thing." Because of a combination of psychological factors, our media portrayal of issues and the need for risk and adventure seeking, kids may end up in a very difficult situation.

Marlyn Glen: Do those who chat to the kids say that they asked how old the kids were and were told that they were 16?

Rachel O'Connell: Yes. They are trying that as a defence.

The Convener: You have said that girls, in particular, sometimes say that they are up to five years older than they are. Do you think that paedophiles are aware that children disguise their ages? I do not want to take it for granted that you believe that to be the case.

Rachel O'Connell: It is. Paedophiles have a checklist that tells them how far they are likely to get with someone. If a kid says that they are older than they are, that indicates to the paedophile that they will be more malleable. Because the child is concentrating so much on portraying themselves as older, they do not have the cognitive leeway to assess whether they are dealing with a really nasty person.

The Convener: I know that there are chatrooms for particular age groups—I am not talking about instant messaging. Probably the most popular internet service provider at the moment is msn. Do any providers put out warnings to children about entering chatrooms for which they are not the right age?

Rachel O'Connell: Some of the big ones do. AOL, Yahoo! and msn put up messages and msn has shut down its chatrooms in the United Kingdom—those chatrooms can be accessed only through premium rate services, so people have to pay for the service. Moreover, there are moderators in the chatrooms. The big companies are putting out the message in relation to chat and instant messaging, but there are many smaller operations that have to be brought in to toe the line.

The fact that the reporting structures behind the internet are not linked up is incredible. The reporting structure of msn is not linked to that of AOL or of Yahoo!, so paedophiles tell one another to spread themselves around in order to avoid detection. I have just heard on the news that the virtual global task force of the National Crime Squad in England has launched a reporting structure. That means that reports will come into a central database, from which people can analyse them and look for similar behaviour patterns and forensic evidence to link individuals.

The Convener: Let me be clear about what you have said about msn. From what I have seen, it encourages users to post profiles and photographs. I have not seen any warnings. It encourages use of the webcam, which is where a lot of this behaviour begins. I did not see any warnings on msn.

Rachel O'Connell: It has one warning at log-in, telling people not to give out personal details.

The Convener: But the system is specifically designed for that.

Rachel O'Connell: Yes. Let me take this opportunity to tell you about what is on the horizon and what is happening now—it is scary when you think about it. There are blogging sites on which people can keep an online journal. They sign up for a service and get a pre-made web page. They can put in a list of their favourite music and write things like, "Today I ate a tomato sandwich and I went to such-and-such a place." Kids have the opportunity to give out details of their routine activities.

A lot of those services are free. The blogging people's perspective is that the products—they are called "social networking products"—are a good way for people to communicate with one another. For example, when I went to Ireland for Christmas, I was able to take pictures around Cork city—which has been done up and is beautiful; I recommend that you go there—with my phone and send them through multimedia messaging service to a website where they were uploaded within a minute. That meant that people in the UK could see what I was doing.

That system is a paedophile's dream, because children are uploading pictures and giving out the details of their everyday lives in online journals. Some of the websites can be syndicated, so an individual can find the code of the website, which is easily accessible, and get a programme through an RSS, or really simple syndication, feed so that any time someone—a little girl—uploads pictures, those pictures will be sent directly to their e-mail account. The parameters of grooming are therefore about to change, because the individual does not necessarily have to make contact with the child.

Here is the scenario. A kid goes to hockey on Wednesday and she takes photos of the hockey pitch with the name of the school—say "St Mary's School"—or the name of a street on them. She then uploads those photos and thinks that it is all really great. An individual who likes brown-haired, sallow-skinned, green-eyed little girls might decide to keep an eye on that. Through looking at the pictures, he discovers that he can uniquely identify her face, her daily routine and her location without ever even having to speak to her. As a result of the blogging sites, she is effectively making that information publicly accessible.

The paedophile may then contact his friends and engage in what paedophiles refer to as "chicken hawking"—they are the hawks and the kids are the chickens. Using blogs is like mobile chicken hawking. The paedophile can send messages to his friends to say, "Look, there's a really good one here." They might follow the girl as she walks home one evening and then decide their plan of action. If the paedophile operates alone, he might decide to abduct her when she turns a certain

corner, where the absence of street cameras or overlooking windows makes it a good place to park and wait. Alternatively, he might contact his friends and, in a paedophile version of dogging, say, "Let's meet, let's abduct and let's take."

In my experience—I put the weight of nine years of research behind this—that is what we are facing. In the situation that I have outlined, the paedophile has had no prior contact with the child. When the police analyse his computer, they say, "Oh, gee, he was going repeatedly to this website and the girl was subsequently attacked." If he sexually assaults her, he can be convicted under existing legislation. However, someone might intervene and say to the girl, "What are you doing getting into that car? Come away." I am not sure that the bill will deal with that situation.

The Convener: That takes us into a whole new dimension. That is excellent information. I begin to wonder whether the bill even begins to tackle the protection of children. We will certainly give that some thought.

Rachel O'Connell: As you pointed out earlier, blogging sites typically provide absolutely no safety information or guidance. I mean zero. The whole point of blogging is to give out personal information in order to network and to make contact. Indeed, msn launched a blogging site that is linked to its instant messenger. This will become a huge issue.

Stewart Stevenson: Over the next few minutes, I want to ask you about some of the issues around ISPs, instant messaging and so on, which are developed at the bottom of page 14 of your paper. I want to try to get on the record some simple ideas that are probably obvious to both of us—I spent 30 years in computing—but I want to do that for the benefit of others who will read the *Official Report* in due course.

Will you confirm that the whole thing works by two people using a device, such as a mobile phone or computer, to connect to a shared resource—which, in general terms, we call the internet—that is made available to them by a facility, or computer, that is operated by a company called an ISP? Does not the ISP provide the door into that shared resource? Basically, there are two devices for the two parties and there are two ISPs—although both parties may use the same ISP—to connect everything together. Do you agree that that is a fair description?

Rachel O'Connell: Yes.

Stewart Stevenson: Will you also confirm that, once the connection is established, the technology will enable the transfer of data or character streams whose meaning and use is not necessarily immediately obvious?

Rachel O'Connell: Yes.

Stewart Stevenson: I want to cover the location of an ISP relative to the person who is connecting with it. Do you agree that the ISP need not be within the same legal jurisdiction or geographical area as the person who is connecting with it? For example, would it be possible for someone in Scotland to make a direct telephone call to connect to an ISP in Nicaragua? Is that your understanding?

Rachel O'Connell: They could, but it would be a bit expensive.

Stewart Stevenson: I will come to that. A number of suppliers provide packages with a significant amount of cheap call time, including international calls, so that, for example, one can connect to Nicaragua for tuppence a minute. In any event, I would like to know what costs paedophiles would be prepared to incur in travelling to meet someone and in preparing for the meeting. Do you have any experience of that?

11:30

Rachel O'Connell: In my experience, the technically minded people use network address translators to avoid detection. However, it is incredible how people go through a psychological process of de-individuation. [*Interruption.*]

The Convener: Sorry, I forgot to turn off my mobile phone.

Rachel O'Connell: People do not take even fairly obvious measures to protect themselves, nor do they go to lengths such as using an ISP in Nicaragua.

Stewart Stevenson: You have described the interworking and exchange of experience and techniques among paedophiles. The key point that I want to get on the record from you is that, if a technically aware paedophile takes the necessary actions, they will be able to access services without there being a meaningful record that can be accessed after the event. I am not talking about cases in which the police monitor somebody's activity by carrying out the internet equivalent of tapping a phone.

Rachel O'Connell: Let me clarify. I think that you are asking whether a paedophile could be so effective in covering his tracks that he leaves no forensic evidence behind.

Stewart Stevenson: That is correct.

Rachel O'Connell: If the activity can be carried out by a sole person, such as downloading images of child abuse and posting them on the internet, it can be difficult to track that person. An example springs to mind: a guy who was kaboom@kaboom.com. He was difficult to track

and he must have been technically capable. With grooming, when a person communicates with his victim, he leaves a trail behind on the victim's computer. The process of developing a case involves putting those two pieces together. In theory, the answer to your question is yes, but, in practice, trails will probably be left behind.

Stewart Stevenson: In every case, will sustainable technology evidence that demonstrates a particular perpetrator necessarily be left on the victim's computer?

Rachel O'Connell: The issue that you raise—the admissibility of evidence in a court of law—is a huge one. The more technically sophisticated the individual is, the more challenging the court case will be, because it will have to address such issues. People in the criminal justice system need training to bring them up to speed on the issues. I understand your point on a theoretical level, but, from my operational experience, people usually slip up at some point. That is just human nature and identifying those people is down to the investigative process.

Stewart Stevenson: Given that I am a mainstream internet user—I use AOL—would it surprise you to learn that I have discovered by tracking that the computer with which I first connect to the internet is outside the United Kingdom? That will be true for most AOL users in the UK.

Rachel O'Connell: Is that because they are going through a central server that is based in the United States?

Stewart Stevenson: No. For people who use AOL, there is a direct communication link to a computer outside the UK, without intermediate computers in the UK.

Rachel O'Connell: When a person is tracked, the investigators look for a caller line identity—the telephone line to the person's house—and credit card details and then start piecing the information together.

Stewart Stevenson: Right, but we are now talking about non-technology evidence. I am seeking to get a limited discussion on the record. Of course, the nature of the interaction and some of the things associated with it may create evidence as to who the person is. However, one of my concerns about this discussion, beyond the scope of the bill, is that there appears to be a belief that the problem can be solved by technological means. I am trying to get on the record the fact that extremely significant issues are likely to mean that the use of technology as a means of gathering evidence can almost always be circumvented by an informed user, so evidence has to be gathered by other means.

Rachel O'Connell: I concur with that. Reliance solely on technological and forensic evidence related to the computer will not be sufficient in a court case, so a full package of evidence is required. The forensic evidence and forensic computing evidence will be part of that.

Stewart Stevenson: May I ask a brief supplementary on that subject, convener?

The Convener: It will have to be very brief, as we are running out of time.

Stewart Stevenson: In that case, I will finish there.

Margaret Smith (Edinburgh West) (LD): That has been very useful, if a little harrowing for the mother of four teenagers.

What information do you have about the implementation of the equivalent legislation in England and Wales? Have any cases been brought to trial under section 15 of the Sexual Offences Act 2003?

Rachel O'Connell: It came into force on 1 May 2004.

Margaret Smith: We are running behind England and Wales. What has happened so far in England and Wales and what is your view on how it is going?

Rachel O'Connell: I am not sure that I can be very helpful on this point but, to my knowledge, in all the cases that may have relied on the sexual offences prevention order, the commission of the sexual offence has taken place. I am not sure that any precedents have been set.

Margaret Smith: I am a lay person on these matters. Unlike our colleague Stewart Stevenson, most members of the committee do not have a high level of computer knowledge. Most of us may know a little bit about this subject, but we are opening up what is a whole new world to most of us—it is not a particularly nice world. It is obviously very difficult for the police to police this activity. What control can the police and other law enforcement agencies have on internet service providers in general? We heard in previous evidence that the police and other law enforcement agencies in America are much more proactive in sitting online and watching what is going on. They try to keep an eye on people who they think may have done this sort of thing previously. How does what British police forces do compare to what other people do elsewhere in the world? How limited is what can be done to police such activity?

Rachel O'Connell: I will answer those questions in order. There is definitely a great deal of scope for the police and the ISPs to collaborate more closely to prevent crime. It is about

encouraging reporting systems to be set up. I hope that such systems will be utilised and exploited so that individuals who are spreading their activities out can be identified. More could be done.

Much of the work that has been done has been at a top level. For example, work has been done by corporate and social responsibility people at Yahoo! and Microsoft. Those people probably have a good understanding of the technology, but not at the computer programming level. We must ensure that there is an interface between law enforcement and product developers. If the companies release new products and release their product range across different platforms, it is important that the product developers have child safety on their agenda. That must be built in.

An interface could be created between the product developers in the companies, the forensic computing experts and people who are doing the kind of research that I am doing, on risk mapping, to discuss what will happen next and what measures can be put in place. If that level of dialogue were to take place, remarkable strides could be made. At the moment, the child safety agenda does not cascade down to the product developers. They are the code writers, but we need to ensure that that interface with law enforcement takes place. It is handy to have an interface at the ISP level—the policy level—but it also needs to go lower down.

On proactive activity, I have with me a proposal for a national internet safety centre, which Stuart Hyde at West Midlands police is putting together in collaboration with the children's charities. The centre will be the equivalent of the National Centre for Missing and Exploited Children in the United States, which has an incredibly close relationship with the Federal Bureau of Investigation. That model is being adapted to be culturally specific to the United Kingdom and to take account of the legislation here, so that a similar situation will develop here. A lot of progress is being made. The proposal will be put before the Home Office internet task force on 23 February. I am sure that West Midlands police would be happy to share the model, because it might be useful for the committee's deliberations.

On proactive monitoring, although he is now retired, Terry Jones of Greater Manchester police's obscene publications unit was working with a company called CyberPatrol. I mentioned IRC-based paedophile chatrooms, which are chatrooms where no company is necessarily involved and the most evil parts of the internet seem to congregate. All the fetish stuff, porn, paedophilia and bestiality is in there, and kids have chatrooms there as well. It is a very difficult area to patrol. CyberPatrol modified a software programme that could identify the unique IP addresses—the unique number that is given to me by my service provider when I am online—for people based in the UK. In one night, CyberPatrol hauled off about 64 UK guys who were exchanging child abuse images. That led to 16 arrests.

Issues that arose were resources, training and the finance implications. In addition, because the policing system is traditionally based on the idea of jurisdictions, when Terry Jones asked Thames Valley police for information, Thames Valley police told him that it was none of his business. The difficulty is not tracking or monitoring those guys, although there are difficulties with resources and training. What needs to be thought through is what the fact that 64 of them can be identified in one night means in terms of investigative time and resources, and how that result contributes to the figures at the end of the year. There needs to be a rethink of those issues. There could be more proactive monitoring, which would yield results such as the result of that night. It is a question of trying to address all the attendant issues, such as whose responsibility the work is, what budget the money for it comes out of, and who co-ordinates it. Those are the logistical constraints.

The Convener: We have to leave it there, unfortunately. It has been a superb session, which will probably take us into a new dimension on the bill. I quite like the idea of calling Bill Gates to give evidence on what his company has been doing on the internet. Margaret Smith mentioned Stewart Stevenson's capabilities, and as we have been sitting here he has taken a photograph of the room and sent it to his personal digital assistant. That demonstrates what can be done, even by members of the Scottish Parliament—or rather by one member of the Scottish Parliament. In no way do I wish to trivialise the issue, though. What you have said this morning has probably blown our minds a wee bit as it has highlighted aspects of the issue that the bill does not cover.

The committee might have to make comments about the obligations of internet service providers that will fall outwith our remit, given that we are considering the protection of children. I cannot thank you enough for your superb evidence. If you find any information that might be of interest to the committee as it drafts its report during the next few weeks, we would be grateful if you would pass it on to us.

Rachel O'Connell: Thank you for giving me a wonderful opportunity to share information with people who are in a position to do something about the matter. This has been a wonderful experience for me.

11:45

The Convener: We are running late, as ever. Members should note that the minister will be able to give evidence until 1 pm. The committee will want to ask a number of questions and we will have to get through as much as we can.

I welcome Hugh Henry to the Justice 1 Committee and I apologise for the late start of this part of the meeting. It is a pity that the minister did not have a chance to hear the evidence that was given by our previous witness, who was from the cyberspace research unit at the University of Central Lancashire. Her evidence was interesting and when it has sunk in I think that it will generate questions. I hope that you get a chance to read it.

The Deputy Minister for Justice (Hugh Henry): I listened to some of the evidence, which was fascinating. However, I might be the wrong person for the committee to speak to about cyberspace.

The Convener: The committee has its own experts.

Will you identify on the record the scale of the problem and why the Protection of Children and Prevention of Sexual Offences (Scotland) Bill is needed?

Hugh Henry: I hope that members of the committee agree that the bill is important. The protection of children is a priority for the Scottish Executive and the Parliament and it is essential that the law on the matter is robust. We want to ensure that the law allows early intervention to help to prevent predatory sex offenders from targeting and abusing children. The bill will ensure that the police and procurators fiscal have a robust package of measures to deal with predatory sex offenders before they commit physical assaults on children and other victims. There are three different elements in the bill, which I will mention in turn.

The grooming offence in section 1 will tackle the problem of the predatory adult who seeks to gain a child's trust in order to persuade the child to enter a situation in which he or she can be sexually assaulted. I acknowledge that to some extent the offence is unusual, because it does not involve an assault on the victim. It is a preparatory offence. There has quite rightly been public concern about adults who attempt to exploit modern methods of communication to gain a child's trust and to dupe the child into a meeting at which he or she would be in danger. In recent years there have been examples of such activity.

Scots law as it stands can deal with many such instances of grooming and successful prosecutions attest to that. However, the Executive and the public rightly want to be assured that the law is absolutely robust and can deal with adults who are engaging in a deliberate course of action. Given that the proposed offence is unusual, we also want to be sure that unwise or ill-considered communications and actions by adolescents do not lead to unnecessary actions in the criminal courts and potentially serious criminal charges. That is why we set the age limit for the offence at 18. I believe that you have had some discussion about that matter with my officials. Of course, if people under 18 commit physical sexual assaults they will face the possibility of serious criminal charges, and it is right for them to do so.

Child protection professionals tell us of cases in which they know that someone represents a risk to children or to a particular child. Although the way in which those people are acting does not necessarily constitute an offence, it is inappropriate and it suggests that an actual sex offence could be just round the corner. If we know that the risk is there, we need to ask ourselves whether we are prepared to do something about it. I would argue that it is our responsibility to do something about it if we know that there is a risk.

I appreciate that there are concerns about the use of civil orders in what might be seen as a criminal context, but I believe that there are sound reasons for their use. It would be irresponsible to fail to take action when there were concerns about the risk to children from an individual. We think that it would be wrong to wait until that person commits a physical assault on a child before we take action. I do not think that we would be able to forgive ourselves if we knew that there was potential danger but failed to act. We would all agree that the damage that is caused to children by sex offenders is sufficiently great to justify tough preventive measures. The new order will give us the power to stop predatory sex offenders before they are able to commit an offence and before they do serious harm to children.

Finally, the bill will extend the use of sexual offences prevention orders. As the law stands, a person cannot be made subject to such an order when he or she is convicted of an offence with a sexual element. Before an order can be applied for or made, we have to wait for further evidence that the offender represents a risk to the public. I argue that in some cases we cannot afford to wait for that further risk to emerge. If someone is being dealt with in a court for committing a sexual offence, and if the sheriff considers that the person is a risk, I believe that it is right to restrict their movements there and then with a sexual offences prevention order. I hope that the bill will give added protection to young people, and I think that it will help to address the risk that too many of them face. I hope that we will not expose people to more risk than is necessary.

The Convener: Has the Executive assessed the scale of the problem?

Hugh Henry: In the financial memorandum we give some estimates of the numbers and the potential costs that are involved. We recognise that it is not a huge problem, but if we can bring in legislation that helps even one child and prevents their suffering, that is to be welcomed. The financial memorandum suggests that there could be 50 or so grooming offences per annum and 10 to 20 applications for RSHOs. Of course, those are estimates and we have no absolute way of knowing how many cases will be acted on when the legislation is in place. However, based on previous experience we think that it is reasonable to anticipate those numbers.

The Convener: We heard quite a bit of evidence—both this morning and at our seminar last week—to suggest that the monitoring of adults who engage in such activity shows that it can include sexually explicit conversations that do not necessarily form an intention to meet. Has any work been done on whether, once an adult engages in lewd conversation with a child, they invariably meet the child for the commission of an offence? There seems to be evidence that there may be a type of offender who would go no further than sexual fantasy-type communication.

Hugh Henry: You are right to say that there are those who engage in that type of activity. Some thought was given to creating an offence of grooming for the purpose of sexual gratification, rather than abuse. If a conversation is sexually explicit, it may be covered by other offences. If it is not and there is no intention to commit a sexual act, we would not want to criminalise it. There are other offences that may be committed because of a conversation that may or may not lead to further action.

The Convener: We have heard that there is a tendency in this type of offence for there to be networks and rings of individuals who exchange information that they have about a child. Are you satisfied that the legislation deals with that scenario?

Hugh Henry: Yes. We are all learning as we go along about what new technology is capable of doing to benefit humanity. Unfortunately, we are also learning just how it can be misused to cause danger and harm to others. There are some very motivated and malicious people who are seeking to advance their knowledge and techniques as the technology develops. We need to watch out for the situation that you describe of people acting in rings. If someone assists another person as part of a ring, they may be prosecuted on an art-and-part basis or for conspiracy to commit an offence.

The Convener: Is there evidence that the current criminal law has failed us in such cases?

Hugh Henry: That is a hard question. In the past week, there have been successful prosecutions in Scotland of people who acted in a completely inappropriate way. We also hear of examples from elsewhere in the United Kingdom. One could argue that in Scotland the current law is being used successfully to protect young children. We are suggesting that we go a step further and try to build in as many safeguards as possible to ensure that the risk of a child being abused or harmed is minimised. Human nature being what it is, it is not possible for us to conceive of a system that is perfect and that prevents a child from ever being harmed. However, what we are attempting to do gives added value to the provisions that are already in place. I hope that it will give parents greater comfort that legislators are taking this issue seriously.

The Convener: The committee appreciates that. We have received a note from our adviser on yesterday's reported case, in which there was a successful conviction for shameless indecency. As you know, that has been common in the Scottish courts. I refer in particular to the case of Webster v Dominick. We have been asked to note that there was a guilty plea in the case, so the relevancy of the charge was not tested. That is a useful point for debate in the context of the bill.

12:00

Stewart Stevenson: I want to develop some of the issues to do with the choice of the age of 18 as the break-off point for the offence under section 1 and for risk of sexual harm orders under section 2. I want to deal first with the impact on the victim. Does the minister agree that a 14-year-old, a 16-year-old and an 18-year-old are all able to undertake activity that would have an indistinguishable effect on, for example, a 12-year-old victim? Does the minister agree that the impact is the same, regardless of the age of the person who undertakes that course of conduct?

Hugh Henry: Yes, but the maturity of a 14-year-old is different from the maturity of a 16-year-old or an 18-year-old. What your question leads to is a much wider debate about the proper age of responsibility in Scots law, which is a complicated issue. We have, properly, taken a different approach to children who commit offences who are under 16. Although criticisms have been made of that approach, we have tried to deal with such children differently. Notwithstanding the difficulties, our approach is regarded as a successful way of dealing with children who offend.

The bigger debate that comes into play is about the difference between people who are 16 and

those who are 18. That is a difficult issue and there has been debate on it. We have attempted to recognise that, notwithstanding the rights that young people in Scotland have at the age of 16, development issues still need to be considered. We want to avoid the possibility of adolescents at the age of 16 and 17 being inadvertently caught up in criminal activity. We thought long and hard about that difficult issue. I am not sure that there is an easy answer to the question whether 16 and 17-year-olds should be held legally responsible in the same way as 18-year-olds are. However, I accept, as you outlined, the physical damage that people of that age can cause.

Stewart Stevenson: I want to develop the point. Section 1 refers to the schedule, which contains a list of 22 offences. Relatively arbitrarily, I have chosen the one in paragraph 15, which is the abduction of a girl under 18 for the purposes of unlawful intercourse, which is an offence under section 8 of the Criminal Law (Consolidation) (Scotland) Act 1995. Could a 17-year-old inadvertently undertake a course of action that would be seen as preparatory to committing the offence and that should not be treated in the way that it would be treated if the person was 18?

In other words, I am inviting you to consider whether there is a distinction between adolescent sexual exploration, which might involve some of the activities that are listed in the schedule, and the offences in the schedule that could not in any sense reasonably be considered to constitute adolescent sexual exploration. We do not want to criminalise adolescent sexual exploration by catching it under section 1.

Hugh Henry: The offence of planning to abduct someone in order to have unlawful intercourse is clearly very different from sexual experimentation among young adolescents. I am not sure that the two activities could be confused and I am struggling—

Stewart Stevenson: I am not trying to catch you out.

Hugh Henry: I accept that, but I genuinely fail to understand—

Stewart Stevenson: I chose that example—I could have chosen others—because I want to know why a 17-year-old who planned to abduct a girl under 18

"for purposes of unlawful intercourse"

would not be guilty of an offence, whereas an 18-year-old who did so would be guilty of an offence.

Hugh Henry: We come back to my earlier point. A 17-year-old who abducted a girl under 18 for the purposes of unlawful intercourse would be committing an offence. We are back to the dilemma about the age at which we draw the line for the preparatory offence, which is always an issue. What is the difference between the actions of a 17-year-old and those of an 18-year-old? Indeed, what is the difference between the actions of a 14-year-old and those of a 16-year-old? There is no easy answer. The convener explored the issue when the committee discussed the appropriate age limit with officials. We drew the line at 18 and we wanted to try to avoid a situation in which 16-year-olds and 17-year-olds who engaged in the sexual exploration that Stewart Stevenson described would be unnecessarily criminalised. There is no right or wrong answer. An argument could be made for setting the limit at 16 rather than 18, but we decided on a limit of 18.

Stewart Stevenson: I will turn the example on its head. If a 17-year-old—I choose that age because it is close to the boundary—or a 14-year-old were to undertake the preparatory activity that, if they were 18, would constitute an offence under section 1, what would be the correct intervention from social work, the criminal justice system or the children's panel? You have acknowledged that the activity would have exactly the same impact on the victim, regardless of the age of the perpetrator.

Hugh Henry: Clearly, the provisions of the bill would not apply in such a situation. Cases have been highlighted in the press that involved children of the ages that Stewart Stevenson mentioned and, in such cases, it is for the social work department and other agencies to determine a course of action. The child might be referred to the children's panel, or the agencies might decide that no further action is necessary.

Consideration would be given to the age not just of the perpetrator but of the younger victim. Consideration would also need to be given to the security and safety of the younger person and to whether, given the younger person's needs and behaviour, they needed to be referred to the children's panel. The Crown Office could decide to prosecute the 17-year-old for the offence of lewd and libidinous behaviour. Those penalties would exist. Under the bill as it stands, in such cases, it would be for the agencies to decide on the most appropriate action, which might involve the use of the children's panel or invoking criminal legislation against the older person.

The Convener: I think that I have sorted out in my mind the distinction between the two issues. It should be clear whether a person has committed one of the crimes that are listed in the schedule, which just gives the criminal law of Scotland. In the bill, we are trying to criminalise the act of preparing to commit one of those crimes, provided that the person is of the right age. As Stewart Stevenson said, the abduction of an 18-year-old by a 17-year-old is one example that might not be caught under paragraph 15 of the schedule.

For me, although the bill's intention might be clear, what is missing is an attempt to identify what it is driving at. Bruce McFee highlighted that in the line of questioning that he pursued. For me, the nature of a grooming offence is that it occurs where someone uses their age or their position of power to build trust in someone who is more vulnerable than them and then relies on that relationship to draw in the more vulnerable person in preparation.

The explanatory notes talk clearly about the bill introducing an offence of "grooming" children. However, although the bill specifies what the offence is, its description of the acts that might be involved in such an offence does not mention any of that. We all understand what the bill is about. Could we resolve the issue that Stewart Stevenson has raised by amending the long title, which currently refers to

"An Act of the Scottish Parliament to make it an offence to meet a child following certain preliminary contact"?

Could a reference to "grooming" offences be inserted into the long title? Then it would be clear.

Hugh Henry: Sorry, what would be clear?

The Convener: It would be clear that the bill is not simply about applying the legislation to the ages that are set out but about looking for something else, namely the important nature of the relationship between the two parties. What the bill is driving at is making it an offence to groom a more vulnerable person—it is more likely that the person being groomed would be a child, but it could be an adult, as we have discussed—into trusting someone who is in a position to know better. That is what the bill should be about.

Otherwise, all that people will be able to consider is whether, under the bill, an act has gone far enough to charge the person with attempting to conduct a crime. We want to try to go to the stage before that. If the bill stated more explicitly what it was driving at—that is, the grooming nature of attempting to build trust with a child—it would have no problem in dealing with the abduction of an 18-year-old by a 17-year-old. I am not sure that I would want that situation to be caught by the bill, although I want the law to be clear that anyone, whether they are 17 or otherwise, who abducts someone else is committing an offence.

Hugh Henry: I agree that what we are describing is power relationships and how one person uses power over another. However, irrespective of what is in the bill, the Crown would always need to consider the circumstances and would not simply follow things rigidly. It would need to take into account whether the age criteria had been met and consider a wide range of factors. I am struggling to think what could be added to the bill to help to clarify the matter. I know exactly what you are saying, but I am not sure that adding anything to the bill would necessarily help. However, we will consider the issue and have some further discussions about that.

The Convener: I am not absolutely certain what one would add to the bill. I draw your attention to the objectives of the bill. The policy memorandum refers to

"offenders who seek to "groom" children for the purpose of committing sexual offences."

That helps to address the problem, but those words are not in the bill. I wanted to draw your attention to that point, as it is perhaps a matter that could be made clear in the legislation.

12:15

Margaret Smith: Currently, the law states that 16 is the relevant age in relation to unlawful sexual intercourse with someone under the age of 16, but we all know that, although that is in the legislation, prosecutors use discretion and consider the circumstances of each case. For example, in the case of two 15-year-olds who are in a consensual sexual relationship and have been for some time, it is highly unlikely that the case would go to court and that they would be criminalised. Fifteen-year-olds feel that, as long as they are in a consensual relationship, they should not get caught up in the fact that what they are doing is a criminal act.

The issue is much more about the power balance, agreement, consent and so on. If legislation on a similar matter can be open to discretion, as we all know, why could this bill not also state the age of 16? That would catch a number of people who are likely—as we have heard in evidence, as Stewart Stevenson pointed out and as you agreed—to cause the same amount of harm. Guidance could state that such people should be dealt with by the children's panel, but 16 could be the age stipulated in the legislation. That would avoid the anomaly that arises, but enable the matter to be dealt with in a discretionary manner, which is what happens in relation to a similar sexual offence that is currently on the statute books. Why could we not do that?

Hugh Henry: The short answer is that we could. Margaret Smith is right to point out that discretion is applied to existing legislation. The procurator fiscal considers all the facets of a case before they decide whether to proceed, and that principle would apply to any charges brought under this legislation. Although I say that the age of 16 could have been applied, it is a matter of striking a balance. We considered ages, maturity and some of the wider issues and felt that, on balance, 18 would be an appropriate age.

We considered the difference between two adolescents being engaged in something and someone of an older age abusing some of the power that comes with age and using their knowledge and maturity inappropriately against someone else. As I said, we wanted to avoid inadvertently categorising teenage adolescent behaviour as a crime. There is not any absolute right and wrong on the matter. It is about which age, on balance, is the best place to draw the line. We felt that 18 was the most appropriate age.

Margaret Smith: Did you consider and reject the idea of including wording that referred to an age difference?

Hugh Henry: Yes. We considered that issue, but it is also fraught with difficulties. The age gap might be one year outside such an age difference. Even if we come down to younger ages, there might be a difference between a 16-year-old and an 11-year-old being involved as opposed to a 15-year-old and a 10-year-old.

We considered that option, but we thought that if we drew an age gap of, for example, four years, someone would point to circumstances in which a gap of three years would be more appropriate. It is not an easy issue.

Margaret Smith: I wanted to ensure that you had considered that option, and have that noted on the record.

Marlyn Glen: My question is about prior communication. The offence requires communication between the parties

"on at least two earlier occasions".

It has been suggested to the committee that a single, extended exchange between the parties could be indicative of the offender's intentions in respect of the child but would not be an offence under the bill. Why must there be two earlier communications?

Hugh Henry: We wanted to focus on something that is being done intentionally and someone who is setting out deliberately to commit an act that we would deem to be criminal. We believe that if there is more than one act, that gives credence to the claim that the person is acting in that way. Notwithstanding Marlyn Glen's point about long communications, we were worried that if a single offence was capable of triggering the criminal action, that might catch out people who were inadvertent or who had not thought their actions through and who, once they had done so, might not engage further.

I know that sometimes people go on for hours on end in a single chat and the issue develops as they go; we are coming to terms with the way in which technology is developing. We thought that requiring two communications would enable us to prove to the courts that there was an intention, whereas if only one communication was required, that might be more open to debate. If there was a long chat during which someone left for a few minutes and an argument arose about whether there were one or two communications, that would be a matter for the prosecution to argue and for the court to decide. Also, depending on what is said during the chat, other offences could come to light even if there is only one communication.

Marlyn Glen: I am still concerned about the definition and how it would be argued in court. It seems to me that to require communication on at least two earlier occasions complicates things unnecessarily, but I hear what you are saying.

For the purposes of section 1, does it matter who initiates the contact between the parties? Does it have to be the adult who establishes contact with the child?

Hugh Henry: No. It does not matter who initiates contact. The key issue is what the adult does with the communication and contact. For the adult to say that they were originally contacted by the child is no defence. If, as the relationship developed, the adult's behaviour was inappropriate and they followed that up on a second occasion, taking further steps to meet, that would be sufficient for a prosecution. It would not matter that the child initiated the contact.

Marlyn Glen: As they stand at the moment, the explanatory notes lead one to look at the matter the other way. There is no offence under section 1 if the adult reasonably believes that the other person is over 16. A couple of issues arise in relation to that, given the evidence that we have just heard. When girls—in particular—go online, they often add perhaps five years to their age when they describe or identify themselves. In relation to sexual offences, a belief about age is usually excluded as a defence, or at least is seriously restricted—for example, if the accused has previously been charged with a similar offence. Why is that policy not pursued in the bill?

Hugh Henry: In a sense, the argument is objective. We are saying that an offence will have been committed only if the adult did not reasonably believe that the child was 16 or over. I accept that that takes us into the use of the word "reasonably", but the test is whether there is an absence of belief, based on reasonable grounds, that the child is 16 or over. The Crown would have to show that, in the circumstances, the accused could not have reasonably drawn the conclusion that the victim was 16 or over. That is a difficult issue, because some people might use that defence spuriously. However, equally, a person might believe that they were acting legally and responsibly, but find out later that that was not the case.

If the accused held an honest but unreasonable belief that the child was 16 or over, they could still be found guilty, because although the belief might be honest, it was not based on reasonable grounds. The argument would be about what it was reasonable for the person to conclude, not about whether the belief was honest. Clearly, the prosecution would have to take account of all the circumstances and find out whether anything within the communication that had been made could have reasonably led to the belief that the person was younger than they claimed to be. The belief does not simply have to be honest; it must also be reasonable.

We think that the definition as drafted, in which the Crown Office has been closely involved, is workable. The fact that the adult did not reasonably believe that the child was 16 or over is an essential element of the offence, rather than the defence—it will be one for the Crown to prove.

Marlyn Glen: The concern arises because there are articulate or literate 12-year-olds. The guidance that is given to parents, and by parents, is that children should not give their identity on the internet—they are told to mask their identity. Children can add five years to their age and claim to be 16.

Hugh Henry: If a person honestly and reasonably believed that they were communicating with someone who was over 16, it would not be right to criminalise them.

The Convener: The Law Society of Scotland told us that it would be more consistent with Scots law for the defence to have to prove reasonable belief, rather than the onus being on the Crown. The Law Society suggested that the bill simply takes procedures from the English legislation, the Sexual Offences Act 2003. We can debate whether that defence should exist at all, but the suggestion has a resonance with me. It would be better for us to remain consistent with the way in which similar offences are dealt with in Scots law.

Hugh Henry: That is a reasonable argument and we are considering it. We have seen what the Law Society said and we will give further consideration to whether it would be appropriate to shift the burden of proof on to the accused. We will let the committee know when we have come to a conclusion on that.

Mr McFee: The minister talked earlier about the lines that we draw in relation to 16-year-olds and 18-year-olds and, indeed, whether we draw any lines. He said that the matter is one of reaching a balance, which I accept. However, one issue that is not so much a matter of balance is the situation in which a foreign national who is resident in Scotland is lawfully married to somebody who is under 16. If that person arranges for their wife to come to Scotland with the intent of engaging in some form of sexual relations, will they commit an offence under section 1?

Hugh Henry: A person who is in that situation could be committing an offence under existing law, depending on the age of their partner. We would not necessarily recognise that the age of responsibility in another country should pertain here. It would be for the Crown Office and Procurator Fiscal Service to decide whether it was in the public interest to prosecute. I do not know the lawful age of marriage in all countries, but if someone brought over a child bride of 12, for example, we would not necessarily say that, because the marriage was legal in the country from which they came, it was acceptable here. Such matters would be for the Crown Office and Procurator Fiscal Service, and the same would apply under the bill.

12:30

Mr McFee: So you do not believe that there needs to be a marriage exemption in the bill?

Hugh Henry: No. There could be circumstances in which it would be right for a person who attempted to act in the way that the member describes to be prosecuted. There could be other circumstances in which a case was on the boundary and the Crown Office and Procurator Fiscal Service decided that it would be unreasonable and not in the public interest to proceed. Rather than have a fairly specific test of marriage, we should retain the element of discretion that currently exists and works reasonably well.

Mr McFee: Although I agree with the minister, we are getting fairly strong advice that the provision may contravene article 8 of the European convention on human rights.

Hugh Henry: We will take advice on that issue. No legislation that we introduce or that the Parliament approves should contravene the ECHR.

Mr McFee: What advice was taken on the matter before the provision was drafted?

Hugh Henry: We have been in consultation with the law officers and our legal officials have considered the matter. I am not sure how much further we can go.

Mr McFee: Under section 1 of the bill, the adult must have the intention to engage in conduct that would constitute a "relevant offence". That is defined in section 1(2)(b) as either any offence mentioned in the schedule to the bill or

"anything done outside Scotland which is not an offence mentioned in that schedule but would be if done in Scotland".

What is the intention behind the second part of the definition?

Hugh Henry: The aim is to catch anything that would be an offence here but may not be an offence in the country to which a person travels with the intention of committing the act.

Mr McFee: The provision is extremely wide. It refers to

"anything done outside Scotland which is not an offence mentioned in that schedule"—

that is, something that would be an offence if the bill is passed—

"but would be if done in Scotland".

Anything that is not in the schedule would be an offence.

Hugh Henry: Yes, if it is an offence in Scotland.

Mr McFee: How wide is the provision?

Hugh Henry: It applies to anything that is covered by Scots law—anything that would be an offence in Scotland. If a person travels abroad for the purpose of committing an act that is an offence in Scotland, that would be covered.

Mr McFee: I will give a ridiculous example to test how wide you intend the provision to be. In this country, it is an offence to drive with 80mg of alcohol per 100ml of blood. In another country the level might be 100mg. If someone went to that country with the intention of driving with a blood alcohol level of more than 80mg, would that act be covered by the provision? Surely it is not supposed to be that wide.

Hugh Henry: We are talking about anything that has reference to the schedule and is specific to the bill. We are not talking about housebreaking and drink driving.

Mr McFee: The provision says the exact opposite of what you suggest. It refers to anything that is not mentioned in the schedule. That is why I asked how wide you intend the provision to be.

Hugh Henry: To be honest, I think that we might be talking at cross purposes. If the activity took place in Scotland, that would constitute an offence because it would be listed in the schedule.

Mr McFee: I am sorry to labour the point. I read the provision two or three times before I asked the question. The second definition of a "relevant offence" is:

"anything done outside Scotland which is not an offence mentioned in that schedule".

In other words, an activity that was not included in the schedule as an offence in Scotland would constitute an offence if it took place outside Scotland. I am trying to understand the logic of that.

Hugh Henry: I think that there is a misunderstanding. We seem to be talking at cross purposes. I suggest that the best way of resolving the misunderstanding would be for me to take the matter away for consideration and respond to the committee in writing. I honestly do not think that Bruce McFee's fear is justified. We are clear that we are talking about an activity that would constitute an offence in Scotland under section 1, because it would be listed in the schedule. However, Bruce McFee suggests a different interpretation. We will consider the matter and come back to the committee.

The Convener: Before I call Margaret Mitchell to ask a question, I draw the minister's attention to evidence that Professor David Feldman, who could not attend our oral evidence session because of bad weather, provided to the committee. You might know that Professor Feldman is the former adviser to the Joint Committee on Human Rights. In relation to the need for a marriage exemption, he told the committee:

"If the marriage would be recognized as valid under Scots law, it would in my view clearly be an unjustifiable infringement of Article 8 of the ECHR to criminalise the making of arrangements for the parties to meet for sexual purposes."

The committee will be happy to forward Professor Feldman's evidence to you if you do not already have it.

Hugh Henry: I think that Scots law is no different from English law on the matter. We are aware of Professor Feldman's comments.

Margaret Mitchell: In what circumstances would it be appropriate to apply for a risk of sexual harm order?

Hugh Henry: The circumstances are specified in section 2, which is entitled "Risk of sexual harm orders: applications, grounds and effect". Section 2(3) provides that

"The acts referred to in subsections (1) and (2) above are—

(a) engaging in sexual activity involving a child or in the presence of a child;

(b) causing or inciting a child to watch a person engaging in sexual activity or to look at a moving or still image that is sexual;

(c) giving a child anything that relates to sexual activity or contains a reference to such activity;

(d) communicating with a child, where any part of the communication is sexual."

Margaret Mitchell: Can you give concrete examples? Will you suggest a scenario in black and white? What situations do you envisage that the provisions would cover?

Hugh Henry: The detail will be in orders that follow the bill. To some extent, the identification of

a scenario would be speculation on my part that would have no substance. I am not sure that it would be wise to engage in speculation at this stage.

Margaret Mitchell: When we think about legislation, it is always good to be able to pin it down.

Hugh Henry: I am sure that you are more than capable of thinking of circumstances that might apply, just as I am. Whether we would agree is another matter and at this stage I do not want to put a personal interpretation on the provisions.

Section 2(3)(a) refers to

"engaging in sexual activity involving a child or in the presence of a child",

which is fairly specific and does not leave much to the imagination.

Section 2(3)(b) refers, first, to

"causing or inciting a child to watch a person engaging in sexual activity"

I am not sure that I can give more graphic detail than is contained in that provision. The paragraph also refers to causing a child

"to look at a moving or still image that is sexual".

I am sure that you can imagine what that might be. We could speculate on what relates to

"sexual activity or contains a reference to such activity",

but I am not sure that going into such detail would be particularly beneficial for the purpose of this discussion.

Margaret Mitchell: Would a risk of sexual harm order apply to someone who has passed themselves off in grooming activity on the internet and who then engages in the examples of cybersex that have been given today and which are difficult to pin down? The defence can be fantasy.

Hugh Henry: Such an order could apply, as the bill refers to communication. However, I would hesitate to say that that is the definitive word on the matter, as it would not be for me to decide in every case.

Margaret Mitchell: It would be helpful to find out whether an order would apply. Would an order be used instead of a criminal prosecution at any point?

Hugh Henry: No. A risk of sexual harm order is not a substitute for a criminal prosecution. Criminal prosecutions should still be pursued if they are relevant. An order could and should apply where a criminal prosecution might not necessarily be relevant. The making of an order does not preclude a criminal trial from taking place.

Margaret Mitchell: Would an order be used where a criminal prosecution had resulted in a not guilty or not proven verdict? Some people from whom we have taken evidence have suggested that that could be a possibility.

Hugh Henry: Yes.

Margaret Mitchell: That is interesting.

I want to move on to the standard of proof. What is the appropriate standard of proof for a risk of sexual harm order? The bill is silent on that matter.

Hugh Henry: The civil standard.

Margaret Mitchell: We are therefore looking at the balance of probability. Should that be explicit in the bill?

Hugh Henry: I am advised that the balance of probability is always the standard that applies in civil cases in Scotland, so there would be no need to specify it in the way that you suggest.

Margaret Mitchell: I refer to David Feldman's paper, which includes case law. He states that

"in view of the seriousness of the consequences for the person subject to an order"

the balance of probability test would not be met

"if there is any reasonable doubt that the necessary facts have been proved".

Hugh Henry: We are aware of the argument that David Feldman has made. The Lord Advocate has closely examined it and does not think that that will happen here. We are not convinced that the Scottish courts would follow that line. We still believe that what we suggest would pertain, notwithstanding David Feldman's learned arguments, which apply to English law. The Lord Advocate has considered the matter and reached a different conclusion.

Margaret Mitchell: So the seriousness of the consequences for the individual—the proportionality issue—which kicks into the European convention on human rights argument, would not be looked at if there was any doubt.

Hugh Henry: It is clear that that would be considered but, on the standard that David Feldman suggests would be applied here—the argument is between proving the case on the balance of probability or beyond reasonable doubt—we think that the conclusion that we have drawn is pertinent and relevant to Scots law. Seriousness would certainly be considered and I am sure that a Scottish court would carefully consider the McCann case, in which their lordships indicated that there was no good argument for the proposition that article 6 of the ECHR is engaged. We do not believe that that is an issue. The Lord Advocate has considered the

matter carefully and I am sure that he will continue to do so.

12:45

Margaret Mitchell: So you are totally against the standard of proof being that of beyond reasonable doubt.

Hugh Henry: Yes, because a different standard of proof applies in Scottish civil law.

Margaret Mitchell: Even though the offence almost amounts to a criminal one.

Hugh Henry: It might almost amount to that, but it is still a civil matter. You are asking us to change our approach to civil law on the basis of one piece of legislation, and although the civil law could be changed, I am not sure that that would be wise or advisable. You might believe that the matter is tantamount to a criminal one, but it is civil matter and we think that the civil law test is the right one.

Margaret Mitchell: Even though, as you said, the provision could be used after an unsuccessful criminal prosecution that resulted in a not proven or not guilty verdict.

Hugh Henry: That is correct, because the matter would be pursued as a civil matter, not as a criminal one. The criminal approach would be exhausted and a civil approach would then follow.

Margaret Mitchell: Will you consider that issue again, or is it set in tablets of stone?

Hugh Henry: It is not set in tablets of stone. You raise significant issues, but the legal advice from Scotland's law officers is that the provision is acceptable.

Margaret Mitchell: I have a brief question about proportionality. The sheriff will grant a risk of sexual harm order in the first place, but the chief constable will decide whether there is to be any variation in the two-year stipulation. It has been suggested that that may well be a problem. Is it?

Hugh Henry: In some cases, the chief constable's consent might be necessary, but section 4(1) states:

"Any of the persons within subsection (2) below may apply to the appropriate sheriff".

It would be for the sheriff to determine whether

"an order varying, renewing or discharging"

the original order is required. The list of persons who can apply to the sheriff includes the person against whom the order has been made, as well as the chief constable of the relevant police force area and a chief constable in another area. However, it will be for the sheriff to determine any variation.

The Convener: I have an open mind on the risk of sexual harm orders, for the reason that the minister gave earlier: the bill is about the protection of children. However, I do not like the analogy with antisocial behaviour orders that some witnesses have used to describe the risk of sexual harm orders, particularly the interim orders, because a greater magnitude of stigma will be attached to the risk of sexual harm orders. I would be happier if we were clearer about when they will be used, with the balance of probability test. You said that the orders can be used at any point, whether or not there is a court case or if a court case has reached a not guilty verdict. It would be helpful if we were a bit clearer about when the orders will be used.

I do not like the fact that after evidence has been tested in a criminal court and a jury has said that a person is innocent, another chance is created to go to a civil court, where the threshold is lower. Technically, a person cannot be convicted of a crime in a civil court, but an order will have the practical effect of attaching quite a bit of stigma to a person who has been found not guilty. I am satisfied with the idea of the test when the police think that enough evidence is available, want to prevent something from happening and have decided on a definite course of action to take.

Hugh Henry: In a jury case, a person might not always be found not guilty; the verdict might be not proven. We are talking about something that would not be automatically determined; in such a civil matter, a sheriff would consider all the evidence.

Notwithstanding whether evidence was heard in relation to the concluded court case, there may be a belief that a risk remains—having regard to all the circumstances and information that is available—of a person committing an offence at some point. A civil case would not depend on the conclusion of a criminal case. The intention would be to ascertain what might happen. A court would look forwards, rather than backwards.

The Convener: If the police were satisfied that they needed to take action, I would have thought that they would test that before proceeding. It is open to them to do that.

Hugh Henry: The orders are not forms of punishment.

The Convener: I appreciate that.

Hugh Henry: The orders will give protection. An order will not punish an individual for something that they have or have not done. The attempt is to build in protection because it is believed, on the balance of probability, that something might happen to a child. That represents a difference in concept.

The Convener: I have a question about section 2 and risk of sexual harm orders. Section 2(3)(d) covers

"communicating with a child, where any part of the communication is sexual."

You are considering harm to a child. Does the bill need to specify that harm can be physical or psychological, or are you really thinking about physical harm to a child?

Hugh Henry: We should not specify such matters. Two questions are involved: what communication is and what is sexual. Section 2(3)(d) refers to communication that is sexual. I do not know how we could make the provision more specific.

The Convener: The question is what harm means in the bill. Does it mean physical harm or any harm? If we want to ensure that a broad definition of harm is used, does the bill need to specify that?

Hugh Henry: I am not sure what more we could say. The bill actually refers to "physical or psychological harm". I struggle to think what definitions could be added for clarification. I honestly do not know.

Margaret Mitchell: Could more of a distinction be made? A risk of sexual harm order could follow a not proven verdict when the evidence was insufficient to prove the accused guilty beyond a reasonable doubt but disquiet was expressed about his conduct and doubt remained. Alternatively, the accused could be cleared as not guilty. Could a distinction be made in using orders after those two verdicts?

Hugh Henry: No. The orders are completely separate. In fact, even where there has been a not guilty verdict, if there were sufficient concerns about the potential future activities of an individual, a sheriff could decide that an order might apply, if it was required to protect a child. The sheriff would not be trying to revise or rehearse what had already happened in a court of law. They would look at the information that was provided to him or her and then decide whether an order was necessary—not to punish that individual, but to protect the child. It would not matter what the verdict was. The issue is whether the sheriff believes that added protection is needed for the child at some point in the future on the basis of the information provided.

The Convener: I am going to have to shut down this discussion.

Margaret Mitchell: I find it extraordinary that that might be done following a not guilty verdict. It is absolutely against the principles of Scots law.

Hugh Henry: It is not extraordinary, because if the facts of the case have been determined and there is no proof that a crime has been committed, it is absolutely right that that person is found innocent. However, if information is available that points to activities that have taken place since the trial commenced or to things that are happening that pose a potential threat to a child, irrespective of what happened in the case it is right that we use an order to protect the child, not to punish the adult who had previously been found innocent in relation to something else.

The Convener: The Executive's position is clear.

Marlyn Glen: Concerns have been expressed to the committee—not least at the seminar last week—that persons engaged in providing sexual health services or advice or education might run the risk of being exposed to a risk of sexual harm order, for example by giving a child something that relates to sexual activity or contains a reference to such activity. Would it not be desirable for the bill to contain provisions that explicitly exclude such activity when carried out in good faith for the child's welfare?

Hugh Henry: I do not think so. A chief constable and a sheriff would need to be satisfied that the person concerned was a risk to a child or children generally. I am not sure that putting class exemptions in the bill would be wise. Tragically, if a class exemption were given, it would not be beyond the bounds of possibility that a person within that class behaved inappropriately.

Marlyn Glen: Absolutely. I was not thinking about a class exemption. At the seminar last week, people mentioned that they did not want workers to be discouraged, as a consequence of the bill, from giving sexual health information. They hoped that some kind of comfort and support would be given to professional workers and volunteers. I am talking about joined-up government. The issue might be addressed in the announcement on the sexual health strategy tomorrow.

Hugh Henry: Let me reflect on the concern that Marlyn Glen expresses for a moment. If that broad group of people was potentially threatened by the bill, clearly there would be something manifestly wrong with the curriculum and the whole system. It would be absurd to suggest that everybody who was engaged in giving advice on health and sex education could be caught by the provisions. If someone is working within the curriculum and the recognised framework, there is no potential for them to be caught by the provisions in such a way. However, if someone starts off from the standpoint of the curriculum and the guidelines and then perversely imports some individual idiosyncratic construction that deviates way beyond what is widely regarded as acceptable, of course that individual could be putting themselves within the

bounds of the provisions that we are considering. That happens anyway when people deviate from the curriculum and do things that are inappropriate and could leave them open to action. However, anyone who sticks to the curriculum would not have any problems.

Marlyn Glen: I wanted to record that there was concern, not particularly in education where there is a set curriculum, but with respect to more informal relationships in which workers give advice. People want to be assured that they will still be backed up.

13:00

Hugh Henry: It is important to put on record that, in circumstances such as Marlyn Glen described, workers giving such advice are currently constrained in what they can and cannot say and in what they should and should not do. There are parameters that already pertain. We are trying to identify situations in which someone moves beyond those acceptable parameters. I do not think that including an exemption such as we have discussed would be of any great benefit.

Margaret Smith: Let us take an example involving a teacher in a Catholic school. Who decides what constitutes acceptable parameters or whether something is manifestly wrong in the curriculum? If a child comes to a teacher and asks about same-sex relationships and the teacher answers the question, believing that the child is distressed, could the bill be used against the teacher?

Hugh Henry: I think that Margaret Smith is drifting into a much more fundamental debate than the one that applies here. The issues that she raises would apply elsewhere, but I do not think that it is appropriate to have a wider debate on sexual health strategy and the role of faith schools or the Roman Catholic Church in this discussion. Whether the situation involved someone in either a Catholic school or a non-denominational school giving advice or making comment in respect of any relationship, it would ultimately be for the chief constable and the sheriff to satisfy themselves that the individual concerned and their actions constituted a risk to a child.

Notwithstanding differences among people about what is taught in schools of whatever description, there would still need to be a test of whether the person's giving the advice constituted a risk to a child. Even if a teacher or head teacher believed that advice had been given with which they did not necessarily agree or which they considered to be inappropriate, it would still be a matter for the chief constable and the sheriff to decide whether that constituted risk. We are in danger of getting into a much bigger debate here.

Margaret Smith: That was just the clarification that I was seeking. I wanted to confirm that it was for the chief constable and the sheriff to consider what constitutes risk to the child, and that it will not be a matter for interpretation by any group of people. It is up to the justice authorities rather than teachers, head teachers or whomever. It is about the risk to the child and not about anybody else's interpretation of what is or is not a sexual aberration.

The Convener: Yes—we have to consider the whole provision. In his evidence to us, James Chalmers of Barnardo's asks us to note that the Sexual Offences Act 2003 in England gives an exemption in that respect. I accept that it might not be necessary for us to do the same.

Mrs Mulligan: I return to risk of sexual harm orders, in particular the use of interim risk of sexual harm orders. Section 5 will apply where an application for a risk of sexual harm order has been intimated to the person against whom the application has been made. What is meant by "intimated" in this context? Would it be possible for an interim order to be sought without the individual concerned being aware of that?

Hugh Henry: I am not able to give Mary Mulligan an exact definition. The normal sheriff court rules would apply, but we will consider the point and clarify it in writing.

Mrs Mulligan: A full RSHO can be made only if the sheriff considers it necessary to protect children generally or a particular child, but an interim order can be made if the sheriff thinks it is "just to do so". Can you reassure the committee that that test fulfils the requirements of the European convention on human rights?

Hugh Henry: Yes, we believe that it does.

Mrs Mulligan: Why is there a different test for the making of an interim RSHO from that for the making of a full order? The convener does not like us to use the analogy of ASBOs, but the test for a full ASBO is the same as that for an interim one. For RSHOs, it is not. What was the thinking behind that?

Hugh Henry: There are two issues: one is practicality and the second is the degree of urgency. As the convener and Mary Mulligan have said, RSHOs are not exactly the same as ASBOs. I do not wish to downgrade the necessity of ASBOs, because they are making a significant contribution in many communities, but the urgency of the situation in which an RSHO might be necessary could be very different from what someone who needs the protection of an ASBO faces.

Mrs Mulligan: You were not keen to give an example of a situation in which a full RSHO might

be used; are you happier to give an example of a situation in which an interim RSHO might be used?

Hugh Henry: No, other than to say that it would be a situation in which the relevant authorities thought that urgent action was needed for whatever reason. I hesitate to identify such reasons.

Margaret Smith: I have questions about disclosure. What is the effect, for the purposes of disclosure, of making a risk of sexual harm order? Who would be informed of the making of such an order or an interim order? That picks up on a number of points that people who work in the field made at the seminar we had last week. For example, social workers asked who would be told and at what point RSHOs would be subject to disclosure.

Hugh Henry: Any information that the police hold, including information about civil orders, could be disclosed under an enhanced disclosure if, in the chief constable's opinion, it is relevant to the inquiry in question. Any associated conviction would be shown in the standard and enhanced disclosures. There are no provisions to require automatic notification of other people such as employers, local authorities and child protection professionals but, following the Bichard recommendations, we have to consider the wider issues of disclosure of information. That needs to be reflected on further.

Margaret Smith: What is the timetable for that and how will it dovetail with the bill?

Hugh Henry: The matter will not be in the bill, but it could have an impact and we are anxious to resolve the issue as soon as we can, given its sensitivity.

Margaret Smith: As I said, it was raised by a number of people.

Section 8 provides that a person who is convicted of an offence under section 7 of the bill will be subject to the notification requirements of part 2 of the Sexual Offences Act 2003. Can you confirm how long that person would be subject to the notification requirements when he had become subject to them only because of an offence that was committed under section 7?

Hugh Henry: Section 8(3)(a) specifies that it would be

"from the time this section first applies to the person and remains so subject until the relevant order (as renewed from time to time) ceases to have effect".

Margaret Smith: What would happen if somebody who was the subject of an order was imprisoned and their sentence fell within the period for which the order applied? It would not be possible to do the kind of things that the order is about. What steps, if any, would be taken when the person was released?

Hugh Henry: Potentially, it would be for those responsible to decide whether to seek variation or renewal of an order. They might decide that the length of imprisonment had been so long that there was no longer an issue; however, they might decide that the problem remained and that the order should therefore be either renewed or varied. It would be a matter for the relevant authorities.

Margaret Smith: Some of the evidence that we heard earlier from Rachel O'Connell was about the steps that are being taken by the Home Office in relation to grooming-type offences generally. The police are moving towards a US model of being more proactive in that kind of work. What liaison do you have with the Home Office on the issue? Are you aware of that work and is it expected to be undertaken in Scotland as well?

Hugh Henry: There are different issues. We liaise quite closely with the Home Office on a range of matters, including legislative and policy issues; however, it will be a matter for police chief constables to decide how best to deploy resources. Our chief constables in Scotland work closely with their colleagues in the rest of the United Kingdom and with police forces in other jurisdictions to try to improve practice. Several initiatives in this country have been influenced by what is happening elsewhere. If anything that is happening elsewhere can help to improve police operations, chief constables will be keen to consider it. However, at the Justice 2 Committee yesterday, I was involved in a discussion about political interference; I suggest that it would not be for politicians to determine how chief constables operate.

Margaret Smith: Dutifully guided, I will ask my colleagues on the Justice 1 Committee, who I am leaving behind, to take that issue up with the Association of Chief Police Officers in Scotland.

The Convener: Now she leaves us.

I have a final question on disclosure. If a person who was the subject of an RSHO was subsequently charged with a further sexual offence, would that information be available to the court during their trial? In other words, would the RSHO be treated in the same way as previous convictions?

Hugh Henry: An RSHO is not a conviction: it is important that we say that clearly. It may well be a matter for the Crown Office to decide whether that would be relevant, but it is something that we will look at.

The Convener: I put it to you that it should not be a matter for the Crown Office but for Parliament to determine the status of orders. I accept your point that an RSHO is not a conviction; however, it might prejudice a person's right to a fair trial if that information could be referred to. If a prosecutor referred to an existing RSHO, that would have the same effect on the jury as would revelation of a previous conviction. I am not saying whether I am persuaded that that might be a good thing or a bad thing; I am just saying that, if it were put to the court, such information would influence a criminal trial. I would like the Executive's intention on that to be made clear.

13:15

Hugh Henry: It is always for the courts to decide whether information might impact on the fairness of a trial. That would be the ultimate test, whether the trial was on this matter or on anything else. We will consider the broader point that the convener makes.

The Convener: We have to stop our oral questioning there, although we have some more questions. We will deal with those—as usual—by correspondence. We have held you for long enough, given that it is quarter past 1.

You have given us notice of amendments to the bill, which we have not yet seen. We will need to discuss with your office how we will deal with that. It is difficult for us to formulate questions without having seen the amendments, although I appreciate that we have got the gist of where the amendments are coming from. I propose that we discuss with your office whether you might be able to come back to the committee. That would probably happen at stage 2. We can at least have a discussion about how we are going to put our questions on the Executive's view of the two proposed amendments.

Hugh Henry: Okay.

The Convener: That ends the evidence session. I thank Hugh Henry and his officials for attending the meeting this morning.

Petitions

Family Law (PE770)

13:16

The Convener: Item 4 on the agenda is petition PE770, by Patricia Orazio. I refer members to a briefing note that has been prepared by the clerks and which sets out the background to the petition. The petition calls on the Scottish Parliament to urge the Scottish Executive to investigate the apparent widespread undue influence of children by family members after parental separation, to establish family law centres with responsibility for drawing up action plans or contracts with parents to promote shared parenting wherever possible and to create children's law centres to support children who are involved in family law cases.

The petition was referred to the Justice 1 Committee because we had expressed an interest in the proposed family law bill. Members will know that a final decision has not been taken about which committee will lead on the family law bill, but I thought that it would be useful to make members aware of the petition. Given that this is our quarterly round of petitions, I wanted to get the petition on the agenda in fairness to the petitioner. Whether we discuss it fully today is a matter for the committee. I suggest that it would be better to give it more airtime when we are clear about whether we will deal with the family law bill.

Margaret Smith: It seems reasonable to do that and to put the petition on the agenda of the committee that handles the family law bill. There is no point in duplication of effort.

The Convener: Members are all like-minded.

Miscarriages of Justice (Aftercare) (PE477)

The Convener: Item 5 is PE477, by the Miscarriages of Justice Organisation. I again refer members to a background note that has been prepared by the clerks. The petition calls on Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a halfway home to help people who have been wrongly incarcerated and have served long terms of imprisonment or whose conviction has been annulled by the appeal court.

Members will note that we have had late correspondence from the Minister for Justice on the petition. The letter updates the committee on her current thinking. A number of options are open to the committee. Members will recall that at the previous discussion on the petition the committee was particularly keen to pursue some of the issues that it raises. Members may also recall that independent of the committee's work, I and a

former member of the Justice 1 Committee, Bill Butler, had been pursuing the matter prior to the petition coming before us. We met the Minister for Justice with the Miscarriages of Justice Organisation to assist in the process. I felt that the meeting was very positive. As things stand, the Executive has an open mind on the petition, although members will see from the correspondence that at this point it is not abundantly clear which aspects of the petition the Executive will act on.

It is open to the committee to push the matter further if members so wish. I invite members to comment.

One option that is open to us is to write to the Executive to press it on when we will get more information on its progress on the matters in the petition. We could also consider whether to bring representatives of MOJO to the committee—if we have time—to hear from them about issues that they are pursuing. We could continue to monitor developments as part of our work programme, or we could do anything else that the committee wishes.

Mr McFee: I am aware of your interest in the matter, convener. As one of the newer members of the committee, this is the first time I have considered the petition. I am keen to hear more about it, so it would be appropriate to ask representatives of MOJO and the Scottish Executive to give evidence. I would like to hear the justification for the Executive's current position. At face value, the petition strikes me as being a not unreasonable request. I would like to hear the rationale behind it and what the Scottish Executive's ideas are.

Margaret Smith: Far be it from me to give the committee more work, but I would like to wrap in options (a) and (b) under paragraph 5 of the note by the clerk. I think that you should write to the Executive and to MOJO for further information. Bearing in mind the minister's letter, which says that on-going work is being done by the Executive but that some work is still outstanding, it might be reasonable to find out from the minister when she believes the outstanding work will be complete. Time should be built in for MOJO to respond to the Executive, and then evidence could be taken from both.

Generally speaking, all members of the committee who have dealt with the issue are supportive and know about the work that you have done on it, convener. We are supportive of the general concept, and I know that people feel that people who have been wrongfully incarcerated are let down again by the justice system when they are released. It is reasonable to give the Executive fair warning that the committee intends to take evidence, to give it the opportunity to provide an indicative timetable for when its work will be done.

Mrs Mulligan: Margaret Smith's suggestion is reasonable. We obviously have concerns, but if the Executive is responding positively to MOJO, that is good and we would want to support that. However, should the issue not be resolved, we would want to be kept informed of what is happening. We might want to take the matter further. The two-step approach that Margaret Smith suggested is probably helpful.

The Convener: I concur with that. It might be important to press the Executive on its timetable and to tell it that we intend to incorporate the issue into our work programme, so that we can get an indication of when the Executive would be likely to respond. We can then see how that fits with our programme. I detect a general interest among committee members in getting more information from MOJO. Notwithstanding our heavy workload, it would be useful to do that. In the first instance, however, we shall write to the Minister for Justice to ask for a timetable for action.

Items in Private

13:23

The Convener: Item 6 is for members to agree that, at future meetings of the Justice 1 Committee, we should meet in private to draft the stage 1 report on the Protection of Children and Prevention of Sexual Offences (Scotland) Bill and to draft the report on our inquiry into the effectiveness of rehabilitation programmes in prisons. Is that agreed?

Members *indicated agreement*.

The Convener: That brings us to the end of our agenda. I remind members that the next meeting will be on Wednesday 2 February, when we will consider an issues paper as the start to drawing up our report. I hope that we will also make progress on our report on rehabilitation programmes in prisons.

I conclude by thanking Margaret Smith for her work on the Justice 1 Committee. I am sorry that she is leaving us—with lots of work to do—but I wish her all the best on the Local Government and Transport Committee.

Margaret Smith: The Local Government and Transport Committee meets for even longer than we do. The other day it met for seven hours.

The Convener: Thank you for all your work.

Meeting closed at 13:24.

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