# JUSTICE 1 COMMITTEE

Tuesday 12 April 2005

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

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## JUSTICE 1 COMMITTEE
**† 10th 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)
*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

**COMMITTEE SUBSTITUTES**

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

*attended

**THE FOLLOWING GAVE EVIDENCE:**

Anne Cairns (Scottish Executive Legal and Parliamentary Services)
Andrew Dickson (Scottish Executive Justice Department)
Sharon Grant (Scottish Executive Justice Department)

**CLERK TO THE COMMITTEE**

Callum Thomson

**SENIOR ASSISTANT CLERK**

Douglas Wands

**ASSISTANT CLERK**

Lewis McNaughton

**LOCATION**

Committee Room 3

**† 9th meeting 2005, Session 2—joint meeting with Justice 2 Committee.**

# Scottish Parliament

## Justice 1 Committee

*Tuesday 12 April 2005*

[THE CONVENER *opened the meeting at 15:09*]

## Protection of Children and Prevention of Sexual Offences (Scotland) Bill

**The Convener (Pauline McNeill):** Good afternoon. Welcome to the 10th meeting of the Justice 1 Committee in 2005. We have received apologies from Bruce McFee, but otherwise we have a full attendance. As usual, I ask everybody to switch off their mobile phones.

Item 1 is the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. I invite members to comment on the record, if they so wish, on the correspondence from the Deputy Minister for Justice, which is the late paper that was circulated to members. Members will be aware that we had hoped to have the Deputy Minister for Justice before the committee to talk about the amendments to the bill. I agreed to postpone the session as the amendments are not ready for consideration. Members have before them an explanation for that in the minister's letter. If members wish to comment, I invite them to do so.

**Stewart Stevenson (Banff and Buchan) (SNP):** I suspect that I speak very much as we all feel. Given the difficulties that are involved and the time that it is taking for the Executive and its officials to bring forward the amendments, it will be difficult for us to understand the amendments and confirm to ourselves whether they are satisfactory in the couple of days—perhaps a week if we are very lucky—that the timetable appears to suggest that we will have. The Executive must think carefully about the implications of that for its likelihood of success in having the amendments accepted at stage 2. I certainly would not be comfortable with supporting an amendment at stage 2 that I am not fully satisfied with, given that there are clearly difficulties. Ministers and officials ought to note that point. The committee has long been promised the details and it is difficult to expect us to understand what is clearly a complex issue in such a short space of time.

**Margaret Mitchell (Central Scotland) (Con):** I agree. We have been promised the amendments and were aware of them as early as stage 1, but to date nothing has been forthcoming. Other members of the committee and I have a grave concern that if the amendments are complex, we should have sufficient time properly to look into the various issues that surround them, on the basis that we are here to make good law as opposed to doing what is expedient. That is worth recording and conveying to the minister.

**The Convener:** Okay. I anticipated the feelings of the committee and wrote to the Minister for Parliamentary Business to make the point that the issue for us is time. We want to ensure that we are able to do a job by having enough time to consider changes to the bill. As other members have stated, the difficulty for us is that although we can shift things about, we will have only a short space of time at stage 2 in which to consider the amendments.

Initially, when we were advised in December that the Executive would make amendments to the bill, members thought that those would be reasonably straightforward because they were related to European Union obligations, but now they appear to be more complex. From the letter that the minister has sent to the committee, it seems that the issue centres on the question of setting the age at 18 when we have a general age of criminality of 16.

One of the lessons that the Parliament must learn from this—it relates to the meeting that we have just had with the Justice 2 Committee—is that although some of the provisions will be set in tablets of stone and we will not be able to alter the basis of the framework decision, it is important for us to get in earlier on such issues. I would like to have seen the Parliament not being tied to a specific age. That ties our hands in relation to principles that we have already determined in the bill. The lesson that needs to be learned is that we must engage at another level in relation to decisions that we are expected to enforce. If there are no other comments, we can do nothing other than leave that on the record. We have asked the bill team whether we can see the amendments as soon as possible.

# Subordinate Legislation

## Bail Conditions (Specification of Devices) and Restriction of Liberty Order (Scotland) Amendment Regulations 2005 (SSI 2005/142)

15:15

**The Convener:** I refer members to the clerk's note that sets out the background information on the Bail Conditions (Specification of Devices) and Restriction of Liberty Order (Scotland) Amendment Regulations 2005. The regulations are a negative instrument, so we have no minister with us today. However, we welcome Sharon Grant from the community justice services division of the Scottish Executive. I am sure that she will answer all our questions if there are any on the regulations. She will be aware that because we do not deal with subordinate legislation on a daily basis, we sometimes need a wee bit of reminding about where the regulations come from and what their purpose is. It would therefore be helpful to get some clarification on the record.

**Stewart Stevenson:** In view of the confusion that was left in my mind when the minister came to talk to us about the order that established the pilots, I would like to ask about what paragraph 5 of the Executive's note says. It seems to be saying two distinct things and I want to get the implications clear in my mind. The Executive note states:

"The policy is aimed at reducing the number of accused held on remand in custody who, subject to the safeguards in respect of public safety, can be released on bail into the community."

The key phrase is

"reducing the number of accused held … in custody".

The note goes on to state:

"It will also tighten the supervision of the high risk group, in cases involving rape and murder charges, who are granted bail."

I was left in a little bit of confusion, when I thought about it and read the *Official Report* of the last meeting at which we considered the matter, about the extent to which those two things inter-operate. I want to clarify—you may assure me or correct me—that we are not talking about using the order as an opportunity to give bail to more people in a high-risk group.

**Sharon Grant (Scottish Executive Justice Department):** That is correct.

**Stewart Stevenson:** Therefore, the additional people who will be granted bail are not identified as being in a high-risk group. It would be useful to spell out what sort of people are likely to be released under the provisions of the order who previously would not have been, so that we have a clear understanding of what is going on.

**Sharon Grant:** Obviously, I cannot pre-empt any decision that a court would make in an individual case. From working through the pilots, working up the legislation initially and speaking to sentencers, we took the view that, in some cases in which a person persistently failed to turn up at court or persistently offended in a lower category of offence—not public safety offences, which, as far as we are aware, would be a matter for the court—and in which the court might be wavering on the verge of giving them bail, in view of the fact that the person has not turned up to court cases in the past, the court might consider granting bail with an electronic monitoring condition.

**Stewart Stevenson:** Let me just test that. In your view, would the provision be likely to include people who have been involved in physical violence or the threat of physical violence against members of the public?

**Sharon Grant:** That, again, is a matter for the court. Safeguards are in place. If someone was refused bail for an assault, say, and they applied under the regulations to be granted bail subject to a remote monitoring requirement, the procurator fiscal would have the right to be heard. If the procurator fiscal still considered—on the basis of the information that he held and information from the police—that there would be a public safety consideration, he would ask the court for that to be taken into account. The court would make its decision on the basis of the representations that are made by the procurator fiscal.

**Stewart Stevenson:** But the general policy intention—which is distinct from what the courts might end up doing—is that large numbers of people who have been involved in assaults, physical attacks or threats of those would not be included.

**Sharon Grant:** The Executive takes the view that the courts always take into account the safety of the public, and we have proceeded with the pilots in that light. Obviously, courts will take public safety considerations into account, and we have proceeded with the pilots in the hope that they will continue to do so.

**Stewart Stevenson:** The evaluation period is quite lengthy, which is reasonable. Have you set triggers that would lead to your reconsidering the operation of the scheme well within the evaluation period? If you have, what are those triggers?

**Sharon Grant:** The details of the pilot scheme were developed by a national steering group, which comprised representation from the Sheriffs Association, the High Court, the Association of Chief Police Officers in Scotland, the Association

of Directors of Social Work, the Law Society of Scotland and the electronic monitoring contractor—working on practical guidance was felt to be appropriate. We have put in place triggers so that, on a contractual basis, the electronic monitoring contractor will follow set criteria if someone breaches a condition. A breach will be reported to the police and the police will take action.

The other trigger is that if we think that things are going—

**Stewart Stevenson:** How quickly is the technology likely to detect a breach? Of course, breaches might be different in that there might be a requirement for someone to be somewhere or a requirement not to be somewhere else.

**Sharon Grant:** The central computer system reports within minutes. The monitoring unit—which is usually in the offender's home—reports within minutes down a telephone line. The monitoring centre will then phone the house of the accused within 15 minutes to find out whether the accused is still there. If it has been registered that the person has left, the monitoring centre will want to confirm whether they have done so. If they have, the centre will try to make inquiries about where they have gone during that telephone call—there will be a conversation with anyone else who is in the house to find out. The centre will then report to the police within two hours, I think, which gives time to prepare a report and fax it to the police. In respect of rape and murder cases, a telephone call will be made to the police within 15 minutes of a breach.

**The Convener:** Will you clarify what constitutes a breach? I understand that under the system that Reliance Monitoring Services operated for restriction of liberty orders, breaches would not be reported to the police until there had been three breaches.

**Sharon Grant:** Restriction of liberty orders are community disposals, so Reliance Monitoring Services would report not to the police but to the courts. Under the system, it reports everything to the court, but not immediately. A breach of a bail condition is reported within the timescale that is set and agreed to by the police.

**The Convener:** This is probably a trivial matter about the presentation of the regulations, but it is important to me. I have struggled to get my head round the difference between bail conditions and restriction of liberty orders. I know that one involves sentences and the other does not, but they are dealt with in the same regulations and things become very confusing. It is important to distinguish between the two. There will be a bail condition when someone has not been remanded and awaits trial, and we have introduced them in murder and rape cases. As a matter of policy, would having separate regulations for restriction of liberty orders and bail conditions not be a more accurate approach, as they are two different things?

**Sharon Grant:** We considered separate regulations, but given that the regulations' purpose is to name the models of equipment that the contractor can use, our solicitors took the view that one set of regulations would do the job.

The legislation that gives power to name equipment for the bail pilots is identical to the legislation that requires regulations to be made for restriction of liberty orders. Members might recall that way back when the Criminal Procedure (Amendment) Scotland Bill was introduced, its bail conditions provisions said that regulations would be made under section 245A of the Criminal Procedure (Scotland) Act 1995, which allows restriction of liberty order regulations to be made. The committee thought that that was confusing, so we just replicated that legislation for bail conditions. However, when we took solicitors' advice, we saw no difficulty in joining back up the matters for the purposes of naming equipment.

**The Convener:** I understand that that is tidier from a solicitor's point of view, but a politician represents the interests of the public who are trying to follow what is going on. Much use has been made of electronic monitoring. We are beginning to use it more, so its presentation must be crystal clear and the distinction must be clear. That has always worried me about electronic monitoring.

If a restriction of liberty order is an alternative to custody and we tell the public that it is a tough measure to comply with, and bail conditions are not a sentence but measures that apply when someone awaits trial, the public must know the clear difference. I understand that the arrangement is tidier and easier, but we must continually make that distinction, so that we can all follow where we are going.

**Sharon Grant:** That would not be a difficulty for the Executive in future. We can quite easily produce two sets of regulations and bring them to the committee at the same time. We are upgrading equipment that is in use, which happens from time to time. That means that the restriction of liberty order and bail regulations will have to be amended, so we can separate the elements again. That is not a problem.

**The Convener:** That would help.

If we are to use the equipment more, I have a question that you may or may not be able to answer about its reliability. Stewart Stevenson has asked what happens if a breach occurs. How reliable is the equipment?

**Sharon Grant:** The equipment is reliable, but it malfunctions from time to time and we would be silly to think that it did not. The electronic monitoring system is designed so that if a tag malfunctions in any way, the monitoring unit at the home can identify that and send a message that says that the equipment is malfunctioning. That unit sends different messages to the central computer for different matters.

Similarly, if a strap tamper occurs—if someone pulls at a tag—that will be registered. That means that a different signal is sent to the monitoring centre. If a strap tamper message appears, the monitoring centre phones the offender or the accused. If the offender or the accused says, "I honestly did not touch the tag," the equipment will be checked for soundness. If doubt remains and signals are still incorrect—that does happen—the equipment is replaced.

15:30

**Margaret Mitchell:** I share the convener's concern about lumping together restriction of liberty orders and the pilot bail scheme. Without going over the arguments, I am very much against the use of the electronic monitoring device in the pilot scheme because we cannot be half safe. If we would not have granted bail before, to say that we will do it now simply because we are going to use a tagging device does not seem to be a sensible way to progress. A restriction of liberty order is an alternative to custody that is used once a person has been assessed, a trial has taken place and we know what we are dealing with. I am concerned that that is not the case in bail situations. Is there any differentiation in the type of equipment that will be used? Will you automatically use more up-to-date equipment in situations involving someone whose potential threat to public safety is not fully known than you would use in situations in which a trial has taken place, all the facts surrounding a person's offence are known and the potential danger to the public that they pose has been assessed?

**Sharon Grant:** If the sheriff is minded to grant bail, the system requires him to obtain a suitability report from the local authority social work department. That suitability report considers the place in which a person is to be restricted and takes on board the views of those people who would be affected by the enforced presence of the accused. It also takes into account any concerns that the local authority may have. For example, knowledge that the person concerned has been involved in domestic violence or child protection issues will be brought to the court's attention. That is part of the local authority's duty of care; it is not implicit in the legislation.

Local authorities took the view that if something came to light while they were preparing a report or they were aware that something should be brought to the court's attention, they would put that in the report. The report is not a recommendation—the local authority has no locus to make a recommendation on bail to the court. It presents information to the court. If that information leads the court to believe that the person concerned should not be granted bail, it will refuse bail.

It is important to say that we have tested the use of the equipment for restriction of liberty orders. It has also been tested in England and Wales, where electronic monitoring has been available for five years longer. We are quite satisfied that the equipment supports the restriction of liberty. We have safeguards in place. The equipment is licensed and is subject to British and European safety standards and we are quite comfortable that it operates satisfactorily and does the job well.

We appreciate that there is a risk in bail situations. That is why we have done a lot of work with the agencies on the matter. The purpose of the pilot scheme for bail is to test the legislative provisions. If we do not test them in a pilot, we will not know whether they will operate successfully.

**Margaret Mitchell:** I have some questions on the logistics of the use of electronic monitoring. Reliance will monitor its use in the bail pilot scheme and for restriction of liberty orders. Will the local authority be approached in every case, to find out whether a home background report is required?

**Sharon Grant:** The report is not a home background report; it is a suitability report. The local authority will be approached in every case. With restriction of liberty orders, local authorities have been resourced to produce additional reports as part of the 100 per cent funding that they receive for criminal justice social work services. We have also funded local authority social work departments to undertake assessment reports in bail cases.

**Margaret Mitchell:** So the local authority will be required to produce a report on every person who is the subject of a restriction of liberty order or who is part of the bail pilot.

**Sharon Grant:** Yes.

**Margaret Mitchell:** Given the shortages in the criminal justice system, are you confident that there will be sufficient manpower to undertake what seems to be a huge volume of work?

**Sharon Grant:** Restriction of liberty orders have been in place for three years. When a court is deciding to sentence a person who has been convicted, it usually calls for the preparation of a social inquiry report. Usually, because alternatives

to custody are being considered, the court asks for a report on suitability for probation, restriction of liberty order or community service, which is included in the social inquiry report. That happens in the majority of cases in which restriction of liberty orders are made.

**Margaret Mitchell:** Would local authorities lift the information out of the social inquiry report, or would another report be required?

**Sharon Grant:** Another report would not be required in relation to restriction of liberty orders: one report is produced, which probably has an annex that proposes to the court suitable approaches to the offender, such as probation, community service, a restriction of liberty order or imprisonment. In bail cases, there is simply a suitability report on the place of restriction and the effects. Such reports are not as wide ranging as social inquiry reports, which include much more detailed background because they are produced post-conviction.

**Margaret Mitchell:** Are you saying that the information would not be lifted out of the report, but that there would be a further report, albeit—

**Sharon Grant:** We might not be talking about the same group, although we are obviously talking about a large number in the same group. The information would not be lifted out unless the report was very new.

**Margaret Mitchell:** It still seems that there is the potential for much more administration and bureaucracy.

**Sharon Grant:** We have funded local authorities to do the work and local liaison groups are in place, on which all the agencies and courts are represented. We have been assured that social work departments are geared up to do the work. However, the pilot scheme will consider the matter—[*Interruption.*]

**The Convener:** I spy an intruder—what is that noise? Perhaps it is electronic monitoring.

**Stewart Stevenson:** We talked about triggers in the case of apparent breaches when an individual has been tagged, but I also want to ask about triggers for decisions on whether the two-year trial period should continue. What performance feedback will there be if evidence from monitoring—independent or otherwise—suggests that the pilot should be stopped before the two years are up? That is an important point.

**Sharon Grant:** The local liaison groups meet regularly to discuss what is happening on the ground in each court area and any problems that arise; they sit below the national steering group, which considers policy issues. If I thought that the approach was in serious trouble and was not working, I would have a duty to report that to ministers, who would decide what would happen to the pilots. Of course, we would take measures to try to rectify problems, but if the pilot was going wildly awry and things were becoming chaotic, we would need to report that to ministers.

**Stewart Stevenson:** Are you saying that it would be your responsibility, as an official, to identify that there was a serious difficulty with the pilot and the minister's responsibility to decide whether to continue, modify or terminate the pilot on the basis of your information?

**Sharon Grant:** Yes.

**Stewart Stevenson:** To what extent would Parliament become aware of such a situation? The issue is sensitive and I am anxious to ensure that we make a success of it.

**Sharon Grant:** I cannot speak for the Deputy Minister for Justice. However, given that he has undertaken to keep Parliament fully apprised of the results of the evaluation, I suggest that if things were going wrong, at some stage we would want to let the committee know about the difficulties.

**Stewart Stevenson:** Would you do that during the pilot period?

**Sharon Grant:** Yes. I have not undertaken to give you periodic reports; the committee might have to decide whether it wants such reports from the minister. It is not in my remit to make such an undertaking.

**The Convener:** The committee can consider making such a request. However, we appreciate that you are saying that you would not wait until the end of the pilot before telling us that you were not happy about the situation, but that you would keep us informed.

**Sharon Grant:** I do not want to collect my P45.

**The Convener:** You have explained to me on many previous occasions that the conditions that are set by the sheriff are what really matter. However, I want to know the parameters within which the electronic monitoring device could check whether those conditions were being met. For instance, given that rape comes into the category of crimes for which the sheriff can impose an electronic monitor as a condition of bail, could the sheriff specify that the accused must not enter streets X, Y or Z, where the victim lived? If such a condition were set, how would the device keep up with that? As I understand it, the device can say only whether or not a person is in their house.

**Sharon Grant:** People are usually restricted from approaching a building or house rather than from entering a street, which is more difficult to detect. For example, in domestic violence cases, the electronic monitoring company usually installs

in the victim's home a monitoring unit that is slightly larger than the microphone in front of me. The range on the unit is set between 150m and 200m. If the person who has been tagged comes within that radius, the unit alerts the monitoring centre. At the moment, with restriction of liberty orders, the monitoring centre staff then phone both the victim, who is informed that the tag has been detected in the vicinity, and the police, who must decide whether to take action. In cases that involve rape or murder, the police will always take action. ACPOS has assured us that the police will take action in all breaches of bail conditions that involve an electronic monitoring requirement, because they are keen to test the system to see whether it is another option.

**The Convener:** As we have no further questions, I thank Sharon Grant for helpfully answering our detailed questions. As she knows, we have an interest in the issue. One advantage of being required to consider the regulations is that we can have the discussion with Justice Department officials that we would have with the minister in the case of an affirmative instrument. As the instrument is subject to the negative procedure, we are not required to report on it to the Parliament, but what we have said will stand in the *Official Report*.

## Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 (SSI 2005/113)

**The Convener:** The note that the clerk has prepared sets out the background to the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005, which are subject to the negative procedure.

I welcome Executive officials Andrew Dickson, who is from the access to justice division, and Anne Cairns, who is from the solicitors division, and thank them for arriving a bit earlier to accommodate our revised agenda. Do members have any questions or comments?

**Stewart Stevenson:** I note that the regulations have been made in the context of an efficiency package. The Executive note suggests that they will effect savings of £1.2 million a year, which is great stuff. What sorts of things have been done to contribute to those efficiencies? It is clear that they involve more than fine-tuning.

**Andrew Dickson (Scottish Executive Justice Department):** In this case, the changes to the fee structure for advocates in solemn criminal cases contribute to the efficiencies. Until now, the system has been very complex. From looking at the regulations, one might think that it is still complex but it was very complex. It has been complex and difficult to predict exactly what is payable in relation to a particular legal aid case, but, because the regulations tie down the payments more precisely to specific parts of the legal process, the system will become more predictable and therefore more efficient.

The Scottish Legal Aid Board assessed the savings by comparing what happens now with what is likely to happen in the future, based on the assumption that the Bonomy reforms will be fully implemented. Those reforms are the other side of the coin. The issue is not simply about efficiency, but about efficiency in a slightly different sense—the new fees structure is intended to go alongside and encourage the full take-up of the changes in process that have been introduced through the High Court reforms. Together, those two aspects are intended to produce a better and overall more efficient system of fees for counsel in the cases that are involved.

15:45

**Stewart Stevenson:** In essence, you are saying that, by adjusting the fees against the tasks, you will achieve a better and more appropriate balance. Without making a meal of it, I presume that we were overpaying for some tasks and underpaying for others, but we will now get the balance correct, so there is a financial efficiency. However, you are also saying that there is an operational efficiency in the system, largely deriving from the Bonomy reforms. Can you identify the balance in the saving of £1.2 million between financial and operational efficiencies, or are the two inextricably linked?

**Andrew Dickson:** The Scottish Legal Aid Board assessed the saving on the basis of available information and on the assumption that the Bonomy reforms will be put in place as intended, which is happening. However, there remains a fair degree of flexibility in how the courts operate. Of course, the courts are independent and have every right to operate flexibly. With our colleagues who deal with criminal procedure, we will monitor carefully the operation of the changes and, if necessary, revisit the system of fees for counsel. In the autumn, we plan to undertake a wider review, which we will discuss with the Faculty of Advocates and the Law Society of Scotland, of graduated fees in solemn criminal cases generally, for solicitors and counsel. At that point, we will take into account how the Bonomy changes are bedding in.

**Stewart Stevenson:** To tie up the matter for me, can you say what percentage of the budget, either in cash or inflation-adjusted terms, the saving of £1.2 million represents?

**Andrew Dickson:** The total budget for legal aid, leaving aside the budget for the administration of

the Scottish Legal Aid Board, is about £140 million. Therefore, we are talking about a saving of a little bit less than 1 per cent.

**Stewart Stevenson:** It is 0.85 per cent.

**Andrew Dickson:** Your arithmetic is better than mine, but it is something like that.

**The Convener:** A key change in the Bonomy reforms is that, because of the nature of certain diets, counsel will be involved in more preparation work. The regulations cover that change in the nature of the work.

**Andrew Dickson:** Yes. The new fee tables include fees for work on preliminary hearings, including managed meetings or their equivalent—"managed meetings" is not a term of art, but it is thought that that is how the system will work—which are payable at the full rate for a trial. That is part of the front loading that is intended to go alongside and, to an extent, encourage uptake of the new procedures that have been set out.

**The Convener:** I know that managed meetings need not be meetings as such; they are exchanges that take place in advance of the preliminary diet, which have a specific payment attached to them.

**Andrew Dickson:** The payment is for the preliminary hearing and everything leading up to it. In that sense, the fee is not £5 for every quarter of an hour of work or that kind of thing. A block of work is identified, for which the payment is the same as if it were a trial.

**The Convener:** The first part of the package was implemented in 2004. I take it that those issues did not relate to Bonomy.

**Andrew Dickson:** They did not relate to Bonomy. The 2004 review was of civil legal aid, and it was the first stage in the process.

**The Convener:** You have said that it is early days for the Bonomy reforms. Members of the committee intend to examine how things are going. Having scrutinised the Criminal Procedure (Amendment) Scotland Bill, we are interested in the changes to the way in which the system works. Is there likely to be a review of the reforms to see whether we have got it right in relation to the table of fees?

**Andrew Dickson:** I cannot respond directly for my colleagues who deal with criminal procedure or my colleagues in the Scottish Court Service, but I know that they are examining closely how the reforms are working. The process for preliminary hearings has been in place for only about one week, but my colleagues in the Scottish Court Service have been observing carefully what is happening and they will continue to do so. I am sure that they will report to ministers and to the Parliament as is necessary.

**The Convener:** As you know, there has been much discussion about how solicitor advocates are paid. They would argue that more use might be made of solicitor advocates, given the shift of business from the High Court to the sheriff court. Does the revised package change the fee system for solicitor advocates for solemn proceedings in the sheriff court?

**Andrew Dickson:** Anne Cairns might be able to respond to that. I am not 100 per cent sure off the top of my head. Certainly, come the autumn when we consider graduated fees in solemn criminal work, the position of solicitor advocates and any developments that have taken place in between times will be taken into account.

**Anne Cairns (Scottish Executive Legal and Parliamentary Services):** The fees system covers solicitor advocates.

**The Convener:** Does it pay them as solicitor advocates?

**Anne Cairns:** Yes.

**The Convener:** I make the distinction because I understand that, although solicitor advocates can represent someone at solemn proceedings in the sheriff court or the High Court, they are not necessarily paid as solicitor advocates. My understanding is that they are paid solicitors' rates. Has that changed?

**Anne Cairns:** When they appear as counsel, they are paid as solicitor advocates.

**The Convener:** Questions of payment and representation are connected with the regulations and I know that that is an issue for the Scottish Legal Aid Board. However, the committee thinks that there is still work to be done, especially because of the shift of business whereby accused persons who were automatically entitled to the representation of counsel no longer have that right. I know that the Scottish Legal Aid Board is considering that. Are you involved in that review?

**Andrew Dickson:** The department will be involved in all the discussions between the Scottish Legal Aid Board, the Law Society of Scotland and the Faculty of Advocates, where it is involved. Much of the detail will be for discussion between the Scottish Legal Aid Board and the professional bodies, but we are keen to keep closely involved with that process on behalf of ministers.

**The Convener:** It is critical that the issue is resolved in time. I have always been concerned not about the shift of business per se, but to ensure that people are represented at the right level and are not disadvantaged. Is there a way in which the committee could make an input to the on-going reviews of these matters, if it wanted to? How would we do that?

**Andrew Dickson:** The most straightforward approach would probably be for the committee to ask for a report from ministers on what is being done on the issue. It might be best for such a report to be timed around the autumn, as we get into the system more.

**The Convener:** That is very helpful. As there are no further questions, I thank both of you for attending and answering our questions. Do members agree to note both this and the previous negative instrument?

**Members** *indicated agreement*.

## Police Grant (Scotland) Order 2005 (SSI 2005/107)

**The Convener:** I refer members to a note that has been prepared by the clerks, which provides background information on the Police Grant (Scotland) Order 2005, which is a negative instrument. Would members like to comment on or raise any issues in respect of the instrument?

**Stewart Stevenson:** In a sense, I understand why none of the material makes direct reference to this issue, but it seems clear that there will be some exceptional costs this year relating to the G8 summit. I would not expect those costs to be picked out specifically, because that could compromise the police's ability to deliver public order. However, I wish to be assured that in the figures that appear in the order proper account has been taken of the additional costs that will be associated with the G8 summit. I suggest that we ask about that issue in writing. The sums of money that are involved ought to be, and I suspect must be, substantial. I see no sign that provision has been made in the figures for the police forces that are directly involved. I would like to be satisfied that provision has been made and that police forces are satisfied that they will not be penalised because of the accident of a major international event with high security implications taking place on their doorstep.

**The Convener:** I have no concept of what the additional cost of policing an event such as the G8 would be, so I speak from a position of ignorance. To that extent, I have no view on the matter and would be happy to write to the Executive to get an indication of whether the costs are so astronomical that they need to be incorporated into the Police Grant (Scotland) Order 2005.

**Stewart Stevenson:** I believe that the event will involve several thousand officers for a period of at least a week. Of course, no additional cost is attached to those officers per se, except that a considerable amount of additional overtime will be required. A variety of other costs will arise from the leasing of equipment and third-party, non-police involvement, which will, I suspect, be paid for by the police. We ought to seek to ensure that the local authorities and police authorities concerned are not disadvantaged in one way or another by the presence of a major international event.

**Margaret Mitchell:** In a discussion with me yesterday, a divisional commander indicated that he will deploy his regular police force at times when it would not normally work, so there will be additional overtime costs. Are those costs included in the grant, or is there a separate fund for them? Is there a contingency fund to deal with exceptional circumstances or a special event? It would be worth our asking about that.

**The Convener:** I have no idea. I appreciate that the event is exceptional. The only comment that I will make is that, as the MSP who directly represents Glasgow city centre, this is a sensitive issue for me, as I am sure it is for others. We simply have to police what we get. Sometimes, we have processions every Saturday, but even though we might have 30 processions to police there is nothing in the police grant directly to account for that. We just have to police what we get. I realise that the G8 summit is at a completely different level, so I do not oppose our seeking clarification. However, I make the point that nowhere in the system have we recognised that cities take on exceptional—or continual—policing of events, which is not, to my knowledge, reflected in the police grant. I would like there to be some recognition of that, but I do not have a problem with writing for clarification if the committee is minded to do so.

16:00

**Stewart Stevenson:** I make it clear that I am not asking for the figure. If we do so, ministers would quite properly say, "We are not telling you." I would like to know it after the event, but that is a different issue.

**The Convener:** So your proposal is that we agree to note the order, but that we write to the Executive to ensure that—

**Stewart Stevenson:** There are two things. We want to be told by the Executive that it has made what it believes to be adequate provision for the event and that it has reached agreements with the appropriate chief constables in respect of it. That is the bottom line.

**The Convener:** Do you mean adequate provision in relation to additional costs?

**Stewart Stevenson:** Yes.

**The Convener:** I am not sure about the second point.

**Stewart Stevenson:** At the end of the day, neither I nor any member of the committee can

make a judgment about what the figures should be. The people who have to do the policing on the ground are the only ones who can do that, and I seek some reassurance that they are sufficiently comfortable. They will not be totally comfortable, but that is the nature of policing. That is all.

**The Convener:** Okay.

**Stewart Stevenson:** I am in your hands, convener.

**Mrs Mary Mulligan (Linlithgow) (Lab):** I understand what Stewart Stevenson is asking for. The wording "sufficiently comfortable" is probably okay, although at this stage the answer will be a prediction of what they might need, so it is difficult to say how comfortable they should be. I have some concerns about that. The negotiations are on-going and I expect that issues will be responded to as they arise in the lead-up to the summit.

**Stewart Stevenson:** To clarify, I just want to know that the police are comfortable, having come up with their view of the resources that they need—that view may or may not be correct, but it is their responsibility to come up with a view—that they are being given the resources that they need.

**The Convener:** That is the part with which I have a problem. We have been asked to note the Police Grant (Scotland) Order 2005. The G8 summit, because of its extraordinary nature and what it involves, could impact on the police grant in a way that nothing else can. We are asking the question, "Are you sure that adjustments are not needed to accommodate the G8 summit, given the thousands of police officers from different forces who will be involved?" If that is the question that you want to ask, I have no problem with it. If you want to go further and say that we want to know that the Executive has asked all the chief constables about the arrangements, that is a different matter.

**Stewart Stevenson:** I am happy to ask just the first question.

**The Convener:** Is everyone happy with that?

**Members** *indicated agreement*.

**The Convener:** In that case, the committee agrees to note the Police Grant (Scotland) Order 2005.

I remind members that the next meeting of the Justice 1 Committee will be on Wednesday 20 April, when we will consider written evidence on the Family Law (Scotland) Bill and other things. Thank you for your attendance.

*Meeting closed at 16:04.*

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