JUSTICE 1 COMMITTEE

Wednesday 22 November 2006

Session 2

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JUSTICE 1 COMMITTEE
44th Meeting 2006, 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)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

*Brian Adam (Aberdeen North) (SNP)
Bill Aitken (Glasgow) (Con)
Karen Gillon (Clydesdale) (Lab)
Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED

Johann Lamont (Deputy Minister for Justice)
Mr Kenny MacAskill (Lothians) SNP

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald
Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Wednesday 22 November 2006

[THE CONVENER *opened the meeting at 09:36*]

Criminal Proceedings etc (Reform) (Scotland) Bill: Stage 2

The Convener (Pauline McNeill): Good morning and welcome to the 44th meeting in 2006 of the Justice 1 Committee. I ask members to do the usual and switch off pagers, mobile phones and anything else that might interfere with broadcasting equipment.

Item 1 is the final day of stage 2 consideration of the Criminal Proceedings etc (Reform) (Scotland) Bill. It gives me pleasure to welcome Johann Lamont to her first meeting of the Justice 1 Committee as Deputy Minister for Justice. I am sure that you will be aware that we have had robust exchanges with your predecessor and I am absolutely confident that that will continue. I am sure that you will agree that our exchanges have always been constructive, particularly at stage 2 of bills. I also welcome Max McGill, Paul Johnston, Noel Rehfisch and Sara Evans from the Scottish Executive, and Brian Adam MSP. I ask Brian Adam to confirm that he is substituting for Stewart Stevenson.

Brian Adam (Aberdeen North) (SNP): I am.

Section 40—Work orders

The Convener: Amendment 134, in the name of the minister, is grouped with amendments 135 to 137 and 143.

The Deputy Minister for Justice (Johann Lamont): I assure you that it is a joy to be here at this late stage in the committee's consideration of this important bill.

Amendments 134 to 137 and 143 make minor changes to the administrative arrangements for intimating acceptance of a work offer. The bill as introduced provides that the accused should intimate acceptance of a work offer to the clerk of court, who in turn is responsible for intimating that to the procurator fiscal.

After further consideration, we think that the involvement of the clerk of court in the procedure is unnecessary; the clerk would simply be performing a postbox function by receiving accepted offers and passing them on to the relevant procurator fiscal. The clerk has no further role in work orders, so it is an unnecessary step.

The purpose of amendments 134 to 137 and 143 is to remove the clerk of court from the procedure. By virtue of amendments 134 to 136, the accused will instead be required to intimate acceptance directly to the relevant procurator fiscal.

Amendments 137 and 143 are consequential. Amendment 137 addresses the means by which service of documents at an address given by the accused can be presumed to have been effective. The amendment removes reference to the clerk of court in that context and inserts appropriate reference to the relevant procurator fiscal. It does not change the substance of the provision in any way.

Amendment 143 is consequential on amendment 134 and deals with the suspension of the time bar while an offer of a work order is pending, which is dealt with in section 42. Once again, the policy is unchanged. The amendment simply removes the reference to the clerk of court.

I move amendment 134.

Mrs Mary Mulligan (Linlithgow) (Lab): Amendment 134 is sensible. Have procurators fiscal expressed any concern about the administration that they will take on?

Johann Lamont: Procurators fiscal will end up with the information anyway. We are just cutting out the bit in the middle that makes the process longer.

Mike Pringle (Edinburgh South) (LD): I entirely agree with Mary Mulligan. Amendment 134 is sensible, and the bill is all about speeding up the processes and getting people into court more quickly. The amendment will help that, so it is a positive move.

Amendment 134 agreed to.

Amendments 135 to 137 moved—[Johann Lamont]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Disclosure of previous offers

Amendments 138 and 139 moved—[Johann Lamont]—and agreed to.

Amendment 184 not moved.

Amendment 140 moved—[Johann Lamont]—and agreed to.

Amendments 185 and 186 not moved.

Section 41, as amended, agreed to.

Section 42—Time bar where offer made

The Convener: Amendment 141, in the name of the minister, is grouped with amendments 142, 144 and 187.

Johann Lamont: Amendment 141 is a minor technical amendment and does not alter the effect of section 42. It makes it clear that the suspension of the time bar for statutory offences while the offer of an alternative to prosecution is pending will apply to all statutory offences, whether the time limit is found in the statute giving rise to the offence or in section 136 of the Criminal Procedure (Scotland) Act 1995.

Amendment 141 adds specific mention of section 136 of the 1995 act, whereas the original form of words referred simply to

"any provision in an enactment".

As section 136 of the 1995 act provides for the time limit for the prosecution of all statutory offences when the offence does not include a time limit, a specific reference to it in new section 136B of the 1995 act as introduced by section 42 will improve clarity.

Amendments 142 and 144 are minor grammatical amendments, although they are nonetheless important. For the sake of clarity, the word "where" is substituted by the word "if" at the beginning of new sections 136B(c)(i) and 136B(c)(ii) of the 1995 act as inserted by section 42. The effect of the provisions is unchanged.

Amendment 187, lodged by Pauline McNeill, would remove section 42. Section 42 allows the time taken between the offer of an alternative to prosecution being made by a prosecutor and the offer being rejected by the accused or recalled to be excluded from any time bar attached to the offence by statute. The existence of a statutory time bar will often be a consideration for prosecutors when they issue offers of alternatives to prosecution. In some cases, there may not be time to make an offer and subsequently initiate court proceedings if the offer is rejected.

Members will know that the committee considered amendments to the system for recalling fiscal fines last week to make the recall system less restrictive. However, in some cases, the recall system could mean that there is a lengthy time between the date of the alleged offence and the date on which a fine is recalled. Rejection of the offer or a successful application for recall is in effect a request to be tried for the alleged offence, as it leads to the procurator fiscal taking court action against the accused in respect of the alleged offence. It would be unfortunate if the effect of a late but well-founded application for recall was that the prosecutor was unable to prosecute the original offence because the case was then time barred. Amendment 187 could have that effect.

As the aim of part 3 of the bill is to encourage the appropriate use of alternatives to prosecution, it seems counterproductive to remove section 42. Doing so might lead to prosecutors choosing not to issue offers of alternatives in otherwise appropriate cases because of the risk that any delay before refusal or recall might leave insufficient time for the prosecutor to take proceedings. In the case of a work order for example, it might take some time for the necessary arrangements to be made. The offender might then decline to co-operate with the order, resulting in the case coming back to the prosecutor after the statutory time bar has passed. As a result, the prosecutor might be forced to prosecute in the first instance as that would be the only certain way of dealing with the offence. That change would deny the prosecutor the flexibility to take the best approach to the case, having regard to all the circumstances. It might also be detrimental to the accused and the system if it leads to court cases that could have been avoided.

Therefore, I ask Pauline McNeill to consider not moving amendment 187.

I move amendment 141.

09:45

The Convener: Amendment 187 is in my name. I do not intend to say too much about it because it is consequential to the debate on deemed acceptance. I do not plan to move the amendment; other members might be minded to do so.

Margaret Mitchell (Central Scotland) (Con): I would be grateful if the minister would clarify the position on recall. As a consequence of last week's amendments, I understood that there would be no time limit on someone applying for a recall. Does the amendment alter that position?

Johann Lamont: There is no limit of time for recall and it can be applied for in exceptional circumstances.

Amendment 141 agreed to.

Amendments 142 to 144 moved—[Johann Lamont]—and agreed to.

Amendment 187 not moved.

Section 42, as amended, agreed to.

Section 43—Fines enforcement officers and their functions

The Convener: Amendment 188, in the name of Kenny MacAskill, is grouped with amendments

189 to 192. I welcome Kenny MacAskill to the Justice 1 Committee. You have arrived just in time to speak to your amendment.

Mr Kenny MacAskill (Lothians) (SNP): Thank you, convener. I apologise for coming to the committee late.

We seek to maintain faith in sheriff officers, a profession that has served Scotland well and has saved police time. The majority of witness citations are sent out by police officers. Changes at the Crown Office have resulted in some citations going by post but, from anecdotal evidence, I understand that serving citations takes up a considerable amount of police time.

It has been recorded in newspapers and elsewhere that there is a desire among the police, whether the Association of Chief Police Officers in Scotland, the Association of Scottish Police Superintendents or the Scottish Police Federation, to concentrate more on their core responsibilities and not on other areas just because it has always been so. In those circumstances, it appears to us that we should be freeing up police time rather than creating a new body.

There is already a well-regulated body in Scotland that has served us well for many years and is capable of doing the work. Currently, it handles a great deal of citations in civil matters and citations for the defence in criminal matters. Amendment 188 is about retaining trust and faith in that body rather than reinventing the wheel. The consequential amendments relate to how sheriff officers would be paid, because it might not be possible to pay them using our current schemes. However, they are happy to negotiate fees.

Amendment 188 is about saving police time and, more important, retaining trust and faith in a profession that is part of the Scottish legal system, has served us well and should be allowed to continue rather than our creating a new body. We do not know who might make up such a body, where they might come from and who might own, operate or regulate it.

I move amendment 188.

Margaret Mitchell: Would the effect of your amendments be to replace the proposed fines enforcement officers?

Mr MacAskill: Yes—sheriff officers would act as fines enforcement officers.

The Convener: We discussed the issue at stage 1. We were particularly interested in whether more regular use of sheriff officers for such procedures would mean added fine recovery costs. Sheriff officers' fees are agreed by either this committee or the Justice 2 Committee and it seemed to me that greater use of sheriff officers would involve considerable added cost. The Society of Messengers-at-Arms and Sheriff Officers pointed out that it would be prepared to negotiate. I presume that if sheriff officers were doing more work, a reduced fee could be negotiated, but I feel that we have not progressed far enough with such discussions.

If we had fines enforcement officers, costs would probably be kept down and there would certainly be an onus on the Executive to monitor whether the fines enforcement process worked effectively. Kenny MacAskill and other members have made the point that sheriff officers are experienced in collecting fines, but the committee was worried that greater use of them could add cost to the system.

Mr MacAskill: No system will be cost free. Fines enforcement officers will not work out of the goodness of their hearts. It is clear that there will be a cost to the system; the issue is how that cost is factored in and how it is met. The use of sheriff officers will have a cost, but in my experience their costs—which are regulated—are reasonable. My amendments provide for further regulation and a separate table of fees that would be subject to negotiation.

It is not the case that there would be a cost to having sheriff officers act as fines enforcement officers and no cost to using the proposed new fines enforcement officers. There will be a cost to the public purse—it is a question of which budget heading it comes under. The sheriff officer system is up and running, so there would be no establishment costs. The costs of having interdicts served and witnesses cited by sheriff officers have been kept at what I would say is a competitive level and, after all, the charges are regulated. It is rather disingenuous to say that one method would be cost free, whereas the other would be costly. There will be a cost; the question is which budget it comes out of.

Margaret Mitchell: I wonder whether your proposal relates to concerns about a later amendment that creates uncertainty about the grade of the persons who will act as fines enforcement officers. That amendment would allow classes of person to be authorised to act as fines enforcement officers, so they would not have to be of a particular grade. You have alluded to the experience that sheriff officers possess, the databases and other information to which they have access and their track record. Is the uncertainty that a later amendment might create about who might perform the function of fines enforcement officer one of the reasons why you have proposed the use of sheriff officers?

Mr MacAskill: Absolutely. It is not simply a question of the databases, the facilities and the modern structure of a sheriff officers firm in the 21st century. From dealing with sheriff officers in a

political capacity over the past seven years and from my experience as a defence agent for 20 years, I know that they are highly professional. Few complaints are made against them, even though they have to deal with difficult incidents involving people who have a track record of violence and who are not necessarily happy to see them. In the main, they handle such cases extremely capably and competently.

We are talking about a proposal to bring in a new breed of officer. We do not know of what standard they will be or what qualifications they will have because that has not been investigated. Serving notices on people is a difficult job and taking money from them is a complicated matter.

Sheriff officers have shown themselves to be capable of professionally serving interdicts, impounding vehicles and so on, and they know when to seek the assistance of the police. The alternative is to leave such tasks to a body that has not been tested. We have no real guidance on what the standard of qualifications will be. We have experience in this country's judicial system of transferring to others a variety of services that were previously provided by a section of the system. The result has been minimum-wage jobs that have not been done well; that is a running sore. Whether in Reliance or in some private prisons, there are problems.

Johann Lamont: Far be it from me to suggest that someone is making claims for amendments that are not borne out by study of those amendments, but I hope that members will bear with me while I outline our position.

The amendments would not get rid of fines enforcement officers. Such officers would remain, but they would be stripped of their powers of diligence. The amendments would not free up police time, which is a separate matter. It is clear that FEOs will be part of the Scottish Administration, so one could argue that, as part of that public body, they will be more accountable to the Parliament.

Amendments 188, 191 and 192 would remove from fines enforcement officers the power to arrest a defaulter's earnings or money held by a defaulter in a bank account. Instead, those powers would be exercisable only by a sheriff officer. The bill envisages that those powers will be used by FEOs in cases in which an offender is in default and is unwilling to pay but has the means to do so. Use of the powers will avoid the need for people in that category to be sent to prison.

Fines enforcement officers are being introduced to make the collection of fines more administrative, freeing up the courts to focus on other business. They are also being introduced to make the enforcement process more robust. It is essential that FEOs have the tools to do that job. By allowing FEOs to instruct arrestment of earnings or funds held in a bank account, we are giving them the means and ability to act quickly and effectively in cases of fine default, where that is appropriate. Without those powers, the ability of FEOs to do their job would be severely curtailed.

In stage 1 evidence, it was made clear that FEOs will be used to improve the levels of fine collection and enforcement in Scotland and will be the centrepiece of our reforms to fines enforcement. That approach was welcomed by a majority of committee members. That is not to say that there will not be a continued role for sheriff officers in the fines enforcement process. The bill does not prohibit the involvement of sheriff officers in carrying out civil diligence to recover fines. However, there are three compelling reasons why we should give FEOs all the powers for which section 43 currently provides.

First, an FEO will be able to take a case-managed approach to all outstanding fines against an individual. As employees of the Scottish Court Service, they will have quick and ready access to all outstanding fines against an individual and will be able to take balanced decisions. By contrast, sheriff officers would be focused only on securing payment of the particular penalty instructed.

Secondly, the functions of FEOs go wider than enforcement and include the provision of advice and information to defaulters to encourage payment. FEOs will quickly develop expertise in that discipline, which is an important part of our proposals. Some people need action to be taken against them to enforce payment; others need advice and information, and payment will follow. Sheriff officers would not be as well placed to perform that role, as their main task would be to collect individual penalties.

Thirdly, FEOs will have a wide range of powers and duties to ensure that they can get the job done. Those include the power to vary payment terms, deduct from benefits or remit a case back to court. The amendments would split those powers across two professions, which would not allow for the most effective approach to case management. The bill does not prevent a judge from ordering a fine to be enforced by way of sheriff officers under sections 214 and 221 of the 1995 act, instead of granting an enforcement order, if the judge considers that there are good reasons for doing that.

The introduction of fines officers in England and Wales has led to significant improvements in collection rates. Although we start from a better baseline, I fully anticipate that FEOs will have a positive impact in Scotland. However, that will be the case only if we give them the full range of

powers that they need to take effective enforcement action.

Since they gave evidence at stage 1, Scottish Court Service officials have held meetings with representatives of the Society of Messengers-at-Arms and Sheriff Officers. In evidence, they suggested that they would be willing to consider the level of fees to be charged in respect of work in the fine recovery process, but we are yet to receive any revised proposal. I hope that the dialogue that has been established will continue so that sheriff officers can be involved in appropriate cases, in a way that complements the work of FEOs.

10:00

Amendments 189 and 190 would introduce an additional step into the process of immobilising and impounding a vehicle under new section 226D, which the bill will insert into the 1995 act. The amendments would require the FEO to instruct a sheriff officer in possession of a warrant granted under section 221 of the 1995 act to carry out the impounding of the vehicle. In practice, most sheriff officers would, in turn, instruct a suitably qualified contractor to carry out the removal and impounding. That would mean that, whenever an FEO wanted to carry out the seizure of a vehicle to encourage payment of a fine, the FEO would need to instruct a sheriff officer, who would thereafter instruct a contractor to carry out the seizure.

It might be argued that such a requirement would provide a form of independent scrutiny over the seizure process, but I question whether that is what would be achieved. Given that the sheriff officer would be acting on the instructions of the FEO, it is difficult to see what the proposal would add in practice. In effect, the FEO would need to contract with a sheriff officer who would, in turn, contract with the removal firm. That appears to be a rather convoluted process.

The additional involvement of a sheriff officer might also have financial implications for the defaulter whose vehicle was seized. The sheriff officer would need to be paid for being involved, as the sheriff officer's contract would be with the FEO. New section 226D(6), which the bill inserts into the 1995 act, provides that the FEO may deduct any expenses associated with seizure of a vehicle from the proceeds of sale, if a court eventually orders that the vehicle may be sold. The procedure that amendment 189 would require would increase the fees that would need to be deducted from the proceeds of sale as the sheriff officer would also need to be paid. That means that the defaulter would get less back.

Let me provide two assurances on the record. First, the sale of a vehicle to pay off an outstanding fine will be used only as a last resort. I hope that the threat of its use or the act of seizure will prove effective in most cases. Secondly, FEOs will be required to use reputable contractors—most likely, those that are used by sheriff officers—when instructing the seizure of a vehicle. FEOs will be required to adhere to procedures that will be at least as strict as those that sheriff officers would follow.

In some cases, the court could authorise sheriff officers to take steps to recover fines, including by the seizure of a vehicle. That might be done if, for example, no FEO is available to oversee the process. Nothing in the bill would stop that. However, I do not believe that the bill should make that an absolute requirement in every case.

Therefore, I ask Kenny MacAskill to consider withdrawing amendment 188 and not moving amendments 189 to 192.

Margaret Mitchell: I understand, and I would be grateful if the minister could confirm, that, in the case of wilful non-payment, two pieces of legislation already allow fines to be deducted from salaries or benefits. However, those provisions have not been used in the Scottish courts and, as far as I am aware, judges do not make extensive use of sheriff officers in that capacity. Does the minister have a view on why that is so?

In one of our meetings with the sheriffs, it was suggested that the difficulty is that the court administration finds it too difficult to implement that legislation properly. I am puzzled to know why the bill seeks to transfer powers that are already available in other pieces of legislation to FEOs who will be equivalent to Scottish Court Service officers, given that such officers do not use the powers that are available to them at present under the two existing pieces of legislation. What will the proposals in the bill add? How can we have any more confidence that the powers will be used in the way that is intended?

Mrs Mulligan: I must confess that it seems so long ago that we took oral evidence on the bill that, when I first listened to Kenny MacAskill's proposals, I could not quite remember why we decided not to proceed down that route but to go with the Executive's proposal instead. However, as the minister reminded us, the ultimate aim of the provision is to ensure that fines are paid. The proposed extension of powers for fines enforcement officers is actually a more rounded approach because, instead of dealing with just one element of fine recovery, it will allow the FEOs to examine the reasons why an individual has not paid the fine and how they can ensure that payment is made. As the minister outlined, there is an understanding that fines might not be paid for a

host of reasons, which we need to try to address if we are to achieve the ultimate aim of ensuring that the fine or fines—unfortunately, people may sometimes have more than one outstanding fine—are paid.

Although I suspect that Kenny MacAskill will say that sheriff officers could deal with cases where there is more than one fine, sheriff officers tend to concentrate on attaining single resolutions rather than on considering everything in the round. On balance, the committee felt that the Executive's proposal represented a new and holistic approach. We hoped that the approach would mean that more fines are paid timeously, or, if they are not, that the cases are dealt with more successfully.

The Convener: Minister, it would be helpful if you would respond to some of the points made—particularly to Margaret Mitchell's point. As I think you said yourself, it should still be possible to use sheriff officers when that is appropriate.

Johann Lamont: That would be for the judge in court to decide, and they would give their reasons.

We should be clear about what is being said about these amendments. There seems to be an argument that we should not have fines enforcement officers, but if the committee has accepted the idea of having them, it really does not make sense for those officers not to have the powers that will let them do efficiently what we want them to do.

Margaret Mitchell said that sheriff officers have powers already but do not use them. The difference is that fines enforcement officers will be able to consider the case and then use their powers to decide on the best approach for that particular case. Currently, I think that it would be for the judge to decide to instruct that a particular power should be exercised. Under the bill, the fines enforcement officer would consider the person, consider the fine, decide whether the person could not pay, or could pay but chooses not to, and then consider all the alternatives.

Mary Mulligan made a crucial point. The provisions are about ensuring that fines are paid. We have to speed things up. If fines are not paid, there are consequences for the credibility of the system.

If Kenny MacAskill's amendments are not agreed to, what is being suggested will happen will not happen. If members are signed up to the notion that efficiency will be increased by having a fines enforcement officer with the powers to look into individual cases using case management, it seems to me that they accept that the system will be speeded up; that the people who have to pay the fines will be supported; and that the integrity of the system will be supported.

Margaret Mitchell: My point was specifically about wilful non-payment. I accept that there could be a role for fines enforcement officers in looking into the reasons why people have defaulted on their fines. However, if the non-payment is wilful, there seems to be a clear role for sheriff officers. They are not playing that role just now, with the powers that are currently available. I wonder whether we are talking about a kind of hybrid system. Perhaps there should be clarification at stage 3.

Johann Lamont: The new system will charge people with the responsibility of enforcing fines and of using the powers that they have. We must consider the defaulter as an individual, but we must also ensure that we reduce the amount of time that is taken up by people who simply do not want to take responsibility for paying their fines. If a fines enforcement officer has the responsibility of working their way through the powers available to them, it will speed up the process and will prevent delays if people wilfully do not pay their fines. I do not think that that diminishes in any way the powers of the courts.

Mr MacAskill: The minister has made some valid points. However, we come back to a fundamental point of principle that Margaret Mitchell touched on: do we want to enhance the system, fine-tune it and make it work better, or do we want to create yet another layer of bureaucracy? Under the present system, the sheriff decides on guilt or innocence and, if appropriate, on the level of penalty. If it is a fine, the sheriff decides on the level of the fine, basing the decision on the person's ability to pay.

That is the remit of the sheriff; it is not the remit of a fines enforcement officer. If there are difficulties that were not factored in when the decision was made to impose a fine with a time to pay order, there is a means inquiry court system. We are in danger of taking powers from sheriffs, who should enforce the penalty, and passing them to someone over whom we have little control.

When we consider the system in England, it seems that what frustrates people in this country is not the nature of the negotiation between the state—through the sheriff—and the individual who has committed the offence, but the fact that the payment that the court imposed has not been made.

Rather than create an additional tier of bureaucracy, what we should do and what the public want is to get the correct money out of the individual if they are—as was mentioned—wilfully not paying. That is a matter of using the enforcement powers that are available to us. If there are problems, fines enforcement officers as currently envisaged may be able to seek to negotiate, but ultimately it seems to me that the

matter should go back to the sheriff. It should not be for an intermediary to decide to vary any level of penalty, as that should be a matter for the court. It seems to me that we should improve the system, which is what the public want, rather than create an additional tier of bureaucracy and take away from the sheriff powers to enforce a penalty. Therefore, I press amendment 188.

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Pringle, Mike (Edinburgh South) (LD)

ABSTENTIONS

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 188 disagreed to.

The Convener: Amendment 145, in the name of the minister, is grouped with amendments 146 to 152, 158 and 159.

Johann Lamont: Section 43 of the bill inserts into the 1995 act new section 226A, which establishes fines enforcement officers. Section 226A currently provides that the Scottish ministers may authorise "persons" to act as FEOs. Amendment 145 makes a minor addition to the section, so that the Scottish ministers may also authorise "classes of person" to act as FEOs. That change will, for example, allow particular classes of employee within the Scottish Court Service to act as FEOs without the need for every individual to be specifically authorised.

In smaller courts, the role of the FEO may be combined with other duties of the sheriff clerk. The amendment will ensure that appropriate classes of individuals, such as sheriff clerks, can be authorised to act as FEOs. Any persons so authorised will be given appropriate training and will have their role as FEO factored into their overall job profile.

FEOs will have an important part to play in ensuring that fines are effectively collected and in providing information and advice to offenders with regard to payment. We want to ensure that they can use the powers available to them appropriately, both to secure payment from those who choose not to pay, but also to provide advice and assistance to those who are genuinely struggling to pay.

FEOs will be responsible for ensuring that an offender complies with an enforcement order made under new section 226B of the 1995 act. Enforcement orders will be made by the court and, once they are made, will provide the FEO with a range of powers. When an offender is subject to more than one outstanding fine, the FEO must have regard to the total amount the offender has outstanding. Offenders may have a number of outstanding enforcement orders against them, made in more than one court and perhaps in more than one sheriffdom. Under the bill as introduced, an enforcement order made in a particular sheriffdom would normally have to be enforced by an FEO based in that sheriffdom. That would mean that when an offender has orders from a number of sheriffdoms, different FEOs would have to take enforcement action against the same offender in respect of different fines. That is clearly not the most effective way to work. It makes more sense for a single FEO to deal with the enforcement of all outstanding fines against an offender.

Amendment 146 introduces further provisions into new section 226A of the 1995 act to allow that to take place. New sections 226A(3A) to (3C) of the 1995 act will ensure that, when two or more enforcement orders have been made against an offender in different sheriff court districts, the FEO for the sheriff court district in which the offender lives may take responsibility for exercising functions in relation to all outstanding enforcement orders. When the FEO does that, he or she is required to inform both the offender and any FEO in the district from which the enforcement order is being transferred. Those changes will allow a single FEO to manage all outstanding fines against a single accused, taking appropriate enforcement action and providing advice and assistance where required.

10:15

Section 43 of the bill inserts new section 226B into the 1995 act. Amendment 147 makes a minor technical change to the order of words in new section 226B(4), which has no impact on the policy.

Amendment 148 will allow enforcement orders to be made in respect of unpaid road traffic fixed penalties and fixed penalties for antisocial behaviour offences under the procedure in new section 226B(5).

That procedure already applies to unpaid fiscal fines and provides that an enforcement order may be made by the court on the application of the clerk, once the fine falls into default, without the

need for a formal court hearing. Allowing enforcement orders to be granted in respect of those fines without the need to bring the case back to a formal fines inquiry court helps to achieve the policy of allowing the FEO to advise an offender and to take appropriate enforcement action, involving the court only if it becomes absolutely clear that enforcement of the fine using the FEO's powers is not a viable prospect. That will cut down on the number of unnecessary fines courts and reduce the number of fines warrants that the police have to enforce, freeing up both the police and the courts to concentrate on higher priorities, while allowing effective enforcement to take place.

Amendment 149 will allow enforcement orders to be made in that way in respect of fines that have been transferred into Scotland from England or Wales. Amendments 150 and 159 are technical, and consequential on amendments 148 and 149.

Amendments 151 and 152 are technical changes to new section 226B(7). That section, as introduced, provides that,

"While an enforcement order has effect"

in respect of a fine, the court cannot exercise certain powers that it usually has, such as varying payment terms or imposing an alternative sentence of imprisonment to be effective if default takes place. Those powers are suspended for as long as responsibility for enforcement is transferred to the FEO under the enforcement order. It is anticipated that enforcement orders will be made in respect of most court-imposed fines, allowing the FEO, as opposed to the court, to take enforcement action. Only if that action proves unsuccessful will the case be sent back to the court by the FEO, with the possibility of a court-imposed sanction then being imposed. While the enforcement order is in force, or where the court is minded to impose an enforcement order in respect of a fine, it is considered inappropriate that the court should be able to exercise its enforcement powers, as the task of enforcement is being passed to the FEO. Amendment 151 makes it clear that the court's enforcement powers are not to be exercised in advance of making an enforcement order if that is a course of action that the court is going to take in respect of the fine. The effect of amendment 152 is to put it beyond doubt that the suspension of the court's enforcement powers applies for as long as the enforcement order continues to have effect.

Amendment 158 is technical and has no effect on the policy in section 43 of the bill. New section 226G of the 1995 act, inserted by section 43, allows a fines enforcement officer to refer an enforcement order back to court in specified circumstances. New section 226G(9) lists the range of disposals open to the court when dealing with a case referred back to it in that way. Amendment 158 removes from the bill new section 226G(9)(b), which provided the court with the power to

"revoke the enforcement order and make an enforcement order of new".

That power is considered unnecessary. Other disposals available to the court under new section 226G(9) include the power to vary the enforcement order, to revoke the order and deal with the offender as if it had never been made, to confirm the order, to direct the FEO to take specified steps to ensure payment, or to make such other order as the court thinks fit. That range of options makes the power to revoke the order and make an order of new superfluous.

I move amendment 145.

Mike Pringle: Could the minister confirm that, if the court has imposed a fine of £100, the fines enforcement officer will not be able to go along and tell someone that he has decided that they need to pay less or more? Can she confirm that what the fines enforcement officer is doing is enforcing the £100 fine and that he cannot vary the fine? Will she also comment on the observation that one of the intended consequences of the bill is to deal with all those people who are in Scottish prisons, particularly Cornton Vale, because they have not paid fines?

One of the aims of the bill is to keep people out of prison and to make the system quicker. One of the benefits of fines enforcement officers will be that far more fine defaulters will have a relationship with somebody who is trying to sort out the problem, which means that they will not have to go back to court and that they will not have to go to prison for a short period such as 14 days, 28 days or three months. We need to keep fine defaulters out of prison. Perhaps the minister could give her opinion on that.

Margaret Mitchell: I reiterate my reservation about amendment 145. When we discussed the concept of fines enforcement officers, I had a picture of a dedicated person, who would be readily identifiable as the fines enforcement officer. There would be no ambiguity about whose responsibility fines enforcement was. Amendment 145 implies that fines enforcement officers could be particular classes of employee. That adds an unhelpful vagueness to the process. Will the minister comment on that?

The Convener: It would be helpful if the minister would indicate who the Executive is considering recruiting to this new position. What I have heard this morning is that there might be a mix of different recruits, which would include a class of persons, the specific reference being to the clerk of court.

My second point is about the discretion of the fines enforcement officer. It is clear from what you have said, minister, that the fines enforcement officer can send a person back to court, presumably if they are defaulting on payment. Will there be guidelines on that? Is it for the fines enforcement officer to determine whether there has been a complete failure on the part of the offender to continue to pay their fine?

The final point is connected to the one that Mike Pringle raised. The Executive has a number of pilots to explore the use of disposals other than custody for fine defaulters. What is expected of the courts in those pilots? In the pilots—one of which I think is in Glasgow—would a default on a fine result in a probation order rather than a custody order?

Johann Lamont: First, on the points raised by Mike Pringle, I can confirm that fines enforcement officers cannot vary the payment. What they can do is to vary the time given for payment. That makes sense, given that the underlying policy position is that people need to take responsibility for their actions. If the punishment that is deemed appropriate for an offence is a fine, the fine should be paid. An offender must take responsibility for that and be supported to do that.

Margaret Mitchell commented on whether fines enforcement officers would be dedicated and readily identifiable. We are trying to make the system more rational, and it would be illogical for a court to have a full-time, dedicated fines enforcement officer when the amount of work does not merit it, unless they are asked to do other work at the same time. Of course, they would have to be trained, and identified as fines enforcement officers. It would be a serious job—it would not simply be a case of asking whoever happens to be around at the time to do the job. However, amendment 145 would allow them to have other responsibilities. They would be employees of the Scottish Court Service, so it is not something random. Fines enforcement remains a significant role, but the difference is that it would be part of the job as opposed to the entirety of the job. The visibility remains the same.

The convener asked about guidelines on the circumstances in which a case could go back to court. The circumstances in which that could be permitted are identified in new section 226G(1).

The Convener: A point was made about the range of disposals in relation to fines. I am not sure whether you covered that. Mike Pringle and I asked whether this is an opportunity to consider what courts are expected to do about fine defaults.

Johann Lamont: In relation to the pilots on attendance orders and so on, we see them in the context of trying to keep out of prison people who have been found guilty of an offence for which a fine is the appropriate punishment. The intention is to complement the proposals on FEOs. There has to be some kind of joined-up thinking around all this. Of course, the pilots will be fully evaluated so that we have a sense of what comes out of them.

Margaret Mitchell: I thank the minister for that explanation. I am not suggesting that FEOs should necessarily be full time, but more clarity is required on who they will be, on their remit and on how they will improve things. If we are still using sheriff officers somewhere, where will they fit in? Amendment 145 is unhelpful and it has not added clarity. I would like to explore the matter further at stage 3.

Johann Lamont: We are trying to rationalise the system, and it is logical that somebody could be a fines enforcement officer as part of their duties. In the vast majority of cases, it will be their only duty because of the amount of work that is generated in their area. However, it is rational to allow someone to be a fines enforcement officer as part of their job. That will not diminish their visibility or their responsibility.

I suspect that the committee is unnecessarily anxious about amendment 145. I urge members to support it.

The Convener: Will fines enforcement officers be recruited in some cases or will roles be combined in every case?

Johann Lamont: In the majority of cases, the amount of work that is generated will require a dedicated, full-time fines enforcement officer. However, we do not want there to be an obligation to have full-time FEOs in places where there is not enough work to merit that.

The Convener: That is helpful.

The question is, that amendment 145 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Mitchell, Margaret (Central Scotland) (Con)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)

The Convener: The result of the division is: For 4, Against 1, Abstentions 1.

Amendment 145 agreed to.

Amendments 146 to 152 moved—[Johann Lamont]—and agreed to.

Amendment 189 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Pringle, Mike (Edinburgh South) (LD)

ABSTENTIONS

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 189 disagreed to.

The Convener: Amendment 153, in the name of the minister, is grouped with amendments 154 to 157.

10:30

Johann Lamont: Amendments 153 and 154 make two minor changes to the operation of the procedure under new section 226D of the 1995 act, as inserted by section 43 of the bill, which provides a fines enforcement officer with the power to seize an offender's vehicle in the event of default taking place.

New section 226D(4) places a duty on the FEO to inform the offender of the existence of a seizure order once it has been made. Amendment 153 amends that section so that the FEO is under a duty to inform the offender of the existence of the seizure order once it has been carried out—in other words once the vehicle has been immobilised or impounded. There might be some time between the making of a seizure order and the carrying out of the steps that are permitted by the seizure order. By placing an obligation on the FEO to advise the offender of the seizure order when it is made an opportunity might be created for the offender to take steps to render it ineffective by, for example, selling the vehicle or passing ownership of it to someone else. Amendment 153 ensures that the FEO must still notify the offender of the seizure order, but only when it is put into effect, reducing the likelihood of any evasive action. The offender will be aware that the seizure of any vehicle that he or she owns is a power open to the FEO should he or she fall into default and warnings to that effect will be given by the FEO in seeking to encourage payment of the fine before any action is taken.

New section 226D(5) provides that the FEO may apply to the court to make an order authorising the sale of a vehicle when a seizure order has been made. Such an order would be premature at that point, however, as the FEO could not seek to dispose of a vehicle until it had been seized. Amendment 154 provides that such an application may be made only once the seizure order has been carried out.

Amendments 155 and 156 also relate to the seizure of vehicles. New section 226D provides the FEO with the power to seize an offender's vehicle, for the purpose of obtaining payment of an outstanding fine where the offender is the registered keeper of that vehicle. We believe that that will be a useful tool for the FEO. Appropriate use of that power will encourage the payment of outstanding fines, but proper safeguards must also be in place.

New section 226H of the 1995 act, inserted by section 43 of the bill, provides that the offender may apply to the court for a review of actions taken by the FEO, including any decision taken to seize a vehicle. That is an important safeguard. However, committee members pointed out at stage 1 that there is no provision in the bill to provide a third party with a right of appeal against the decision of an FEO to seize a vehicle, where that third party claims to own the vehicle.

Amendment 155 addresses that concern by introducing new sections 226D(6A) and 226D(6B) into the 1995 act. New subsection (6A) provides that a third party that claims to own a vehicle that has been seized by an FEO may apply to the FEO to have the seizure order revoked. Should the FEO refuse to take action as a result of that claim, the application may be considered by the sheriff. If either the FEO or the sheriff is satisfied with the third party's claim, then the seizure order shall cease to have effect. New subsection (6B) makes it clear that that procedure applies only in respect of a vehicle seizure made under section 226D of the 1995 act.

Amendment 156 is consequential on amendment 155. It provides that regulations that may be made providing further detail on the seizure of vehicle provisions may include provision as to the new third-party right of appeal introduced by amendment 155.

New section 226D(10) provides that the Scottish ministers may make regulations in respect of fines enforcement officers' powers to seize an offender's vehicle in order to secure compliance with an enforcement order. New section 226D(11) provides a list of matters that regulations made under new section 226D(10) may include provision

for. Amendment 157 adds a new paragraph to new section 226D(11) to provide that such regulations may make provision as to the payment of fees, charges or other costs in relation to the seizure, storage, release from seizure or disposal of a vehicle seized under section 226D. That puts beyond doubt the fact that regulations may make provision in relation to who should pay those costs, particularly where a vehicle is returned to an offender following payment of the fine.

I move amendment 153.

The Convener: I thought that I was in another time and place there; for a minute I thought that you said that you supported a third-party right of appeal, but I might be mistaken. I could not resist saying that.

I welcome the amendments. As the minister said, the committee was concerned at stage 1 about those issues, such as whether a vehicle that belonged to someone else could be seized because of a fine default. Could you advise the committee at what stage a fines enforcement officer can trigger the seizure order in relation to a vehicle? Is it when the person first defaults, or when they continue to default? What is the maximum time for which a vehicle could be immobilised, particularly if another person challenges who owns it? If that process took a few weeks, the person challenging ownership of the vehicle would not be able to access it during that time. Does the bill oblige the fines enforcement officers to get a market price for the vehicle when it is sold?

Margaret Mitchell: I welcome the effect of amendment 155, which strengthens a potentially useful provision by providing the third-party right of appeal in situations where the fine defaulter does not own the vehicle that has been seized. I thank the minister for lodging the amendment in response to the concerns that the committee expressed at stage 1.

Mrs Mulligan: My questions are along similar lines. Given that notification and seizure would happen at the same time, what is the timescale for a third party to claim that they, rather than the fine defaulter, are the owner of the vehicle? Does the right of appeal apply only where a third party owns the vehicle? What would happen if there was shared ownership?

Brian Adam: I am coming to the bill rather late. Will the minister spell out the order in which things happen when an officer is trying to recover a fine? Where in the pecking order is seizure of vehicles? I have considerable concerns about the whole approach, because it seems like we are revisiting poindings and warrant sales. Are we going for bank accounts and income before we go through the warrant sales procedure? What is the order of priority for fines enforcement officers, or whoever is being granted the power to act?

The Convener: Given that quite a few points have been made, it would be helpful if you could clarify any of them, minister.

Johann Lamont: It would be a bonus if I could clarify any of them.

I provide two reassurances. First, the sale of a vehicle to pay an outstanding fine will be used only as a last resort. I hope that the threat of its use or the act of seizure will prove effective in most cases.

Secondly, FEOs will be required to use reputable contractors when instructing the seizure of a vehicle and to adhere to procedures that will be at least as strict as those that would be followed by sheriff officers.

Brian Adam suggested that the procedure was like poindings and warrant sales. However, we are talking about fines rather than debts—there is a distinction. We have made it clear that a range of powers are available to an FEO, so if there was money in a bank account, it is logical that that is the first place that they would go.

On timing, the third party can apply for recall of the seizure order as soon as seizure is carried out. The application would then have to be considered. As long as the application had been received, the vehicle could not be disposed of in the meantime. It is also worth pointing out that new section 226D(6) makes it clear that any proceeds from the sale of a seized vehicle must first be used to pay off any unpaid fine, and fees and charges after that. A car would not be seized or got rid of if that did not cover the outstanding fine that had been defaulted on.

The Convener: So it would not be possible for a fines enforcement officer to seize a vehicle and sell it on to cover just part of a fine. The fines enforcement officer would have to think that, by the sale of the vehicle, they could cover the whole of the fine.

Johann Lamont: In practice, an FEO will seize a vehicle only if its sale will cover the fine.

The Convener: I seek two further points of clarification. First, I am pleased that you have put on record the fact that the provision would be a last resort. Is that clear in the bill, or is it simply the view of the Executive that that is how the provision should be used?

Johann Lamont: There is no statutory provision there, but the policy that underpins the bill is that the seizure of vehicles provision is seen as a last resort. Logically, fines enforcement officers will seek to achieve repayment in the most effective, efficient and straightforward way. It is also logical

that, if there is money sitting in a bank account, that is the first place to go. A number of delays are built into seizure, sale and so on, and those are not the first options that officers would want to use. I emphasise the logical approach of the FEO and the way in which they would view the whole case. That should give the committee sufficient reassurance.

The Convener: Secondly, Mary Mulligan and I were pursuing the issue of what the maximum time would be in relation to someone recalling the process because they were claiming that they owned the vehicle. Would you be willing to discuss that further for stage 3? I am not clear about what the maximum time might be. Someone could make the challenge that they are the owner of the vehicle in question, but it could remain out of use for a week. That could effectively be quite a long time, depending on the person's circumstances. If nothing else, I want to be clear about what the maximum time would be before that person was able to challenge the provision, successfully or not.

Johann Lamont: The provision is not there to encourage further delay. It was acknowledged in a point that was made by the committee that people could become disadvantaged, so third parties should have some space in which to make an application. On the broader issue, there is a power to make regulations setting out the timescales, and the committee will have the opportunity to scrutinise those.

The Convener: I do not know how other members feel about this, but I think that it would be worth discussing that point. The other approach would be to ensure that the fines enforcement officer is clear about the ownership of the vehicle before proceeding. That would perhaps prevent any delay, should it be discovered that someone else owned the vehicle and that it should therefore not be seized. I would be grateful for a commitment on that and for further discussion on the matter.

Johann Lamont: That is the nub of the argument that the committee has developed on the matter. If someone is the keeper of a vehicle but does not own it, I am not clear about how the fines enforcement officer would be able to establish who was responsible for it other than through the process as it is set out. It is clear, however, that vehicle seizure is not the first route that a fines enforcement officer will take.

Brian Adam: This might be revisiting something that the committee has already discussed, but can the minister confirm that new section 226D(1)(a) marks the introduction of clamping in Scotland for the first time? As I understand it, we do not have that at present. Could you explain why it is necessary to immobilise as well as impound a vehicle? Once it has been seized and impounded, immobilisation is surely not necessary. Some of the clamping practices that have brought the enforcement of the law into disrepute south of the border should not be introduced here on the back of the Criminal Proceedings etc (Reform) (Scotland) Bill. If we introduce something that allows clamping by FEOs, the principle will be established. Could the minister clarify that?

10:45

The Convener: As no other member wishes to speak, I call the minister to wind up and address that point if she can. We have not gone into the level of detail of discussing what immobilisation means; we have not scrutinised the impounding of vehicles.

Johann Lamont: We are not attempting to import into Scots law heinous practice on clamping from south of the border. Clamping already exists for particular offences and is a stage before seizure. The correct order is to immobilise a vehicle and then to impound it. That already happens for tax offences. I hope that I have allayed fears and anxieties about that. It is logical first to immobilise a vehicle that we seek to impound, so I urge members to support the amendments in Hugh Henry's name.

Amendment 153 agreed to.

Amendment 154 moved—[Johann Lamont]—and agreed to.

Amendment 190 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Pringle, Mike (Edinburgh South) (LD)

ABSTENTIONS

Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Amendment 190 disagreed to.

Amendments 155 to 157 moved—[Johann Lamont]—and agreed to.

Amendment 191 not moved.

Amendments 158 and 159 moved—[Johann Lamont]—and agreed to.

Amendment 192 not moved.

Section 43, as amended, agreed to.

After section 43

The Convener: Amendment 160, in the name of Hugh Henry, is grouped with amendment 164.

Johann Lamont: Amendment 160 adds a new section that will entitle the Scottish ministers to make provision by order to implement the European Council framework decision on the application of the principle of mutual recognition to financial penalties. Amendment 164 makes it clear that any order that is made under the provisions in amendment 160 will be subject to the affirmative procedure.

On 7 September, the Minister for Justice wrote to advise both justice committees of our intention to lodge an amendment on the framework decision. Following discussion with the Home Office, it was agreed that, so far as the framework decision applies to Scotland, the changes that will be required to the law will be within devolved competence, so we want to ensure that they can be properly considered by the Parliament once ready.

However, the fact that the issues fall within devolved competence does not mean that plans for implementation in Scotland can be developed in isolation. A United Kingdom-wide approach to several of the issues that are covered will be necessary to ensure that the UK, as a single member state, enforces consistently fines that are transferred to it from other EU states.

As explained in the letter of 7 September, a consistent approach is needed to any dual criminality requirement throughout the UK; otherwise, other member states could allege that the enforcement of penalties in the UK was inconsistent. The UK as a whole needs to consider whether to adopt any of the discretionary factors that will allow non-recognition of a financial penalty that has been transferred under the framework decision.

Discussions on implementation of the framework decision are taking place with the Home Office. Unfortunately, the Home Office is not yet in a position to confirm when legislation that will give effect to the framework decision in England and Wales will be introduced at Westminster. Members will appreciate that it is not possible for us to bring forward detailed provisions that will implement the framework decision in the bill in the absence of such proposals.

In view of the fact that the implementation deadline for the framework decision falls around the time that the Scottish Parliament will be dissolved, we have considered what steps can be taken to ensure that it can be implemented as quickly and effectively as possible, in tandem with the rest of the UK and in a manner that will allow the Scottish Parliament to scrutinise the relevant provisions. We believe that taking the power to implement the framework decision by order and making that order subject to the affirmative procedure will allow speedy implementation as soon as a consistent approach has been developed throughout the UK without jeopardising the Parliament's right to scrutinise the measures.

I move amendment 160.

Amendment 160 agreed to.

Sections 44 to 46 agreed to.

Section 47—Making provision for JP courts

The Convener: Amendment 220, in the name of Mike Pringle, is grouped with amendments 193 to 198, 221, 223 and 225.

Mike Pringle: There are several amendments in my name in the group.

At stage 1, Saturday sittings of justice of the peace courts were discussed and not entirely ruled out. Amendment 220, which is a probing amendment, would allow JP courts to sit at a more socially agreeable time. Many defenders who work full time must take time off their work to go to court. It would be useful for such people if they could go to court on a Saturday, particularly if a motoring offence is being considered. Most JPs work full time and would perhaps be able to work on Saturdays. We have, after all, a socially agreeable and family-friendly Parliament in which votes are cast at 5 o'clock on Wednesdays and Thursdays. It is worth exploring the amendment with the minister.

I move amendment 220.

Shall I speak to amendment 200 now, convener?

The Convener: No. Do you want to speak to any other amendments in the group?

Mike Pringle: No.

Johann Lamont: Section 48(1) of the bill as introduced provides that

"A sheriff principal has day-to-day responsibility for the efficient administration of any JP court located in that sheriff principal's sheriffdom."

Amendment 193 will remove the words "day-to-day". Sheriffs principal approached us about the wording of the provision in view of the fact that they will primarily have a supervisory role in the administration of the JP courts—they will not be expected to have a hands-on role on a day-to-day basis. As a result, the wording of section 48(1)

gave the wrong impression. We took account of those views in lodging amendment 193.

Amendment 194 is a minor and technical drafting amendment. Saying that sections 9 and 10 of the 1995 act "include" further provision in relation to the territorial jurisdiction of the JP courts, makes it clear that those sections also deal with other matters and that they are not solely concerned with the territorial jurisdiction of those courts.

Amendments 195 to 198 are intended to ensure that justices of the peace and stipendiary magistrates can carry out signing functions at any place in Scotland. Currently, the bill makes provision for justices of the peace and stipendiary magistrates to carry out signing functions only within their sheriffdom. Signing functions do not relate to criminal proceedings and so are not covered by section 49(5). Restricting the signing functions of JPs and stipendiary magistrates in such a way is not our policy intention. Essentially, the sorts of responsibilities that are covered by the phrase "signing functions" are confined to confirming facts within the justice's knowledge, such as the fact that somebody has made a written declaration or that they have just signed a document. The responsibilities are not judicial responsibilities. In practice, we expect that justices will normally carry out those functions within their own sheriffdoms, but we see no reason to prevent them from carrying out signing functions elsewhere in the country if they are asked to do so.

For that reason, amendment 195 removes the statement that JPs can exercise signing functions at any place in the sheriffdom for which they are appointed. Amendment 196 then makes it clear that a JP or stipendiary magistrate can exercise signing functions anywhere in Scotland. It is perhaps worth noting that amendment 196 means that councillors will be able to perform their signing functions in any place in Scotland, as section 63(2) allows councillors to exercise signing functions in the same manner as JPs.

Amendment 197 is a direct consequence of amendment 195. Amendment 198 makes a minor and technical drafting change to section 49(6)(a), which should refer to subsections rather than sections.

Amendment 220, in the name of Mike Pringle, seeks to ensure that ministers, in fulfilling the general duties that section 47 places on them to make provision for the organisation and administration of JP courts, will allow the courts to sit on a Saturday. I am aware that Saturday court sittings were raised briefly at stage 1, and we have been mindful not to do anything that would preclude them in legislation. Section 8(1) of the 1995 act makes it clear that a district court

"may sit on any day for the disposal of … business."

The court must not be required to sit on a Saturday, but it is not prohibited from doing so. The bill will amend the reference to "district court" in section 8(1) of the 1995 act to read "JP court"; that appears to do what amendment 220 seeks to achieve.

I assure members that there is nothing in the bill or in the 1995 act that will prevent JP courts from sitting on a Saturday. Ministers would not be able to exercise the general duty that is provided under section 47(1) in a way that precludes JP courts from sitting on a Saturday. Section 48 makes it clear that responsibility for the efficient administration of JP courts rests with the appropriate sheriff principal. It will include the responsibility for setting court sitting days and holidays in consultation with the relevant local interests. Saturday sittings could be arranged if they were considered to be appropriate and the local court was in agreement. It makes sense to leave local decisions such as court sitting days in the hands of the sheriffs principal, who will take such decisions following consultation. Local court management is best exercised by those who need to work in and manage the court.

Our legislative framework will not prohibit JP courts from sitting on Saturdays, nor will it require every JP court to be open on every Saturday. I hope that that reassures Mike Pringle that the bill provides the right degree of flexibility on sitting days and I ask him to consider withdrawing amendment 220.

I have a critique of Mike Pringle's other amendments in the group. I wonder whether he wishes to speak to them before I make it.

Mike Pringle: May I come back in, convener?

The Convener: Yes.

Mike Pringle: Amendment 221 would delete the provision in the bill that means that JP courts will be constituted by only one JP. That provision was quite an issue during stage 1; we received submissions on it from a number of bodies. For example, the East Lothian justices committee said:

"The East Lothian justices see this as a seriously retrograde step which puts at risk the continuation of the three-justice bench, an arrangement they see as an integral part of the delivery of local justice in the district courts at present and in the JP Courts in the future."

During oral evidence taking, we heard from Graham Coe that a considerable number of district courts are now constituted by three JPs and that, in many instances, without a three-justice bench, there would not be enough work for the justices in the area. The Inverclyde justices committee had a slightly different view: at the moment, there is only

one justice on a bench in Inverclyde, and the justices committee was happy with that.

The committee said in its stage 1 report that it was concerned about the idea of doing away with the multimember bench:

"The Committee recognises that the retention of the multi-bench could be a useful tool in ensuring that sitting time for JPs does not suffer disproportionately."

I accept much of what has been said, but changing to a single-justice bench would not be a welcome step in many JP courts in Scotland, particularly in rural areas. There would be serious repercussions in many areas, so I suggest that we reconsider the change. I would be interested to hear what the minister has to say about that.

11:00

Amendment 223 seeks to insert two new subsections into section 56. One of my considerable concerns, which is shared by other members, is about how much training there will be for justices. Such training is extremely patchy in Scotland—it is quite good in some areas, but almost non-existent in others. When I was a justice of the peace and I first came to Edinburgh, had I been thrown on to a single-justice bench immediately, there would have been serious consequences for justice. That is the case for most other justices, because they need to get experience.

We gained that experience by sitting with another justice for a considerable time. On a three-member bench, which I spoke about in relation to my previous amendment, that would not be necessary because two experienced justices could sit with a justice who had just been appointed. That is an advantage of the three-justice bench. However, where there is a single-justice bench, it is incumbent on us to ensure that we deliver good justice through experienced justices.

The committee report talked about the development of the training and appraisal package for JPs and about JPs requiring to sit at least once a month during their first year. It said that the

"requirement would not exceed the current average number of sittings but would impose a requirement for regular sittings."

To be experienced on the bench, a justice has to sit regularly. Amendments 221 and 223 would improve our justice system. I will be interested to hear the minister's response.

Johann Lamont: Amendment 221, which was lodged by Mike Pringle, would remove the ability of ministers to make an order that would provide for a JP court to be constituted by one JP only. However, there might be benefits in the future in ensuring that all JP courts throughout the country are constituted by one JP. It would ensure consistency of provision and it might also make it easier to provide high-quality training and appraisal throughout the country if all JPs were doing the same job, rather than there being some courts with a chair and two wing members on each bench.

However, as has been outlined, we are aware that there would be serious difficulties in moving towards a uniform one-person bench at the moment. First, the change would be unpopular in those parts of the country that currently have three-person benches. Secondly, it would reduce the opportunities for JPs in some areas to sit on the bench frequently enough to gain adequate experience. Thirdly, it would involve imposing an additional change upon district courts with three-person benches at a time when they are already subject to significant reforms.

We want to see how the new lay justice system operates, particularly with regard to training, appraisal and the regularity with which people sit on the bench before making a decision on whether to move to a one-person bench.

For all those reasons, I assure the committee that we are not looking to move towards a one-person bench immediately. However, it would be prudent to include an order-making power so that in the future, if we think that real benefits are to be gained from moving towards more consistent provision throughout the country, and the concerns that have been expressed have been identified and addressed, steps can be taken without having to return to the matter through primary legislation. Any order that was made under those powers would be subject to the affirmative procedure and would therefore be subject to detailed parliamentary scrutiny. I hope that that gives Mike Pringle comfort.

In summary, section 50(2), as drafted, strikes the right balance. It allows us to change the size of the JP bench in the future, if experience of how the new system works tells us that that is the right thing to do. However, it means that no change will be made immediately and ensures that any future change is subject to due parliamentary scrutiny. Bearing those factors in mind, therefore, I ask Mike Pringle to consider not moving amendment 221.

Amendment 223, which is also in the name of Mike Pringle, seeks to require Scottish ministers to include provision in an order under section 56 to the effect that, during the first year of their appointment, new JPs can sit on the bench or sign warrants only if they are accompanied by an experienced JP. First of all, I reassure the committee that we acknowledge the importance of

training and that it will be improved and standardised across Scotland.

In its response to the committee, the Executive stated that, partly for the entirely logical reasons that have been outlined, it was attracted to the suggestion that new JPs should sit alongside experienced JPs. However, with amendment 223, I am concerned that putting such a requirement into primary legislation would be too rigid a way of achieving a policy intention that is shared by the committee and the Executive. I also have some concerns about the amendment's drafting.

On the first point, I am not convinced that it is advisable to have a statutory requirement that new JPs should always sit with experienced JPs during their first year of appointment. Such a statutory measure would, by its very nature, be inflexible. For example, what if an experienced JP had to withdraw at the last minute from sitting alongside a new JP who had been sitting on the bench for only 11 months? I am not convinced that it would be in the public interest for that day's court business to be abandoned. Putting the measure into primary legislation would also make it more difficult to change if evidence suggested that new JPs needed to be accompanied for only nine months, say, or that a period of 18 months might be more appropriate. Instead of prescribing the idea in primary legislation, I think that it would be best to work with the District Courts Association and the Judicial Studies Committee to take the matter forward.

On a technical point, I am concerned about the drafting of amendment 223, which defines an experienced JP as someone who has been reappointed after their first five-year appointment under the new system. If the amendment were agreed to in its current form, no one could qualify as an experienced JP until late 2012 at the earliest. Of course, I realise that that cannot have been the intention.

For that reason—and because of our broader concern about including provision of this sort in primary legislation—I ask Mike Pringle to consider not moving amendment 223.

The Convener: I welcome the fact that the amendments have been lodged, because the committee was keen to draw out some of these issues. We know that the level of district court business has fallen and that it might well fall further, depending on how the new powers on fiscal fines and so on are used. We also know that ministers can, by regulation, give more powers to district courts. The committee was clear about one thing: before it even considers giving the district court system any further powers, the Executive must address the issue of confidence in the district court system. After all, there is no indication that business will increase—and business is important if JPs are to get the experience that they need.

I support the Executive's amendments, but I do not support Mike Pringle's. I welcome the opportunity to have this discussion, but I am quite clear that the issue of training is vital and that public confidence in the district court system is the linchpin to all this. I am in favour of increasing the powers of district courts, but only if it can be demonstrated that training has been standardised across Scotland and that we can have confidence in JPs sitting by themselves on benches. We will discuss the matter further in later amendments, but, as I have said, I welcome the opportunity to address these issues now.

Margaret Mitchell: The lodging of amendments 220 to 223 has helped to clarify the position on this matter. I particularly welcome the minister's assurances, especially the comment that Saturday sittings can, if deemed appropriate, be introduced under section 48. That is helpful.

I welcome the minister's response to the issue that is raised in amendment 221. There are various single-justice benches in Scotland, and I am not aware that, when those JPs were new, they had any particular problems with people appealing their decisions. That said, and with good reason, business is done differently in certain parts of the country. The minister's sensible and welcome approach will allow that situation to continue for the moment and to be reassessed in the future.

It is important that the committee knows what any training will comprise, and I would welcome more detail on that matter. Although the first part of amendment 223 sounds attractive, I take on board the minister's comments about the possible consequence of such a move. In any case, as she pointed out, the drafting error in the second part means that the whole thing is simply not competent. However, it is good to have been able to discuss an important issue.

Johann Lamont: We are investing in training and retraining JPs in order to improve public confidence. Mike Pringle has made a reasonable suggestion for improving confidence and the quality of training, but I am not sure that such an approach should be so inflexible. We all have to live with the law of unintended consequences.

Of course, if there were rationality in the system, mentoring would be a logical move, so long as it did not make training inflexible. Confidence in the system is certainly important and is, in fact, a thread that runs through the bill; after all, under the new Crown Office marking guidelines, the number of cases that will be dealt with at this level is likely to increase.

In asking members not to support Mike Pringle's amendments, I am in no way trying to gainsay the significance of members' comments. We very much take these matters into account.

Mike Pringle: I welcome the minister's responses. On amendment 220, I think that introducing Saturday sittings would be beneficial, especially for people who work full time during the week. I am not saying that such sittings should deal with all offences, but they could be used for a particular range of them. That would certainly mean that people would not have to take time off work and, if the sittings were fairly frequent, would allow justices to get good experience in a particular area of the law.

I am delighted to hear that the Executive does not intend to do away with three-member benches. When I spoke to the clerks in Edinburgh, they expressed considerable concern about the fact that they have only a single-member bench. We have all heard the evidence on that matter, and I am grateful for the minister's comments on it.

On the minister's point about the phrase "an experienced JP" in amendment 223, I did not, of course, intend to delay things until 2012. In general, I welcome the bill, but we might well come on to discuss how we can introduce some of the measures a bit quicker. I certainly think that training is important, and I welcome the minister's comments in that respect.

For some time now, people have been genuinely concerned about the fact that justices are ending up on the bench with very little training. I welcome the fact that the bill seriously addresses the question of training because, in any modern society, it is entirely wrong that someone can dispense justice with only three days' training a year. Earlier, we discussed the introduction of fines enforcement officers. However, I do not imagine that they will be put out on to the street without having first received a considerable amount of training. JPs play a very important role in our judicial system, but we need more consistency throughout Scotland. As a result, having a consistent system of training can only benefit the justice system.

Amendment 220, by agreement, withdrawn.

Section 47 agreed to.

Section 48—Administration of JP courts

Amendment 193 moved—[Johann Lamont]—and agreed to.

Section 48, as amended, agreed to.

Section 49—Area and territorial jurisdiction of JP courts

Amendments 194 to 198 moved—[Johann Lamont]—and agreed to.

Section 49, as amended, agreed to.

The Convener: I suspend the meeting for five minutes.

11:15

Meeting suspended.

11:25

On resuming—

Section 50—Constitution and powers etc of JP courts

The Convener: If we are sitting comfortably, I shall reconvene.

Amendment 199, in the name of the minister, is grouped with amendments 200 to 202 and 213 to 215.

Johann Lamont: Amendments 199, 213 and 214 are designed to put it beyond doubt that the JP court will have the right to try common-law offences. The schedule to the bill repeals section 7(1) of the Criminal Procedure (Scotland) Act 1995, which at least in part provides the current authority for justices of the peace to hear common-law offences. The amendments include provision to put it beyond doubt that, even when section 7(1) of the 1995 act is repealed, district or JP courts will be able to hear common-law offences. Amendment 214 also puts beyond doubt the fact that a court constituted by a stipendiary magistrate shall have the criminal summary jurisdiction and powers of a sheriff in addition to all the normal powers of a JP court.

Section 51 of the bill contains a range of provisions that will allow the phased transition from district courts to JP courts across Scotland to take place smoothly. The provisions ensure that the right legislation is in force in respect of both courts that have been unified under the control of the Scottish Court Service and those that are yet to be unified.

Amendments 200 and 201 have been lodged in response to a recommendation by the Subordinate Legislation Committee to set out the purpose of the order-making powers that are contained in sections 51(4) and (5). We agree that the purpose of the powers should be set out clearly to avoid any doubt about what they may and may not be used for.

Amendment 202 is a minor, technical amendment. Section 52 of the bill makes provision

in respect of ministers' powers and responsibilities over the transfer of staff and property as a result of the court unification process. Section 52(4) makes it clear that the Transfer of Undertakings (Protection of Employment) Regulations 1981 will apply to any district court staff who transfer to the Scottish Administration under a transfer scheme. Since the bill's introduction, a new version of the regulations has come into force. Amendment 202 will ensure that the bill refers to the new 2006 regulations, which have replaced the 1981 regulations.

Paragraph 7(4) of the schedule to the bill amends various references to "district courts" in the 1995 act to "JP courts" in order to take account of the court unification process. Amendment 215 simply picks up a reference to "district courts" that appears in section 8(3) of the 1995 act, which relates to the setting of court holidays by the sheriff principal, but the amendment does not change the substance of the provision in any way.

I move amendment 199.

Mike Pringle: I welcome amendment 199 in particular. The evidence from the District Courts Association suggested that, unless we did something about this, JPs might not have the power to deal with common-law offences and might be restricted to dealing only with the offence of theft. That was not the intention behind the bill but, without such an amendment, we might in effect have seen the end of the district courts and, clearly, none of us wants that. I very much welcome amendment 199.

Amendment 199 agreed to.

Amendment 221 not moved.

Section 50, as amended, agreed to.

Section 51—Abolition of district courts

Amendments 200 and 201 moved—[Johann Lamont]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Transfer of staff and property

Amendment 202 moved—[Johann Lamont]—and agreed to.

Section 52, as amended, agreed to.

Section 53 agreed to.

Section 54—Appointment of JPs

11:30

The Convener: Amendment 203, in the name of the minister, is grouped with amendments 204, 205, 222, and 206 to 212.

Johann Lamont: Amendment 203 is a minor, technical amendment. It replaces the reference to "paragraph" in section 54(7)(a) with a reference to "subsection". The intention is to ensure that the day that the Scottish ministers specify by order under section 54 will have two purposes. First, it will be the day on which existing JP appointments come to an end and, secondly, it will be the day on which existing JPs who are entitled to automatic reappointment take up office under the new arrangements for JPs. Amendment 211 makes a minor, technical amendment to section 61(12). It serves the same purpose as amendment 203 but relates to stipendiary magistrates rather than JPs.

Amendments 204 and 212 are minor, technical drafting amendments, which are designed to remove any doubt about the operation of sections 54 and 61.

The bill changes the terms of appointment of both justices of the peace and stipendiary magistrates. For the changes to take effect, we need to ensure that JPs and stipendiary magistrates have their existing appointments terminated on a specific date and are then appointed under their new terms on a specific date. In practice, the Executive wants existing JPs and stipendiary magistrates—if they are eligible and willing to take up their new appointments—to start their new appointments on precisely the same day as their old appointments cease. That will ensure that there is no transitional period during which there are no JPs anywhere in Scotland. The amendments ensure that there can be no doubt about the fact that current appointments will come to an end and new appointments will begin on the same day.

Amendment 205 addresses an issue that has been a source of concern to the committee and which was the subject of a recommendation in its stage 1 report. Therefore, I hope that it will be welcomed by the committee.

As the committee is aware, the bill currently provides for the appointments of all existing JPs to terminate on a given day. All full JPs will then automatically be appointed on new five-year terms on the same day, provided that they agree to meet the requirements relating to sitting on the bench and undertaking training and appraisal.

At present, many full JPs do not sit on the bench. There are approximately 1,400 full JPs in total, but only 600 of them have sat on the bench during the past 12 months. That means that approximately 800 full JPs are currently eligible for automatic appointment under the new system—if they sign up to the relevant conditions—but do not have any recent experience of sitting on the bench.

The committee expressed concern in its stage 1 report at the possibility that JPs without recent experience of sitting on the bench might be expected to sit on the bench under the new appointments system. Amendment 205 seeks to address that concern. It ensures that the only JPs who are eligible for automatic appointment under the new system are those who have been placed on the court rota during the 12 months prior to the new appointments system coming into force. Other JPs will not be eligible for automatic appointment, although they will be able to apply for appointment, with other members of the public, when vacancies arise in their local area.

The committee's recommendation stated that JPs without recent experience of sitting in court should have the opportunity to receive training so that they can apply for reappointment at a later stage. That could be construed as suggesting that people who are currently full JPs but who do not sit on the bench would have to undertake training before being eligible to apply for future vacancies. That would not be a justifiable requirement, as it would in effect impose a higher standard for existing justices than for members of the public who have never been appointed as a JP. Therefore, we intend to offer training to full JPs who are not eligible for automatic appointment. JPs will still be free to apply for future vacancies as part of the normal public recruitment process even if they have not availed themselves of the training. The policy intention does not need to be included in the bill.

We believe that amendment 205 addresses the committee's concerns on this important issue. It will ensure that the only people who are automatically appointed as JPs under the new system are those who have recent experience of sitting on the bench. In doing so, it should ensure that the bill achieves its intention of improving the overall standard of lay justice throughout Scotland.

Amendment 206 is a minor amendment and relates to the training of JPs. When the bill was drafted, we anticipated that successful candidates would be appointed as JPs and would then be required to attend induction training. However, a number of stakeholders have pointed out that that would create a problem if, for example, it became clear during the induction training that a candidate was not well suited to becoming a JP. Therefore, we anticipate that people who have been successful in any recruitment process will be asked to undergo induction training. The advisory committee in their sheriffdom will then forward their names for appointment as JPs after, rather than before, they successfully undergo the training.

Therefore, any order that relates to the induction training of JPs will relate to people who have not yet been appointed as JPs. Amendment 206 makes it clear that ministers' order-making powers are not confined to people who have already been appointed as JPs but extend to people who need to undergo induction training in order to become JPs.

Amendment 207 is intended to put it beyond doubt that section 57(1) applies only to JPs who have been appointed on five-year terms. It puts it beyond doubt that existing JPs cannot be reappointed under the subsection when their current appointments come to an end under section 54(7)(a).

Amendments 208 and 209 are minor and technical drafting amendments that do not change the meaning of the bill. They simply separate out a provision that, first, specifies the fact that the sheriff principal must chair the tribunal and, secondly, sets out the restrictions on the sheriffs principal who may chair. Those two matters will now be dealt with in separate subsections.

Amendment 210 ensures that full-time stipendiary magistrates are appointed until the age of 70 rather than placed on renewable five-year appointments. The amendment means that the appointment terms of full-time stipendiary magistrates will be in line with those of sheriffs. Part-time stipendiary magistrates will still be placed on five-year appointments, similar to those for part-time sheriffs and justices of the peace.

The Executive believes that it would be anomalous for the appointment terms of full-time stipendiary magistrates to be different from those of sheriffs. In addition, placing full-time stipendiary magistrates on limited terms would bring few benefits. In particular, unlike with JPs, their appointment will not be linked to requirements for training, appraisal and availability to sit on the bench, so there is less benefit in subjecting them to periodic reappointment. For those reasons, the Executive thinks that it would be better to amend the bill to appoint full-time stipendiary magistrates until the age of 70.

Amendment 222, in the name of Mike Pringle, would impose a minimum requirement on JPs to be available to perform business and signing functions at least once a month. I have two concerns about that. The first is that, although I support its objective—for JPs to sit more often—I am not convinced that amendment 222 is the best way of achieving it. On a more detailed level, I have some concerns about the amendment's drafting.

On the first point, I share the concern expressed in the committee's stage 1 report that some JPs do not sit on the bench often enough to gain adequate experience. That is one reason why the bill provides for sheriffs principal to set minimum

requirements for sitting on the bench. However, I am concerned that amendment 222 sets a minimum requirement that a minority of JPs may find impossible to meet.

According to the most recent figures that we have, there are 15 local authority areas in Scotland where JPs currently sit on average for fewer than 12 days a year. Several of those areas currently operate a three-person bench. Even if we allow for the probability that there will be an increase in the number of district or JP court cases, there are still likely to be JPs—perhaps in rural areas in particular—who are unable to meet the statutory minimum requirement that amendment 222 proposes. That is why the Executive would prefer to adopt an approach in which each sheriff principal can set minimum sitting requirements. Those requirements will take into account the number of JPs in an area and the likely volume of court business, as well as the desirability of JPs sitting on the bench frequently.

In the longer term, we expect that justice of the peace advisory committees, which will be chaired by sheriffs principal, will take into account the need for serving JPs to sit on the bench regularly when they decide how many new JPs need to be recruited in a particular area. That would mean that the number of JPs in an area would be large enough for local business needs to be met but not so large as to prevent JPs from sitting frequently.

On a more detailed point, the amendment would not necessarily achieve the policy intention that the committee outlined in its stage 1 report. As drafted, the requirement to be available at least once a month applies to signing functions as well as to the performance of judicial functions. Technically, somebody might be able to meet the minimum requirement simply by performing a signing duty every month. I doubt whether that is what is intended.

In conclusion, I am sympathetic to the aims of amendment 222, but I believe that it is better to allow for some local flexibility in setting minimum sitting requirements. Otherwise, particularly at the start of the new system, there is a danger of setting a statutory requirement that JPs will not be able to meet. Therefore, I ask Mike Pringle not to move amendment 222.

I move amendment 203.

Mike Pringle: Amendment 222 relates to the committee's concern about whether justices sit often enough to get adequate experience. We have perhaps already had a bit of discussion on that in relation to other amendments, and I welcome the minister's comments. It is important that justices sit at least once a month—perhaps more than that in some areas. I accept that amendment 222 might be wrongly drafted, and I will consider what the minister said.

Amendment 205 is probably one of the best amendments in front of us today. When we visited West Lothian district court, great concern was expressed about the idea that every justice in that area would automatically be allowed to sit on the bench. That concern has been expressed by others as well. Amendment 205 is therefore very welcome. It means that only existing qualified justices will be able to sit on the bench and that any other justice will have to go into the same system as anybody else who wants to become a justice and sit on the bench. They will have to apply and undergo training. I very much welcome that.

I also welcome amendment 206, on the induction training that is to be given prior to the appointment of JPs. It is all about providing more training and making justices who sit on the bench more competent.

I do not think that the original intention was for stipendiary magistrates to be appointed every five years. That does not happen at the moment. We have stipendiary magistrates only in Glasgow at the moment; perhaps that will change, but the appointment terms should be like those for any other full-time appointment. I therefore welcome amendment 210.

Mrs Mulligan: Like Mike Pringle, I am pleased to see amendment 205. The issue was raised with me by JPs at West Lothian district court even prior to the committee's visit to take evidence there. It was also raised when we had the round-table session with various JPs from around the country. The concern was expressed that allowing those who have not been able to maintain their skills or update their training to proceed on to the JP list would undermine the professionalism that we are trying to ensure that the new JP courts will have. The risk to their standing in our doing that would have been great. Amendment 205 is a satisfactory response to the committee's concerns.

Margaret Mitchell: I, too, welcome amendment 205, which provides clarification regarding the appointment and tenure of JPs.

Amendment 210 is also welcome. Stipendiary magistrates will now be full-time appointments until the age of 70. That provides some necessary certainty. However, I am still unsure about an issue that I raised with the Solicitor General for Scotland at stage 1, concerning the position of justices of the peace who are appointed as honorary sheriffs. I do not think that the bill makes any reference to honorary sheriffs, who will be part of the summary justice system. I wonder about their tenure and would like to know whether their position has been considered.

The Convener: As no other member wishes to speak, I call the minister to respond to the debate. I point out that Margaret Mitchell has raised the issue of honorary sheriffs a few times, but I do not think that anything has been raised in—

Margaret Mitchell: The Solicitor General for Scotland—Elish Angiolini, before she moved on—undertook to get back to us but, as far as I am aware, she has not given us an answer on the issue.

The Convener: Minister, I appreciate that you are not in a position to answer for the former Solicitor General for Scotland, who is now the Lord Advocate. However, if you could respond to the other points, that would be helpful.

Johann Lamont: I will ensure that the matter is pursued and will get a response to the committee in sufficient time for you to reflect on it before stage 3.

Margaret Mitchell: I am grateful.

11:45

Johann Lamont: I emphasise the importance of local requirements and the capacity to make judgments at a local level about the pressure on justices of the peace and how people can get the kind of experience that Mike Pringle has identified. It is comforting that committee members have welcomed the amendments that have been lodged by the Executive.

In relation to amendment 206, there is a desire to emphasise the need for competence, which Mike Pringle has talked about, because that gives confidence not just to those who have concerns about the system, but to JPs. Having the appropriate training and experience will give them confidence in what they are doing. It will also allow consistency, which reinforces the importance of JPs being seen as part of a justice system that works with a degree of authority. That is very much with the grain of the legislation.

I assure members that we will come back to the committee on the point raised by Margaret Mitchell.

Amendment 203 agreed to.

Amendments 204 and 205 moved—[Johann Lamont]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Conditions of office

Amendment 222 not moved.

Section 55 agreed to.

Section 56—Training and appraisal of JPs

Amendment 206 moved—[Johann Lamont]—and agreed to.

Amendment 223 not moved.

Section 56, as amended, agreed to.

Section 57—Reappointment of JPs

Amendment 207 moved—[Johann Lamont]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Removal of JPs

Amendments 208 and 209 moved—[Johann Lamont]—and agreed to.

Section 58, as amended, agreed to.

Sections 59 and 60 agreed to.

Section 61—Appointment of stipendiary magistrates

Amendments 210 to 212 moved—[Johann Lamont]—and agreed to.

Section 61, as amended, agreed to.

Section 62 agreed to.

Section 63—Signing functions

The Convener: Amendment 224, in the name of Mike Pringle, is in a group on its own.

Mike Pringle: Section 63 is slightly confusing. The issue is whether members of the Scottish Parliament, the House of Commons or the House of Lords should exercise signing functions. If a JP is elected to one of those places, they still have the right to sign, but I do not believe that elected politicians should get involved in issues that could relate directly to things that happen in their constituency. A politician who is dealing with a particular issue for someone might find that a policeman arrives who wants to search that person's premises and the politician is the one who is responsible for swearing the warrant. It is not appropriate for elected members to sign such documents, hence my amendment 224.

I want to raise a couple of other issues relating to section 63. First, there is a perception that if the bill is passed, all current JPs who can sign documents will stop signing them, but I do not think that the bill says that. I would be grateful if the minister would clear that up and confirm that existing JPs will be able to continue to sign documents. At least two district courts have asked me to raise the issue. I provided an assurance to them and I look forward to the minister providing an assurance to us.

My other concern relates to section 63(2), which states:

"A member of a local authority, despite not being a JP, may exercise signing functions in the same manner as a JP."

My understanding of that is that every elected member of every local authority, even if they are not a JP, will immediately be able to sign documents. That would be wrong. I return to the issue of training. An extensive variety of documents must be signed in front of the police and other people. People must pay a fee if they go to a notary public, a lawyer or someone else, but it does not cost money to go to a JP, so more and more people are going to them to get documents signed.

I make a passing comment to conclude. There is a slight concern about how we can get more justices of the peace to address special needs and ethnic minority issues. We have been lax about that.

I move amendment 224.

Margaret Mitchell: I confess that I am a little confused by Mike Pringle's amendment 224. What is the logic of excluding from exercising signing functions people who have been JPs but are not eligible to sit on the bench because they are members of the Scottish Parliament, the House of Lords or the House of Commons, but allowing elected councillors who are not eligible to sit on the bench to continue to exercise signing functions?

Mike Pringle: I accept what Margaret Mitchell says. If the bill is passed, all members of local authorities will be able to sign documents. When I became an MSP, I resigned as a justice of the peace because I did not think that it would be appropriate for me to continue to sign documents. Not every member of the Scottish Parliament, the House of Commons and the House of Lords will be able to sign documents—to do so, they would need to have been a justice of the peace before being elected. I simply believe that, once people have been elected to one of those three bodies, it is inappropriate for them to continue to exercise signing functions.

The Convener: I have two points that I would like clarified. You mentioned that some people have a perception about whether JPs will be able to continue to sign documents. Do you know where that perception comes from?

Mike Pringle: When I was a councillor, I was a justice of the peace. Margaret Mitchell was probably in the same situation. Once we had been elected, by law we were not allowed to continue to sit in court. However, a justice of the peace is allowed to continue to sign documents until they stop being a justice of the peace. If a person is elected as a councillor and then appointed as a justice of the peace and then loses their seat, they can continue to be a justice of the peace if they were appointed by the Secretary of State for Scotland, and can therefore continue to exercise signing functions. Things are slightly different if the appointment was made by the council, because the person will have been appointed only for the period during which they were a councillor. If the person was re-elected, they would have to be reappointed as a justice of the peace—as I was on two or three occasions.

The Convener: You said that there is a perception that if the bill is passed JPs will not be allowed to continue to sign documents. Are you talking just about elected members who are JPs?

Mike Pringle: Yes. I am talking about people who are elected.

The Convener: What documents are we talking about? Currently, I understand that councillors can sign witness documents in divorce cases, for example. Are you suggesting that they should stop doing that?

Mike Pringle: I am suggesting that councillors should be able to continue to sign documents. The bill says that all councillors will be able to sign documents. The range of documents that a JP signs is huge—from swearing search warrants in front of the police to passport applications, immigration documents and documents that confirm a person's identity. The range is almost endless. I was constantly surprised by the variety of documents that people turned up with at Edinburgh City Council to ask us to sign.

Brian Adam: Section 63(6) spells out the signing functions, which are extremely limited and do not appear to include the more serious documents that Mike Pringle mentioned. I see nothing in the bill that would allow councillors to sign warrants or even the documents that the convener talked about. I have no problem with the provision.

Johann Lamont: Amendment 224 would prevent a JP or stipendiary magistrate from exercising the signing functions of office if they were an MSP, an MP or a member of the House of Lords. The amendment would not have a direct impact on many people: only nine MPs or MSPs are currently JPs and it is likely that none of them will be eligible for automatic appointment under the new system. Therefore the amendment would apply only to a JP who became an MP, an MSP or a member of the House of Lords.

Despite the amendment's limited scope, I have concerns that it would deliver no practical benefit and could have one curious consequence. It is important to remember that the signing functions are limited, as Brian Adam rightly pointed out, and

do not include the signing of warrants. In section 63(6), signing functions are defined as:

"(a) signing any document for the purpose of authenticating another person's signature,

(b) taking and authenticating by signature any written declaration,

(c) giving a signed certificate of—

(i) facts within the giver's knowledge, or

(ii) the giver's opinion as to any matter."

Signing functions do not involve judicial decisions of any kind, which is crucial.

In many cases, the signing functions that are set out in the bill can be performed by other members of the public. However a JP's signature might carry an authority or acceptability that would not accompany the signature of another member of the public.

Signing functions have previously been defined in legislation to make it clear that signing JPs can carry out signing tasks, which will sometimes be fairly basic, such as countersigning shotgun licence or passport applications, but will sometimes be more specialised notarial services, such as confirming that a written declaration has been made.

If the bill were to prohibit a JP from carrying out any signing functions, it would impose a fundamental restriction on what JPs can do. That is particularly the case given that the signing functions that an MP or MSP would be barred from carrying out can be performed by a wide range of members of the public. For example, amendment 224 would have the curious effect of meaning that MPs could countersign shotgun certificate applications unless they were also justices of the peace, which does not seem desirable.

There is no harm in allowing JPs who are also MPs, MSPs or members of the House of Lords to perform signing functions. There is a minor public benefit in allowing them to do so. For that reason, I ask Mike Pringle to withdraw amendment 224.

We will work with the Convention of Scottish Local Authorities to ensure that there is appropriate induction for councillors in relation to their signing functions. We appreciate that training is needed.

Mike Pringle: I have been asked about members who are currently JPs. As I understand it, those people will continue to exercise signing functions. Perhaps the minister will confirm that.

Johann Lamont: I will attempt to shed some light on the matter. People who remain JPs under the new system will still have signing powers. Current JPs who will stop being JPs under the new system will not have the signing powers of JPs, but they will still be able to sign shotgun, passport and firearm applications. If they are councillors, they will of course continue to have signing powers.

12:00

Mike Pringle: I thank the minister for clearing that up. I hope that when some of the people from district courts who have approached me read the *Official Report*, they will be happy that that was clarified. I am more than happy to accept what the minister said and I will not press my amendment.

The Convener: I am sorry to say that I am still a wee bit confused. Minister, when you replied to Mike Pringle, you said that a person who stops being a JP will still be able to sign applications. Did you mean elected members or anyone who was a JP?

Johann Lamont: Current JPs who will stop being JPs will not have the signing powers of JPs, but, in a personal capacity, they will continue to have the power to sign shotgun, passport and firearm applications. I am happy to provide a further note on that before stage 3 so that people can have clarification, if some concern is felt, as Mike Pringle said, about how the system will work in the period of change and about which people will continue to have powers.

The Convener: We are all a bit clearer about the situation, but a note would help to provide clarity for others.

Margaret Mitchell: Mike Pringle mentioned that some members were JPs as councillor appointments. When they entered the Parliament, they ceased to be councillors, so they resigned their positions as JPs. Other JPs who were appointed by the secretary of state will continue to hold that position, and they are the people whom amendment 224 would affect.

Amendment 224, by agreement, withdrawn.

Section 63 agreed to.

Sections 64 to 66 agreed to.

Section 6—Liberation on undertaking

The Convener: We move back through the bill to section 6. Members may recall that we decided to consider section 6 later because we wanted to resolve some issues in relation to liberation on undertaking.

Amendment 96, in the name of Hugh Henry, is grouped with amendments 217, 218, 40 and 97.

Johann Lamont: Amendment 96 is a minor drafting amendment to improve clarity. The bill amends section 22 of the 1995 act so that the police will have the power to release an accused person on undertaking when he or she has been

arrested under a warrant. The amendment will make it clear in section 22 of the 1995 act that the power to release on undertaking relates only to warrants in summary procedure. That is not a policy change—the amendment is simply designed to assist the reader. Without the amendment, the reader would have to cross-refer to section 135 of the 1995 act to determine the level of proceedings to which the provision applied.

Amendment 40 is technical and deals with the situation when the police have released an accused person on an undertaking to which special conditions may be attached. In the bill as introduced, such conditions would continue to apply when the accused did not appear in court to answer the undertaking and the procurator fiscal did not call the case or seek a warrant, or the court did not grant a warrant. A residual power is given to the fiscal to revoke conditions on an undertaking, but the concern might be felt that some cases could slip through the net and that special conditions would remain in force for longer than necessary. In most circumstances, such conditions should have a short lifespan. Accordingly, by changing the word "appears" to "is required to appear", amendment 40 will ensure that the terms of an undertaking, including any conditions, fall at the end of the day on which the undertaking is due to be called in court, whether or not the accused actually appears in court to answer the undertaking. The only exception to that remains when a warrant is granted for the arrest of the accused.

Amendment 97 is also technical. It will remove a provision in section 6(3) of the bill that is considered unnecessary. That provision was to insert new subsection (3A) into section 135 of the 1995 act, which said that when an accused person was arrested on a summary warrant and released on undertaking, his or her appearance at court on undertaking was to be regarded as if the appearance were from custody. On reflection, we have taken the view that the provision is unnecessary. Section 6(3) of the bill also amends section 135(3) of the 1995 act to include provision that the accused, after arrest on a summary warrant, is to be brought before a court as soon as is practicable, unless liberated on undertaking. That provision is thought to be sufficient to confirm the procedure to be followed in relation to summary warrants and the effect of a person's appearance on an undertaking.

Amendment 217, lodged by Pauline McNeill, seeks to remove a provision that would insert new section 22(1D)(b) into the 1995 act. That would allow a police officer to attach additional or "special" conditions to an undertaking. The bill makes provision elsewhere that, when the police release an accused on undertaking, they can do so on the standard conditions of bail that would be imposed by a court. Inserted section 22(1D)(b) makes it clear that any special conditions attached by the officer must have the purpose of ensuring compliance with those standard conditions. Such conditions could be useful to ensure that specific issues of public safety and the protection of particular individuals and places are addressed. Where a person is apprehended for shoplifting, for example, a special condition may be that the accused does not enter the shop where the alleged offence occurred. Where the alleged offence is a crime of disorder in a particular place, a condition may be that the accused does not enter a street or area.

It has been suggested that such conditions might restrict the liberty of an accused. I will make two points in response to that. First, as the conditions are being attached to an undertaking, there will be only a short time between their imposition and the case being called in court. It will then be for the court to consider the imposition of appropriate bail conditions. Secondly, refusal by the accused to accept a condition that the police believed it was appropriate to impose would give rise to concern that the accused was minded to breach the proposed condition. In those circumstances the police would probably keep the accused in custody, and he or she would appear in court on the next court day.

Rather than restricting the liberty of the accused, the provision gives the police the opportunity to impose appropriate conditions on an accused person who is released on an undertaking and gives the accused the opportunity to remain at liberty—where that is appropriate—until their case is called in court. The use of undertakings by police officers is subject to guidelines issued by the Lord Advocate, which will be revised to reflect changes in the legislation. In addition, any conditions on an undertaking can be varied, relaxed or revoked by the procurator fiscal. That builds a further safeguard into the process.

There is provision in the bill for the Scottish ministers to set out the rank of police officers whose authority is required to impose special conditions on an undertaking. I will deal with that point when speaking about amendment 218. New section 22(1D)(b) is by no means an unlimited or unrestricted power. There will be safeguards, both in law and in practice. The power will complement any increased use of undertakings in practice, as it provides the chance to impose an additional short-term restriction on the behaviour of an accused until the case can be called in court. I therefore ask the convener to consider not moving amendment 217.

Amendment 218, also lodged by the convener, seeks to amend new section 22(1E) of the 1995

act to include a requirement that additional conditions added to an undertaking by means of new section 22(1D) must be authorised by an officer with the rank of inspector or above. When an accused is released on undertaking, he or she will always be subject to the condition to attend a specified court at a given time and on a given date. New section 22(1D) gives the police power to attach further conditions to an undertaking. Those can be either the standard bail conditions or other "special" conditions.

The standard conditions provide that an accused is not to commit further offences, not to interfere with witnesses and not to behave in a way that would cause witnesses alarm or distress. The bill also gives the police power to impose special conditions, where appropriate, to address specific issues in respect of a particular accused or particular incident and to secure compliance with the standard conditions. Special conditions might include not entering particular premises or a designated area, or not approaching a particular person.

New section 22(1E) of the 1995 act provides that the Scottish ministers may by regulations stipulate which officers will have the power to authorise additional conditions under new section 22(1D). I reassure the committee that ministers intend to make those regulations prior to commencing new section 22(1D). However, I draw a distinction between the imposition of standard conditions and the imposition of special conditions. It could be argued that anyone giving an undertaking should be required to adhere to the standard conditions, which are not unduly restrictive. Any police officer who has the authority to release an accused on an undertaking should be able to attach the standard conditions.

Amendment 218 requires an officer of the rank of inspector or above to authorise the use of standard as well as special conditions. That is unnecessary. It would be a very cumbersome process if every undertaking required the authority of an inspector for the accused to be released on the standard conditions, which are set down in law and cannot be changed by the officer on the ground. However, I accept entirely that the position is different with special conditions, which will be attached more infrequently and need to be considered carefully with the involvement of a senior officer. For that reason, I am willing to give the committee my assurance that ministers will, through regulations, require that a police officer of the rank of inspector or above will need to authorise the use of special conditions under new section 22(1D)(b). As I said, I do not believe that there is any need for such a restriction on the use of standard conditions. I hope that that assurance addresses the concerns that led to amendment 218 being lodged and I ask the convener to consider not moving it.

I move amendment 96.

The Convener: Section 6 is one of the sections that is giving me the greatest cause for concern, not because I disagree with the intention behind it but because, until now, there has been a lack of clarity about the way in which it is expected to operate. There needs to be further discussion about the detail of that.

I thank the minister's officials for their hard work in providing a good note that explained to the committee how liberation on undertaking is expected to work. Part of the confusion arose from the fact that, after receiving a note from the Crown Office entitled "Liberation on undertaking", we assumed that we were talking about the liberation of individuals from custody. It is now clear that the liberation on undertaking procedure is an existing power, rather than a new power, but it has not been used that widely; it has been used mainly to ensure that drink-driving cases, for example, come to court quickly.

The bill provides for the addition of standard and further conditions, the latter of which my amendment 217 seeks to remove. The helpful diagram with which we were provided allows us to understand how the different parts of the undertaking process will work.

Will the minister confirm that the process will take three months? I am concerned about the timescale and want the Executive and the Crown Office and Procurator Fiscal Service to assure us that the provision is deliverable, given that we know that it will require considerable resources at the front end and a change in practice in the Crown Office and Procurator Fiscal Service. I also want to be sure that if we could not meet the three-month deadline we would not leave ourselves open to challenge from defence agents on the ground of undue delay and that if procurators fiscal could not meet the deadline, they could revert to the reporting procedure, so that cases would not fall.

It is important to note that we are giving the police significant powers that we currently give to the court. I am not against that, but I want to clarify how those powers will be exercised.

The bill as it stands will allow police officers, of rank still to be determined by regulations, to apply special conditions when liberating someone on an undertaking. On the face of it, that seems sensible, but it is important to debate it. Currently, when a person appears at court from custody, there is a debate about whether bail will be opposed.

I want to be sure that the provisions in section 6 are European convention on human rights proofed and that it is perfectly in order for the police to make the decisions that they are being empowered to make. I presume that there will not be a debate and that a police officer of a certain rank will simply decide what further conditions to apply in certain cases. I am pleased about the minister's assurances on the rank of police officer required and on the further conditions.

12:15

I am not keen on doing this sort of thing through regulations—especially when it is likely that those regulations will come into force in a new session of Parliament when there may not be a continuity of committee. If further conditions have to be applied, the Executive should ensure that checks and balances are in place.

I want to be assured that special conditions can be revoked, because mistakes can be made. If it is part of a special condition that a person should not go to a particular street, it should be checked, for example, whether the person's general practitioner is on that street and whether the restriction would prevent the person from attending. That should be able to be fixed.

The committee has been asking for guidance on the type of cases that undertakings will be used for. We have held meetings in private with Crown Office and Executive officials, and those meetings have helped to clarify the situation, but it would be useful to have the clarifications on the record.

Because of the inclusion of standard and special conditions, the committee has assumed that some of the cases for which undertakings will be used would previously have been custody cases. Otherwise, I do not understand why you would restrict individuals by applying special conditions. Will people be released on special conditions who would—before the bill came into force—have been in custody? What kind of cases would that apply to?

There were many questions there, but they have to be ironed out before stage 3. I fully support the idea behind undertakings, which will be essential in speeding up the system, but I would like some more detail. I am sorry to have been so long-winded.

Margaret Mitchell: I understand that the intent behind this provision is that the accused will often appear in court more quickly, and that it will cover cases that might not previously have been covered by an undertaking. However, alarm bells rang for me when, at an informal briefing, it was stated that cases involving sexual offences or abuse might go to court more quickly. I wondered about the ability of a police officer to make the decision not to arrest someone who might, for example, have a history of sexual offences. How thorough will the checks be if the person does not go back to the police station? We were assured that the checks could be done properly, but I worry about the idea of someone on the street making such a decision when the consequences could be so serious.

I ask the same question as the convener: which cases will be covered? What will happen if an unrelated charge or complaint arises against an offender with a history of sexual offences, or if a related charge arises?

Mrs Mulligan: The bill is about increasing the efficiency of the summary justice system and reducing the delays within it. The provisions on undertakings are one way of addressing those issues. The convener said that we are still a little unsure about the cases for which undertakings will be used. I will listen carefully to the minister's response.

There are four points on how liberation on undertaking will be used on which I would like reassurance from the Executive. First, having benefited in the briefings that we received—including the most recent informal briefing—from the experience of those who have used the proposed procedure in the pilot schemes, we are aware that the provision of police reports could be an issue. Will the Executive issue guidance on what should appropriately be included in police reports, to ensure that the process does not go back and forth between the police and the PFs because further information is needed to proceed with the case?

Secondly, does the Executive have a view on the co-location of the police and Procurator Fiscal Service? Would that help people to share and discuss the information that is necessary for cases to proceed smoothly?

Thirdly, given that one reason why cases do not take place as quickly as they should is that accused persons fail to appear in court on the date of their court appearance, what did the evidence from the pilot schemes suggest about the closer involvement of defence solicitors? Did the pilot schemes help them to work with their clients to ensure that they appeared in court?

Finally, in cases in which the accused did not appear, did the pilot schemes suggest that the police were adequately resourced to take action on the day? Such action would avoid the further delay that is involved in recalling the case for a later appointment in court. If we could truncate some of those procedures, we could ensure that justice happens as quickly as we would like. That would be in the interests of not just the accused but the witnesses, the victim and everyone else.

There will be benefits from implementing the liberation on undertaking proposals, but it is important that the appropriate procedures are used to enable cases to proceed quickly.

The Convener: I appreciate that this is the first time that the minister has heard many of these issues, but the committee has had exchanges with the Executive on them for quite a while. However, we will be grateful for any clarification that she can provide.

Johann Lamont: If nothing else, hearing about the issues has helped my education, which is always a good thing.

As the convener pointed out, liberation on undertaking will mean that people are not held in custody in the first place. I think that the concern has been cleared. The alternative to agreeing to the undertaking is that the person will be held in custody. The person will be required to agree to the conditions that are attached to the undertaking. The procurator fiscal will be able to revoke or relax any special conditions by virtue of new subsection (1F) that the bill will insert into section 22 of the 1995 act. Those protections are provided for in the bill.

A statutory time limit will not apply, which should allay the convener's fears that the procurator fiscal will not be able to act on a case after three months because it will have gone beyond the time limit. If the three-month limit is missed, the case will still proceed as there will be no time bar.

On ECHR compliance, the committee will be aware that the law officers and the parliamentary authorities have already stated that they are of the view that the bill is in line with ECHR requirements.

Special conditions will be able to be tailored to the individual case. Such conditions could recognise the particular nature of the offence with which the person has been charged.

On police reports, work is already under way on improvements to them. Under section 12 of the 1995 act, the Lord Advocate will issue guidelines on what police reports should contain.

The bill contains a range of measures to tackle failure to appear, as has already been discussed. We are working to ensure that cases go ahead on the date that is set down for them. The aim of the measures is not to create more work but to provide for more front-loading of work, which the Crown Office and Procurator Fiscal Service will manage.

On co-location, there is a broader issue about how the police and procurators fiscal office share and discuss a range of matters. The required co-location needs to be not so much a geographical or territorial co-location but a co-location of mindset. For example, I understand that the procurator fiscal office in my area has been reorganised to match the police divisions, so that there is a direct connection between personnel of the two offices, which has been extremely helpful.

I turn to those cases to which the greater use of undertakings will be a priority. The majority of child witness and sex offence cases are prioritised, but there are some low-level sex offence cases that are little more than aggravated breaches of the peace and some cases involving child witnesses in which the role of the child is extremely limited or the offence is minor. Cases of that nature are not always prioritised, but if more use were made of undertakings, they could be prioritised, which would be welcome. It will be for the police and the prosecutor to determine what other offences might benefit from quicker progression to court through the use of undertakings. There will be scope to tackle specific local problems that are related to particular crimes or particular criminals. I am sure that we would all welcome the police and prosecutors being given the scope to tackle such cases more effectively.

I am grateful that there have been positive comments on the note on liberation on undertaking that was circulated. It is important to stress that the new provisions are not about allowing people who at the moment would be taken into custody to be released on undertaking. Those people will continue to be detained, because there will be good reasons why the police do not want to release them. However, there may be some limited exceptions—for example, when a husband and wife are arrested, one partner may be released on undertaking to allow them to continue to look after their children.

In practice, there will be a shift from cited cases to undertakings, which will enable cases to be dealt with more quickly. The fact that the initial court appearance and the disposal of the case will be nearer the time of the commission of the offence will help to make it easier to tackle reoffending and to prevent the accumulation of further offences.

I am not sure whether I have covered all the points that have been raised but, given that release on undertaking is such a big issue, I would be more than happy to continue the discussion between stage 2 and stage 3.

The Convener: That was helpful. You have covered most of the points that have been made. I just have a few supplementaries.

It is helpful that you have clarified that the undertaking procedure will not generally be used in cases in which, at the moment, people would be taken into custody. However, are the cases in which it will be possible for a police officer of a

certain rank to apply special bail conditions likely to be cases in which, at the moment, there would be custody?

Johann Lamont: The purpose of the conditions is to ensure that an undertaking is enforced and that the police are happy with someone being released on an undertaking. The use of special conditions is considered to be a sensible and proportionate move. It is a question of tailoring the conditions to the person who allegedly committed the offence. It is about identifying the individual and giving the police the reassurance that they want. The use of special conditions with release on undertaking is not a means of releasing people as an alternative to custody on principle. It is about examining individual cases, determining whether the use of an undertaking is appropriate and, if so, what conditions it is appropriate to apply. The accused must sign up to those conditions before they can be imposed.

The Convener: I have a final point of clarification. It has been said previously, and again today, that the Executive is happy that the measures are ECHR compliant. Am I correct in saying that the undertaking process will take about three months? Is that what you are aiming for?

Johann Lamont: There is no statutory time limit. The purpose of liberation on undertaking is to get people into court as quickly as possible. It is part of the speeding up of the process.

The Convener: So the guidelines will not contain a suggested time limit that you want to aim for.

Johann Lamont: The guidelines will offer an aim rather than a statutory limit, so if a case does not get to court within a particular time it will not be time barred, which is important.

12:30

The Convener: That is an important point and your comments are helpful, but I want to be sure about this. If special conditions are applied and the case takes longer than the average, will the fiscal be under pressure to relax the conditions if it takes longer to get the case into court?

Johann Lamont: I do not know whether the procurator fiscal will feel under pressure, but it will be within the authority of the solicitor to make the case that the conditions should be revoked or relaxed.

The Convener: So that could still be done.

Mike Pringle: I have one small point. On the issue of who is likely to be released on an undertaking, my assumption—I do not know whether I am right or wrong—is that the police are unlikely to give someone who has a record an undertaking. The police can always check whether someone has a record, even at 2 o'clock in the morning. My understanding is that if the police see that the person has previously been involved in three or four assaults, it is unlikely that they will be given an undertaking. Similarly, if a serial shoplifter is arrested at 3 o'clock on a Tuesday afternoon, the police will quickly be able to find out whether they have committed a number of previous offences. In those circumstances, it is unlikely that the police will release someone on an undertaking, because that is the sort of person whom they will remand in custody.

Johann Lamont: The police will, of course, take the person's record into account when they make a decision about which way they go, but while you might say that they could attach special conditions and release somebody on an undertaking rather than take them into custody, equally in borderline cases they could attach special conditions when in other circumstances the person would be released without conditions. In such cases, the procedure will engender more confidence in the system and the fact that there will be a timescale will reassure people.

Margaret Mitchell: I am grateful for the minister's explanation, but I seek clarification. Although I appreciate that there may be circumstances in which the protection of the public is strengthened through issuing special conditions, I seek assurance that under the bill no one with a history of sexual offending who would previously have been detained in custody will be released on an undertaking with special provisions.

Johann Lamont: The whole process is not intended to make our communities less safe than they are now. We probably have a greater understanding of the nature of sexual offences than we had in the past, but it will be for Lord Advocate's guidelines to identify the circumstances in which special conditions can be attached. The approach is not about trying to capture a group of people and say, "We do not want to take those people into custody." It is about tailoring the response of the police to the individual and attaching special conditions where appropriate. We all know about the issue of risk.

Brian Adam: Given that the procedure is relatively new, do you intend to monitor it and take powers so that you can review it in the light of experience without resorting to primary legislation?

Johann Lamont: First, this is not a new procedure. I understand that undertakings have been around for more than 20 years. Revising them is perhaps a means by which people can have more confidence in them. They will also have a more logical place within the whole process. Naturally, we expect the police and the Procurator

Fiscal Service to keep those matters under review. That is not something that we put into legislation, but it will be done, because we have to consider the effectiveness of the processes.

The Convener: The committee fully recognises that an awful lot of work is taking place to ensure that the processes are ready and operate effectively.

The minister's comments have been extremely helpful. Committee members might want to reflect on what has been said and indicate whether they still think that there is a need to meet the Executive before stage 3. I thank the minister for clearing up a lot of the issues.

Amendment 96 agreed to.

The Convener: Amendment 216, which is in my name, is grouped with amendment 219.

The amendments essentially are about an accused person's solicitor being notified of proceedings against them, particularly liberation on undertaking proceedings.

There has been some but not enough discussion about the people with whom the summary justice system deals. Other members have spoken about the range of possible offenders, and we had a discussion a few weeks ago about whether trials in the absence of the accused are justified. I mention that because we have identified that, although some individuals make a deliberate determination not to turn up or co-operate, many have chaotic lives. There needs to be some recognition of the people with whom the summary justice system deals.

It would help the system if the person's solicitor knew that they had been liberated on undertaking and were aware of any conditions that applied. I will listen carefully to what the minister says about amendments 216 and 219, but I believe that it would be helpful if an accused person's solicitor was notified of proceedings against them.

I move amendment 216.

Johann Lamont: Amendment 216 would require, first, that the police send a copy of an undertaking to a solicitor nominated by the accused when the accused is given it and, secondly, that they include details of the nominated solicitor on the undertaking form. Amendment 219 would require the procurator fiscal to intimate to the nominated solicitor any changes made to the terms of the undertaking.

I am not opposed to the principle behind amendment 216. The question is whether it is necessary and appropriate to legislate to make notification compulsory in every case. Having considered the possible implications, I do not think that it is.

Under section 13(1)(a) of the Criminal Procedure (Scotland) Act 1995, an accused person is required to provide the police only with their name and address. They are not required to provide the police with the name of their solicitor—if indeed they have one—and frequently do not. There may be benefits in solicitors being involved at as early a stage as possible, but it is important to remember that the onus remains on the accused to instruct a solicitor and that it is for the solicitor to accept or decline instruction in each case. The police and procurator fiscal can be sure that a solicitor is acting only when the solicitor intimates that fact to them. The accused person might change their mind about whom to instruct, or the solicitor, for whatever reason, may decline to accept instruction.

Court appearances for undertakings will take place soon after the release on undertaking. Therefore, even if a solicitor has been instructed by the accused and the Crown has been informed, by the time that has happened it may be close to the date of the court appearance. To make it mandatory in every case for the police and procurator fiscal to intimate such information before the date of the appearance on the undertaking would create extra work for both the police and the prosecutor that may be of little or no benefit.

That said, there is nothing to stop arrangements being put in place locally and their being used when it is beneficial to do so. In fact, a similar practice to that outlined in amendment 216 formed part of the West Lothian criminal justice project, which was designed to examine ways in which accused people could be brought to court as quickly as possible. Committee members—Mary Mulligan in particular—will be aware that the scheme's success was largely down to there being an appropriate degree of local flexibility about the exchange of such information. Where such local arrangements are in place, working well and making the process more efficient, we support them.

I stress again that I am in favour of the principle of early communication with a properly instructed solicitor when that is possible. However, it is unnecessary and impractical to legislate for that to happen in every case. Even if the difficulties regarding communication between fiscal and defence can be resolved, important issues remain in play about who makes contact with a solicitor and whether that solicitor is willing to act.

I hope that I have provided some reassurance to the convener. I ask her to consider withdrawing amendment 216 and not moving amendment 219.

The Convener: That is difficult, because I have had no indication as to what the committee thinks about them.

I hear what the minister is saying. There would be additional work for the police and procurators fiscal if solicitor notification was mandatory, but I genuinely believe that, in most cases, it would be helpful. We have not had much discussion about the types of people who are dealt with by summary justice, but I know that solicitor notification would be beneficial in Glasgow, because there are cases in which it would make the difference if the solicitor knew that their client was supposed to appear.

I am not sure whether local flexibility is the answer, and I have not had a chance to see all the results of the pilot to ascertain whether that was a factor. I know that Mary Mulligan has had an opportunity to see those results in some detail. Between now and stage 3, I could hear from her and from those involved in the pilot to see whether solicitor notification made the critical difference. On that basis, I would be prepared not to press amendment 216.

There is also an issue about fairness to the accused. I want to ensure that there is a balance. If authorities did not use flexibility in notifying solicitors, I would be concerned about notification just being ignored. However, I shall seek the committee's agreement to withdraw amendment 216.

Amendment 216, by agreement, withdrawn.

Amendments 217 to 219 not moved.

Amendments 40 and 97 moved—[Johann Lamont]—and agreed to.

Section 6, as amended, agreed to.

Section 67 agreed to.

Schedule

MODIFICATION OF ENACTMENTS

The Convener: Amendment 98, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 98 is a consequential amendment that stems from section 14, which introduces new section 150A into the 1995 act, relating to trials in the absence of the accused in summary proceedings. The amendment will ensure that solicitors can be paid from the legal aid fund when they represent an absent accused. In order for the absent accused to be represented in that way, it is necessary to disapply the accused's right to a choice of solicitor. The amendment should ensure that the court is able to proceed to a trial in absence where it considers it to be in the interests of justice to so proceed, while having due regard to the individual's right to legal representation.

I move amendment 98.

The Convener: The only point that I want to put on record in relation to amendment 98 is the fact that I still want to raise points at stage 3 about trials in the absence of the accused. I do not want my position on amendment 98 to be misconstrued as fully supporting the Executive's current position on such trials. I am not really convinced that the process is practical, so I want to think about it again at stage 3. However, I will support amendment 98 today.

Margaret Mitchell: That is also my position. I moved an amendment to oppose trial in the absence of the accused, as currently set out in the bill, so my support for amendment 98 follows on from the fact that I lost an earlier vote, and does not mean that I support the position.

Johann Lamont: Far be it from me to misconstrue anything anybody does in votes in committee. If there are to be trials in the absence of the accused, it is logical to ensure that there is provision for the accused to be represented. I recognise that the principled position that members hold on the substantive issue does not mean that they will resist an amendment that follows what has so far been the agreed position of the committee.

Amendment 98 agreed to.

Amendments 213 to 215, 99 to 101 and 41 moved—[Johann Lamont]—and agreed to.

12:45

The Convener: Amendment 102, in the name of Hugh Henry, is grouped with amendments 161, 105, 162 and 163.

Johann Lamont: Amendment 102 rectifies an omission in section 119(11) of the 1995 act. At present, when the High Court grants authority to bring a new prosecution under section 118(1)(c) of the 1995 act in disposing of an appeal, and the accused is remanded in custody pending that retrial, the custody time limit is applied to the retrial process in respect of sheriff and jury cases. That time limit starts to run from the date on which authority is given for the fresh prosecution by the High Court.

Section 119(11) as drafted does not impose that custody time limit in respect of a retrial in the High Court. Although the Crown, as a matter of practice, observes the time limits in such cases, it is right that they should be set out clearly in the law. Amendment 102 corrects that omission and ensures that, from the date on which the High Court grants authority to bring a new prosecution, where the accused is remanded in custody pending that retrial they will have the protection of the custody time limits set down in section 65 of

the 1995 act in both sheriff court and High Court solemn proceedings.

Amendment 105 is technical in nature. It amends section 283 of the 1995 act, which makes provision for the certification of evidence obtained using video recordings. Currently, section 283(1)(c) of the 1995 act refers only to visual images, and to those images being recorded on a video tape. Amendment 105 will ensure that that section includes the recording of sounds as well as visual images and will allow them to be recorded on a device, not solely on a video tape. That change will ensure that the provisions keep pace with new methods of recording video evidence and that potentially important evidence is not disregarded simply because it was not recorded on video tape.

Amendment 161 adds to the schedule and thereby amends sections 211, 222 and 223 of the 1995 act. Those amendments make further provision in relation to the collection and enforcement of fines, and are designed to make the process more administrative where possible, in keeping with our policy of ensuring that the police and courts can concentrate on their priority roles.

Amendment 161 adds three new sub-paragraphs to paragraph 12 of the schedule. The first of them amends section 211(6) of the 1995 act, which makes provision in relation to accounting for fines. Provisions for High Court and sheriff court fines are combined to ensure a consistent approach. In practice, all High Court fines are collected by the sheriff court. The list of persons to whom fines may be paid is widened. That provides flexibility with regard to the office holder who should be responsible for the collection of fines and will allow, for example, accounting functions to be carried out centrally rather than by individual clerks of court, which will free up court staff at the front line. Section 211(5) is repealed because it will be unnecessary—the amended section 211(6) makes consistent provision in relation to all court-imposed fines.

The second of the three new sub-paragraphs amends section 222 of the 1995 act, which sets out the procedure for the transfer of fines from one court to another, both within Scotland and between Scotland and the rest of the UK. It provides that a transfer of fine order may be made at the instance of the clerk of court rather than the court, which will free up judicial time to be used for other priorities. Transfers are purely administrative: there is no question of the amount of fine being changed or the fine being written off; it is just being moved to the area in which enforcement would be most appropriate.

The second of the three new sub-paragraphs also inserts a new subsection, (1A), into section 222 of the 1995 act, which will enable the clerk of court to transfer all outstanding fines against an offender within a sheriffdom to a single court so that, when the offender appears in court in respect of outstanding fines, all outstanding fines can be considered at the one hearing. Taken together, the provisions will allow the clerk of court to transfer all outstanding fines to a single court, in order that they can be considered together and appropriate action taken against the defaulter. That makes a lot more sense than having four or five separate court hearings for four or five outstanding fines, as may currently happen. Consequential amendments are also made to replace references to the sheriff court with references to the sheriff clerk.

The third of the three new sub-paragraphs amends section 223 of the 1995 act, in relation to the procedure to be followed by clerks of court in transferring fines. The changes are consequential on the amendments to section 222 and substitute references to the court with references to the clerk of court. New paragraph (c) as inserted by the third head of amendment 161 provides that, when a transfer of fine order is made, the clerk of the receiving court will be required to remit or account for the fine to the court in which it was originally imposed only if that court is outwith Scotland. At present, the 1995 act requires that to be done in respect of fines transferred within Scotland, but that will not be necessary in future as the Scottish Court Service records all fines on a national computer system, avoiding the need for the administrative process whereby fines are sent from one court to another in order for accounts to be settled.

Amendment 163 will prevent the repeal of section 131(6) of the Antisocial Behaviour etc (Scotland) Act 2004, the repeal of which is provided for in paragraph 22 of the bill schedule. Section 131(6) of the 2004 act provides that a fixed penalty for antisocial behaviour may be enforced as if it were a fine imposed in the district court if the offender does not pay it within the time allowed or request that the matter be taken to court. Repeal of that provision had been proposed on the basis that district courts will be phased out under the bill and replaced by justice of the peace courts. On further consideration, however, the view has been taken that section 131(6) should remain in the 2004 act, but suitably adjusted to reflect the new court structure.

Section 131(6) of the 2004 act makes it clear that the provisions on fines enforcement in the 1995 act can be applied following default. In particular, a fines enforcement officer can exercise enforcement powers in relation to those penalties where default occurs and an enforcement order is granted.

Amendment 162 adds a reference to section 131(6) of the 2004 act in paragraph 22 of the schedule, allowing the reference to the district court in section 131(6) to be substituted with a reference to the justice of the peace court, to reflect the transition from district courts to justice of the peace courts as part of the court unification process. That is consequential on amendment 163.

I move amendment 102.

The Convener: Fortunately for you, minister, Stewart Stevenson is not here to ask technical question about the amendments, which do not seem to be particularly controversial.

Amendment 102 agreed to.

Amendments 103, 42, 104, 161, 43, 105, 162 and 163 moved—[Johann Lamont]—and agreed to.

Schedule, as amended, agreed to.

Section 68—Orders

Amendment 164 moved—[Johann Lamont]—and agreed to.

Amendment 225 not moved.

Section 68, as amended, agreed to.

Sections 69 to 71 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. Thanks for attending, minister. You did exceptionally well for your first appearance. We appreciate all of the work that has been done by your predecessor and by the officials. The bill is not controversial—it is a good bill—but there is a lot of detail that we want to be clear about. We appreciate the notes that we have been given over the past few months.

We will reflect on what has been said and, if there are any burning issues that we want to be clarified before stage 3, we will let you know.

As everyone probably knows, the committee got an award at the politician of the year awards last Thursday. I think that I managed to name everyone on the committee when I accepted the award—it would be terrible if I left someone out. I meant to bring the award with me to let members see it, but I did not. I will bring it next time.

Our next meeting is next Tuesday, when we will consider in private our report on the Scottish Criminal Record Office.

Meeting closed at 12:54.

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