JUSTICE 2 COMMITTEE

Tuesday 26 June 2001

Session 1

£5.00

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

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JUSTICE 2 COMMITTEE
19th Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Christine Grahame (South of Scotland) (SNP)
Ms Margo MacDonald (Lothians) (SNP)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Tavish Scott (Shetland) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Iain Gray (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 26 June 2001

[THE CONVENER *opened the meeting at 09:33*]

The Convener (Pauline McNeill): Welcome to the 19th meeting of the Justice 2 Committee. We are—for the first time, I think—in committee room 2, which is one of the better facilities that we have used.

I remind everyone to switch their mobile phones and pagers off. I have turned mine off.

I confirm that the sound operator is happy that we can proceed. I have been asked to do that because we have sometimes started a bit too sharply.

I have received apologies from Margo MacDonald.

I have a few items to report to the committee. The committee has been designated a secondary committee for the Police and Fire Services (Finance) (Scotland) Bill by motion S1M-1990, which was agreed to on 6 June, because the bill falls within the remit of the Minister for Justice. The bill is short and straightforward. It is about carrying forward working balances at the end of each financial year with the consent of Scottish ministers up to a predetermined limit. The lead committee on that bill will be the Local Government Committee. The Finance Committee has also been designated a secondary committee.

Is the committee content to leave consideration of the bill to the Local Government Committee?

Members *indicated agreement.*

The Convener: I take that as consent. We wish the Local Government Committee well with the bill.

For information, the stage 1 debate on the Protection from Abuse (Scotland) Bill will take place on Thursday at 9.30 am. That is tomorrow morning.

Mrs Lyndsay McIntosh (Central Scotland) (Con): No.

The Convener: I have 9.30 written here.

Mrs McIntosh: Thursday is not tomorrow.

The Convener: Oh sorry, this is Tuesday. You are right that the debate is not tomorrow.

I know that that bill is important to some members of the committee who served on the former Justice and Home Affairs Committee. They can note that the debate is on Thursday at 9.30 am.

I have one more item to report. The committee requested to visit Her Majesty's Prison Kilmarnock. We are in the process of setting that visit up. The clerks will be in touch to find out suitable dates.

Mrs Mary Mulligan (Linlithgow) (Lab): Have our visits to procurators fiscal been finalised?

The Convener: We will come to that later when we discuss how to proceed with our inquiry into the Crown Office and Procurator Fiscal Service.

Item in Private

The Convener: Item 1 is that the committee agrees to take part of item 7, which concerns the appointment of advisers to the committee for our inquiry into the Crown Office and Procurator Fiscal Service, in private. Any decision in principle to appoint an adviser would be made in public, but the discussion of who the adviser should be should be done in private.

Are members happy that we do that?

Members *indicated agreement*.

International Criminal Court (Scotland) Bill: Stage 2

The Convener: I welcome the Deputy Minister for Justice and his team to stage 2 consideration of the International Criminal Court (Scotland) Bill. I have been given a lengthy brief on the procedure for stage 2. Would you like me to go through the brief?

Members: No.

The Convener: I will do my best to guide the committee.

Does Christine Grahame have plenty of water by her side? She will be speaking a lot today.

Christine Grahame (South of Scotland) (SNP): I also need a life support system.

Section 1—Genocide, crimes against humanity and war crimes

The Convener: Amendment 38 is grouped with amendment 15.

Christine Grahame: I will start with amendment 15. It would delete section 6, which is concerned with residence. It is consequential on amendment 38. That is all that I need to say about amendment 15.

Amendment 38 takes us back into territory that we debated at stage 1—universal jurisdiction. It is concerned with what might be called absolute universal jurisdiction as opposed to partial universal jurisdiction, which we discussed when we talked about presence.

Agreeing the amendment would allow Scots law to have jurisdiction

"in a country or territory outwith Scotland"

on any person. I do not want to go back through the arguments on universal jurisdiction. The committee went through them for our stage 1 report and in the stage 1 debate. I find universal jurisdiction an attractive route to take for Scots law. It also seems to me to be practical, functional and flexible.

The committee may recall that in the evidence that we took for the stage 1 report we were given examples of the difficulties that not having universal jurisdiction might create. If there were two accused, only one of whom we had jurisdiction over because they were resident in Scotland—I will talk later about the difficulty of the concept of residence—and their co-accused was not, there might be difficulties in initiating a trial. One of the accused could be prosecuted and the other could not because we failed to have universal jurisdiction. Other examples were given.

My impression is that not to have universal jurisdiction is a political move based on the fact that universal jurisdiction was not in the English bill, which is now the International Criminal Court Act 2001. I am attracted to the fact that other nations, such as New Zealand and Norway, have accepted universal jurisdiction in its purest sense.

I was not persuaded by the argument that universal jurisdiction would take Scots law outwith what it does already. The great thing about Scots law is that it develops with the times. Universal jurisdiction would be such a development. The evidence that we had from Dr Scobbie indicated that the move to universal jurisdiction is a trend in international law. The convener will correct me if I am paraphrasing the evidence wrongly, but I adhere to the view that we received insufficient evidence against universal jurisdiction during our truncated evidence taking, as only the minister said that we should not take that approach.

I am not persuaded by the argument about residence because of the difficulties that were raised in connection with what constitutes residence. I stand to be corrected, but there is no definition of residence in the bill. During the stage 1 debate, I asked for a definition of residence. I asked the minister:

"Will the minister give a definition of residence, as no one has given us one? A key problem, which was raised by Dr Scobbie, is the fact that there is no definition of residence in criminal law. Will the minister give us such a definition now?"

The minister replied:

"Nonetheless, the concept of residence, as interpreted by the courts, exists in other legislation—for example, in the Sex Offenders Act 1997 and the War Crimes Act 1991. There is no reason why that concept cannot be included in the bill."—[*Official Report,* 14 June 2001; c 1611.]

However, that concept has not been included in the bill, and I do not think that an amendment has been lodged that defines residence, although I may have missed it. Why did you make that statement, minister? If such a definition could have been included in the bill, why was that not done?

Amendment 38 uses wording that is included in sexual offences legislation and that is broad in scope. It allows for the sort of flexibility that gave Scotland jurisdiction in relation to internet sex offences and the international sex trade—it expands Scottish jurisdiction.

I make it clear that I do not intend to move amendment 38. I simply want to open up a debate on the issue. I will move a similar amendment at stage 3. I would like to hear further argument from the minister on why residence is not defined in the bill and why we should accept the rather vague argument that the courts would make those decisions.

The Convener: May I clarify that you do not wish to move amendment 38, Christine?

Christine Grahame: I will not move amendment 38 today.

The Convener: Therefore, you wish simply to speak to the first group of amendments. That is fine—[*Interruption.*] I will clarify the procedure. When we get to the end of the debate on this group of amendments, I will ask whether you wish to press amendment 38. At that point, you will be able to withdraw it.

As no members wish to speak to this group of amendments, I call the minister.

The Deputy Minister for Justice (Iain Gray): As Christine Grahame said, given that we have debated this issue on a couple of occasions, the committee is familiar with the Executive's view that universal jurisdiction is not appropriate in this case. I will summarise and reiterate the three key arguments that we have gone through previously.

First, the principle of territorial, as opposed to universal, jurisdiction is central to the prosecution of crimes in this country. It is a principle of Scots law. Members of the committee, perhaps in the context of other parts of the debate, have said that they would not like those principles to be diluted by the bill.

Secondly, we have implemented extraterritorial, or universal, jurisdiction in a number of cases, but only where it was specifically required by treaty obligations, such as legislation on torture and serious contraventions of the Geneva convention.

Thirdly, we do not believe that it is right or sensible for Scotland unilaterally to adopt what could be seen as a global prosecutor role—that is not the purpose of the bill.

There is a fourth argument about the definition of residence, which is slightly different to the point that Christine Grahame raised in amendment 38, which would implement full universal jurisdiction. In response to the point that she made on my statement during the stage 1 debate, perhaps I was not as clear as I should have been. My point was that there is no definition of residence in the Sexual Offenders Act 1997 or the War Crimes Act 1991, as that is a matter for the courts to decide. We do not think that it is necessary to include a definition of residence in the bill, as it is more flexible, sensible and practical to leave the decision on the definition of residence to the courts. That has been the practice in relation to those other pieces of legislation.

09:45

In my view, the key point is that it is right that we should move in step with the clear will of the international community. That will is codified in the Statute of the International Criminal Court—the Rome statute—which was the result of many years of discussion and negotiation. The Rome statute deliberately does not specify universal jurisdiction, as it is concerned with building an international approach to dealing with instances where such terrible crimes cannot be dealt with by domestic courts. The approach in amendments 38 and 15 is that we should turn our backs on that international consensus in favour of an approach in which individual countries would decide who should be prosecuted and when, even when a country has no connection whatsoever with the events in question. In our view, not only is that approach impractical but it risks diversion from the key business at hand, which is establishing and supporting the international criminal court.

The philosophy behind the statute is one of encouraging individual countries to face up to their responsibilities with regard to war crimes and the like that are committed by their citizens. Where that proves impossible or difficult, the ICC will be able to step in and end the culture of impunity. It has already been pointed out that the establishment of the ICC and universal jurisdiction for individual countries represent different, rather than complementary, approaches. Contrary to what was suggested during stage 1, it is not the case that we are doing the minimum to fulfil our obligations or that we are not doing the right thing. The provisions of the bill as it stands are in tune with the principles and the philosophy of the treaty.

Christine Grahame raised another concern previously: without universal jurisdiction, Scotland could become a safe haven for war criminals.

Christine Grahame: I did not raise that issue.

Iain Gray: I apologise. That issue was raised in debate, although not by Christine Grahame. It was suggested that war criminals might visit Scotland briefly with complete impunity, if they knew that we had no jurisdiction over them. However, there are two or three arguments against that concern.

First, the Home Office is taking action to strengthen immigration rules, in order to prevent individuals gaining entry to the country if it is known that they have been involved in war crimes.

Secondly, there would always be an element of doubt in such a person's mind that the residence element of the legislation would apply to them: they might think that they would be arrested and extradited to another country that had jurisdiction over them, or arrested and surrendered to the ICC in The Hague. That would be a deterrent.

The third argument is practical. If none of the above applied, it would be unrealistic to believe that Scottish police could gather sufficient evidence from a foreign country to allow them to

arrest and serve an indictment on such an individual within the time limits that are specified by the Rome statute. That would apply in the case of a co-defendant, if the other defendant fell within the residency or citizenship requirements of the bill.

In the hypothetical example given by Christine Grahame, the impracticalities of applying universal jurisdiction might undermine the trial of a resident and would have the opposite effect to what I believe she intended in amendments 38 and 15.

The key argument is that we should move in step with the statute and the international community. On that basis, I ask Christine Grahame to withdraw amendment 38 and not to move amendment 15, which she has indicated she intends to do.

The Convener: When you spoke to amendment 38, you were deemed to have moved it, Christine. Do you wish to withdraw amendment 38?

Christine Grahame: I want to clarify something that the minister said.

The Convener: You may make a brief comment.

Christine Grahame: I will come back to this issue at stage 3, but the minister said that territoriality is based on crimes that are committed on Scottish land or in Scottish territorial waters. However, we are talking about crimes that take place outwith this country. A distinction has to be made. I stand to be corrected on this, but the principle behind criminal jurisdiction is founded on the act being committed within Scottish territory, either on land or in territorial waters. We had jurisdiction over Lockerbie, for example. However, we will often be considering crimes that take place outwith Scotland, so we are not comparing like with like in terms of jurisdictional principles.

Iain Gray: The principle of territoriality in Scots law applies either to crimes committed in Scotland or to crimes committed by UK citizens that may have been committed abroad. The position is therefore parallel to the one that we intend to legislate for in this legislation.

Christine Grahame: Is the distinction between a common-law prosecution and a statutory prosecution? Will you clarify for me how jurisdiction works? When we talk about crimes committed within Scotland's territory, is that common law, and when they are committed beyond that territory, is that statute?

Iain Gray: I confess that I do not know the answer. I will look into it, bearing in mind that Christine Grahame has said that she will return to the issue at stage 3.

Amendment 38, by agreement, withdrawn.

Section 1 agreed to.

Schedule 1 agreed to.

Sections 2 and 3 agreed to.

Section 4—Offences in relation to the ICC

The Convener: Amendment 1 is grouped with amendment 2.

Iain Gray: Amendment 1 adds contravention of section 1 of the Prevention of Corruption Act 1906 to the list of offences that correspond to ICC offences against the administration of justice. In its evidence to the committee, the Law Society of Scotland noted that the list as it stands is not comprehensive. It was correct to do so and, in my letter to the committee of 17 May, I indicated that we would deal with the point. Section 4 of the bill is intended to fulfil all our obligations in regard to article 70 of the Rome statute. That article details the relevant offences against the ICC's administration of justice. In particular, article 70.1(f) relates to an official of the court soliciting or accepting a bribe in conjunction with his or her official duties. A corresponding domestic offence is created in section 1 of the Prevention of Corruption Act 1906, which makes it an offence for a Crown official corruptly to accept or obtain any gift or reward for showing

"favour or disfavour … in relation to his principal's affairs or business".

It is therefore appropriate to make the addition that is proposed by amendment 1.

I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Iain Gray]—and agreed to.

Section 4, as amended, agreed to.

Schedule 2 agreed to.

Section 5 agreed to.

Section 6—Proceedings against persons becoming resident in the United Kingdom

Amendment 15 not moved.

Section 6 agreed to.

Section 7—Meaning of "ancillary offence"

The Convener: Amendment 3 is in a group of its own.

Iain Gray: In some ways, the argument on amendment 3 is not dissimilar to that on amendments 1 and 2. Section 7 defines ancillary offences. Amendment 3 adds the crime of

"defeating, or attempting to defeat, the ends of justice"

to the list of offences that are included as ancillary offences. It is possible to interfere with the criminal process in ways that are not currently covered by the bill—for example, by assisting an accused person to escape from custody. That loophole is closed by adding the offence of

"defeating, or attempting to defeat, the ends of justice"

to the list in section 7.

I move amendment 3.

Amendment 3 agreed to.

Section 7, as amended, agreed to.

Sections 8 to 11 agreed to.

Section 12—Questioning

The Convener: Amendment 4 is grouped with amendments 5, 6 and 7.

Iain Gray: The amendments in this group are the last Executive amendments that are based on the evidence that was given by the Law Society. I take this opportunity to record my thanks to the society for its helpful scrutiny of the bill. Amendment 6 ensures that the fact that a person has been informed of his or her rights is recorded in writing prior to that person being interviewed. Section 12 already provides for the recording in writing of the fact that a person has given consent to be interviewed. Amendment 6 comes into line with that by ensuring that there will also be a written record of the fact that the person has been informed of his or her rights under article 55 of the Rome statute. That is consistent with the draft rules of procedures on evidence that have been drawn up by the Preparatory Commission for the International Criminal Court. The draft rules mention that such information should be noted in the record. Amendments 4, 5 and 7 make consequential changes.

I move amendment 4.

Amendment 4 agreed to.

Amendments 5 and 6 moved—[Iain Gray]—and agreed to.

The Convener: Amendment 39 is in a group on its own.

Christine Grahame: Amendment 39 is important. Section 12 is on questioning. If a person being questioned waives his or her right to counsel, amendment 39 says that that should be

"documented in writing by that person and witnessed by an independent person".

When someone has waived rights, it is important that there is independent evidence that the person knew what he or she was doing.

Iain Gray: We support the intention behind amendment 39, but we believe it to be unnecessary. Sufficient safeguards are already in place. We have already agreed to an amendment that said that a written record should be made of the fact that someone to be questioned had had their rights under article 55 of the Rome statute read out to them. One of those rights states that the person is to

"be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel."

Therefore, it does not seem necessary that that fact be separately recorded in writing.

Any evidence obtained under section 12 would, if appropriate, be presented in proceedings before the ICC at The Hague. It would be for that court to decide whether the investigation and questioning of witnesses had been conducted properly and in a fashion that made the evidence admissible. We are confident that the provision is appropriate as it stands—especially as it is very much in line with the equivalent article in the Rome statute. I invite Christine Grahame to withdraw amendment 39.

Christine Grahame: I cannot understand the resistance to amendment 39, which would strengthen the bill—especially when we are dealing with people who speak foreign languages or who have different understandings. It would strengthen the prosecution case if someone had been made clearly aware of their rights to legal representation. The minister says that he is sympathetic; I do not know why he cannot go a step further and agree that the amendment is sensible and practical and that it strengthens the prosecution's case. I will press amendment 39.

10:00

The Convener: In that case, we move to a vote. The question is, that amendment 39 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Grahame, Christine (South of Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Scott, Tavish (Shetland) (LD)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Amendment 39 disagreed to.

Amendment 7 moved—[Iain Gray]—and agreed to.

The Convener: Amendment 40 is in a group of its own.

Christine Grahame: Please bear with me. My purpose in lodging an amendment to delete section 12(4), which concerns consent to questioning, relates particularly to section 12(4)(b), which states that such consent may be given

"in circumstances in which it is inappropriate for the person to act (whether by reason of physical or mental condition or youth) by an appropriate person acting on behalf of the person".

I am concerned about that. Who will act as the "appropriate person"? A person is either capable or incapable. Amendment 40 begins with the statement:

"a person shall not be deemed to have consented if that person is incapable".

As I have said, a person either has or does not have the capacity to give consent to questioning. The amendment continues with a definition of incapacity. If a person is incapable, how can they agree to someone acting on their behalf?

I move amendment 40.

The Convener: Before you reply, minister, I should point out that I, too, have some concerns about section 12(4). I hope that you will indicate that guidance on the definition of incapacity will accompany the bill.

Iain Gray: Although Christine Grahame raises an important point, I should clarify that the issue is about the capacity to give consent to questioning rather than the capacity to give evidence. For example, although it would be appropriate to take evidence from a child, the court might consider it appropriate for another "appropriate person" to decide whether consent to questioning should be given. It seems to me that there are two different judgments to be made.

However, if there is a dispute about a person's capability, the appropriate place for that to be determined and assessed is in the competent court. In this instance, the competent court is the ICC in The Hague, which would examine all the circumstances related to the collection of information, including issues of capability. As every case will be different, it is important to ensure that the legislation covers all eventualities. The current wording of section 12 achieves that aim and also builds in important safeguards such as the rights detailed in article 55 of the Rome statute, which is reproduced in the bill as schedule 3.

Article 68 of the Rome statute also provides protection, as it provides for the protection of victims and witnesses. The court must take

"measures to preserve the safety, … well-being, dignity and privacy"

of those people. The ultimate decision on whether consent has been given appropriately—and therefore by an appropriate person—should lie with the ICC, which is the competent court as far as this part of legislation is concerned.

Christine Grahame: I am not content with the minister's response. Am I to read into it that an amendment to section 12 might be winging its way to us for stage 3, or that some additional guidance might be given on the definition of incapable? The word "inappropriate" is not proper in the context of section 12(4)(b). The important point is that consent may be given

"by the person; or … in circumstances in which it is inappropriate for the person to act".

As an example of that inappropriateness, you have used the phrase "mental condition". I suggest that the concept of inappropriateness is familiar in Scots law and statutes and that we would expect the words "capacity", "incapacity" and "understanding" to be used instead. Has any thought been given to rewording the section to take account of the notion of capacity as suggested in amendment 40?

The Convener: That was supposed to be Christine Grahame's summing-up.

Christine Grahame: Sorry.

The Convener: However, as she has raised an important point, I will give some leeway. To ensure that all the points on this issue have been made, I will ask Scott Barrie to speak before the minister replies.

Scott Barrie (Dunfermline West) (Lab): Christine Grahame has a point. I do not suggest that the wording of section 12(4)(b) is untidy, but I think that it could be slightly better expressed or more tightly defined. Leaving aside the question whether the wording of amendment 40 is correct, I think that we need to be very careful about getting this right. Perhaps we need to reflect on this issue for stage 3.

Mrs McIntosh: I am inclined to agree with Scott Barrie's interpretation of Christine Grahame's point. We have discussed mental capacity in previous committee meetings, and it is worth considering now.

Iain Gray: It is important to point out that section 12 would apply only in the gathering of evidence for a case taken in the ICC at The Hague. I cannot argue with amendment 40's definition of incapable, as I think I am right in saying that it is drawn from the Adults with Incapacity (Scotland) Act 2000; I put some effort into ensuring that that definition went into Scottish legislation.

Section 12 would not be invoked if a case were being heard in the Scottish courts; it would be invoked only in cases that were being tried in The Hague. As a result, it is quite important that the

definition of appropriate is either left to the ICC or covered by its rules of procedure and evidence. However, the committee has raised a number of important points. If Christine Grahame is willing to withdraw amendment 40, I am more than content to reconsider the matter and return to it at stage 3. As far as I know, there is no amendment waiting in the wings.

Amendment 40, by agreement, withdrawn.

Section 12, as amended, agreed to.

Schedule 3 agreed to.

Section 13—Taking or production of evidence

The Convener: Amendment 17 is grouped with amendments 21, 23 to 35 and 37.

Christine Grahame: The other amendments in the group are consequential on amendment 17, which is the substantive amendment. Amendment 17 centres on the separation of powers between the Scottish Parliament and the Lord Advocate. The powers in the bill as introduced will allow Scottish ministers to direct chief constables to serve documents on specified persons and to direct procurators fiscal to apply to sheriffs for warrants and so on. Those functions relate to the investigation and prosecution of crime and to the direction of prosecution authorities in fulfilling those obligations; those duties are the responsibility of the Lord Advocate. I must stress that it is important to separate the powers of the Executive from those of the judiciary.

Section 48 of the Scotland Act 1998 states:

"Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person."

The key word in that section is "independently". As currently drafted, the powers under part 2 of the bill could be discharged by any Scottish minister of whatever political hue. To ensure transparency of approach and to ensure that the objective independence of the Lord Advocate in carrying out those functions is preserved, all references to "Scottish Ministers" should be replaced by references to the "Lord Advocate", or by a provision whereby Scottish ministers would have to refer matters to the Lord Advocate. That is what would happen if the amendments in the group were agreed to.

That also follows the approach that was taken in the Criminal Justice (International Co-operation) Act 1990, which was enacted to enable the UK to assist other countries in relation to criminal proceedings and investigations. That act provides a framework that allows the UK to serve overseas processes in the UK, to take evidence in the UK for overseas purposes, and to authorise searches for material that is relevant to overseas investigations. In that act, the Lord Advocate is specified as the authority for discharging certain functions.

If we use different terminology in the context of legislation that deals with international co-operation, that might lead to confusion from a practical perspective, and it might cast doubt on whether specific functions should be discharged by the Minister for Justice or by the Lord Advocate.

I am outlining the reasons behind this group of amendments in full so that everything is on the record and so that—if there is a dispute—we can come back to it.

Although the Criminal Justice (International Co-operation) Act 1990 is a pre-devolution measure, the Scotland Act 1998 does not preclude the adoption of a similar legislative model in that context. Indeed, section 52(2) of the Scotland Act 1998 specifically envisages a situation in which the distinct functions of the Lord Advocate will be specified in legislation. Section 52(2) states:

"Statutory functions of the Scottish Ministers, the First Minister or the Lord Advocate shall be exercisable on behalf of Her Majesty."

A distinction is therefore drawn between the collective functions of Scottish ministers on the one hand and the role of the Lord Advocate on the other.

The powers in part 2 of the International Criminal Court (Scotland) Bill are functions that should be discharged by the Lord Advocate alone, in his capacity as head of the system of criminal prosecution in Scotland. That should therefore be clearly stated in the bill.

I move amendment 17.

Tavish Scott (Shetland) (LD): I would like to make a couple of observations. First, we are dealing with an international bill and its consequential implementation within Scots law. Secondly, the minister drew some parallels in his opening remarks when we were discussing universal jurisdiction. If the minister can draw any parallels with obligations that have been introduced into Scots law from other international treaties, and say whether the separation of powers between the judiciary and the Executive had to be dealt with specifically in those cases, that would also be helpful.

The Convener: Those are important points to raise at stage 2. At stage 1, we heard evidence from the Law Society of Scotland, which took the same view. I would like to press you on those issues, minister.

Iain Gray: In replying, I must point out that the

matter is being given careful consideration by the Executive. That is usually a precursor to a long and fairly convoluted exposition, which will follow with members' forbearance.

It is clear from Christine Grahame's remarks that we have a difference of opinion as to which function under the sections in question the Lord Advocate would be exercising. We should remember that those sections of the bill would apply only in ICC prosecutions. In other words, they would not apply to Scottish prosecutions or criminal investigations.

The amendments in the group are not consistent with the intentions of Parliament in relation to conferral of functions that are provided for in the Scotland Act 1998. Post-devolution, all statutory functions should be conferred on Scottish ministers collectively so that such functions can legally be exercised by any minister. It is for the First Minister to decide, through his or her allocation of ministerial portfolios, which minister should exercise a function. The only exceptions, as Christine Grahame correctly pointed out, are statutory functions that have been conferred upon the First Minister and the Lord Advocate and which are legally exercisable only by them.

In the case of the Lord Advocate, his functions are known as retained functions—functions that he carried with him when he ceased to be a minister of the Crown in the UK Government and became a member of the Scottish Executive. Before that, the functions that were performed by the Lord Advocate—other than in relation to criminal prosecution and the investigation of deaths in Scotland—were transferred to the Secretary of State for Scotland and, thereafter, to Scottish ministers.

However, it would be appropriate to confer new statutory functions on the Lord Advocate only where they relate to his position as head of the systems of criminal prosecution and investigation of deaths in Scotland. As Christine Grahame said, those are functions that the Lord Advocate is required to exercise independent of any other person. He cannot therefore be directed as to how he will exercise those functions. That is the only case of functions being conferred directly on the Lord Advocate. In effect, the Scotland Act 1998 entrenches the Lord Advocate's position as public prosecutor in Scotland.

10:15

I contend that the functions in part 2 of the International Criminal Court (Scotland) Bill, that Christine Grahame wants to provide should be exercised by the Lord Advocate, are not functions that relate to the Lord Advocate's position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

The functions in part 2 of the bill fall into three categories. First, there are functions that relate directly to fulfilling requests from the ICC for assistance. Those functions are detailed in section 13, on the taking or production of evidence; section 14, on further provisions relating to evidence; section 18, on the provision of records and documents; and section 21, on verification of material. Those functions relate to the implementation of international obligations—not to the systems of criminal prosecution in Scotland. It is therefore appropriate that they are conferred upon Scottish ministers collectively.

Secondly, there are functions in part 2 of the bill that relate to civil proceedings. Those functions are detailed in section 19, on the investigation of proceeds of ICC crime, and section 20, on freezing orders in respect of property that is liable to forfeiture. In addition to their being examples of the Scottish ministers discharging obligations to provide assistance to the ICC, those functions relate to civil matters and not, therefore, to the system of criminal prosecution in Scotland.

Thirdly, there are other functions such as directing chief constables to serve documents under section 15 on the service of process and, under section 16, on entry, search and seizure, the function of directing the procurator fiscal to apply for a warrant. Those functions are required to implement international obligations to assist the ICC, and it is therefore appropriate to confer those functions on Scottish ministers.

Those functions do not relate to the system of criminal prosecution in Scotland. They are similar to functions that the Lord Advocate has in carrying out prosecutions in Scotland—he has a relationship with chief constables and procurators fiscal. It is therefore more than likely that the First Minister will take that factor into account when deciding which minister ought to exercise the functions in such cases. However the Executive's view is that it is not necessary to make such provision in the bill. On that basis, I ask Christine Grahame to withdraw amendment 17 and not to move the others in the group.

Christine Grahame: I thank the minister for his lengthy answer. I seek to withdraw amendment 17 at this stage so that I can read his lengthy and intricate answer and work out whether or not I agree with it. We might return to the matter at stage 3.

Amendment 17, by agreement, withdrawn.

The Convener: Amendment 8 is grouped with amendment 9.

Iain Gray: Amendments 8 and 9 will bring the arrangements in the bill more closely into line with

the relevant provisions of the 1998 Rome Statute of the International Criminal Court. The amendments provide for all proceedings under section 13 to be held in private. The arrangements in sections 13 and 14 relate to articles 87 and 93 of the Rome statute. Article 93 states that parties are to provide assistance to the ICC by the taking or production of evidence. Article 87 stipulates:

"The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request."

The requirement that the requested state must ensure confidentiality lies behind amendments 8 and 9. Amendment 9 is consequential on amendment 8.

I move amendment 8.

Amendment 8 agreed to.

Section 13, as amended, agreed to.

Section 14—Taking or production of evidence: further provisions

Amendment 9 moved—[Iain Gray]—and agreed to.

The Convener: Amendment 18, in the name of Christine Grahame, is grouped with amendments 19, 20 and 22.

Christine Grahame: Amendments 20 and 22 are consequential on amendment 18. The three amendments deal with the strange concept of a register of proceedings. In Scotland, we talk about a record of proceedings. Amendment 18 seeks to ensure that existing Scots terminology is not contaminated and changed by the introduction of such strange ideas and fine words as "register".

I move amendment 18.

The Convener: That seems to be a fair point.

Iain Gray: I regret that Christine Grahame and I have failed to agree on the contamination of Scots law by the introduction of universal jurisdiction, but I am happy to agree that "record" is a better term than "register" in the context. We are happy to accept amendments 18, 20 and 22.

Amendment 19 is also in the group and I will make some comments on it. Christine Grahame might also want to speak to it.

The Executive is clear that sections 13 and 14 of the bill relate to the provision of assistance to the ICC by investigating matters at its request. I think that the Law Society has argued that that is analogous to precognition and that the bill ought to take some account of that. We are not sure that that is precognition, but it is clear that there are some similarities. We would like therefore to consider further how cross-examination of witnesses at that stage of the investigation might work in practice. As a result, I would like to reconsider amendment 19 and revert to it at stage 3. On reconsideration, if we decide that we prefer section 14 as we originally drafted it, I will write to Christine Grahame in plenty of time to allow her to decide how she wishes to proceed. In the meantime—and on that basis—I hope that she will not move amendment 19.

Christine Grahame: Unfortunately, I omitted to speak to amendment 19, but I would like my remarks to be recorded in the *Official Report*.

Section 14 of the bill deals with the collection of evidence for the ICC. The procedure is designed to be similar to the process of taking evidence in Scotland that we discussed at stage 1, and in particular to the process of precognition on oath in Scots domestic law.

Amendment 19 seeks to align the procedure that is outlined in section 14 with the current procedure, which applies to precognition on oath under Scots law. Precognition on oath is generally used in situations in which witnesses refuse to attend the offices of procurators fiscal to give precognitions. The usual course is to apply to the sheriff to precognosce that person on oath and thereby have enforced the witness's attendance before the sheriff.

A witness is not normally entitled to be accompanied by a solicitor when a precognition is taken and the accused is not entitled to be present or represented at the examination. It is therefore difficult to envisage a situation in which cross-examination would be appropriate or competent in that procedure. Clarification would therefore be welcome on the purpose of including section 14(3)(c). The minister said that he will reconsider amendment 19.

Those remarks will be recorded in the *Official Report*, but I do not intend to move amendment 19. However, I am interested in the minister's comments.

The Convener: You were supposed to sum up, but as you have asked the minister a question, I will give the minister a right to reply, if he wishes to do so.

Iain Gray: I have nothing further to add at this stage.

Amendment 18 agreed to.

Amendment 19 not moved.

Amendment 20 moved—[Christine Grahame]—and agreed to.

The Convener: Amendment 21, in the name of Christine Grahame, was debated with amendment 17.

Amendment 21—[Christine Grahame]—moved.

The Convener: All in favour of amendment 21?

Christine Grahame: It is amendment 22, not 21.

The Convener: Sorry—no, I was right the first time. It is amendment 21.

Christine Grahame: I am confusing my amendments. I do not want to move amendment 21.

Amendment 21, by agreement, withdrawn.

Amendment 22 moved—[Christine Grahame]—and agreed to.

Christine Grahame: Would it help if I say which amendments I will not move in group 7? I do not wish to move the consequential amendments, if that is appropriate.

The Convener: We will deal with the amendments individually.

Amendment 23 not moved.

Section 14, as amended, agreed to.

Section 15—Service of process

Amendments 24, 25 and 26 not moved.

Section 15 agreed to.

Section 16—Entry, search and seizure

Amendment 27 not moved.

Section 16 agreed to.

Section 17 agreed to.

Schedule 4

TAKING OF FINGERPRINTS ETC

Amendments 28 to 31 not moved.

Schedule 4 agreed to.

Section 18—Provision of records and documents

Amendments 32 and 33 not moved.

Section 18 agreed to.

Section 19—Investigation of proceeds of ICC crime

Amendment 34 not moved.

Section 19 agreed to.

Schedule 5 agreed to.

Section 20—Freezing orders in respect of property liable to forfeiture

Amendment 35 not moved.

The Convener: Amendment 10 is grouped with amendments 11 and 12.

10:30

Iain Gray: Amendments 10, 11 and 12 are technical and will bring the bill into line with present domestic arrangements on the proceeds of crime. The bill as drafted does not allow Scottish ministers to vary a freezing order, so if the ICC requested a variation of an existing freezing order—to include another piece of property, for example—the only route open to ministers would be to make a fresh order. The amendments will permit the authorities to vary existing freezing orders. That will be more flexible, more efficient and more cost-effective.

I move amendment 10.

Amendment 10 agreed to.

Amendment 11 moved—[Iain Gray]—and agreed to.

Section 20, as amended, agreed to.

Schedule 6

FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

Amendment 12 moved—[Iain Gray]—and agreed to.

Christine Grahame: Amendment 36 would extend the prohibition on making a claim in relation to a freezing order to claims made under section 22 of the Bankruptcy (Scotland) Act 1985. The bill says that it is not

"competent to submit a claim … to the permanent trustee"

in relation to a freezing order under section 48 of the 1985 act. Under section 22 of the 1985 act, a claim can be submitted to the interim trustee. Such a claim is then deemed to be resubmitted to the permanent trustee when he or she is automatically appointed under section 48 of that act. The reference to section 48 of the 1985 act appears to be too narrow. The bill should refer to the effect of section 22.

I move amendment 36.

Iain Gray: I will forgo a lengthy speech. Christine Grahame is correct and I am happy to accept amendment 36 with thanks to her for spotting the omission.

Christine Grahame: The minister has just made my day. I will go home now.

The Convener: You deserved that.

Amendment 36 agreed to.

Schedule 6, as amended, agreed to.

Section 21—Verification of material

Amendment 37 not moved.

Section 21 agreed to.

Sections 22 to 25 agreed to.

Section 26—Supplementary provisions relating to the ICC

The Convener: Amendment 13 is grouped with amendment 14.

Iain Gray: Two or three groups of amendments ago, Christine Grahame caught me confusing a verb with a noun, so I am delighted to end on these minor, grammatical, technical amendments, which replace the singular "reference" with the plural "references" and improve the bill's grammar.

I move amendment 13.

Amendment 13 agreed to.

Amendment 14 moved—[Iain Gray]—and agreed to.

Section 26, as amended, agreed to.

Sections 27 to 29 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the International Criminal Court (Scotland) Bill. I thank the minister and his team; Christine Grahame, who managed to find all her papers on time; and everyone else.

I propose that we take a comfort break. Coffee is available outside the room.

10:34

Meeting adjourned.

10:45

On resuming—

Petition

The Convener: Item 3 deals with petition PE336. I assume that members have had a chance to examine the many useful documents with which we have been provided, including an extract from the *Official Report* of the meeting of the Parliament of 30 May and submissions from the Scottish Law Commission, the Scottish Legal Action Group, the Lord President and the Association of Personal Injury Lawyers.

The purpose of today's discussion is to decide whether we want to take any further action on the petition. The papers include suggested courses of action but members may suggest others.

The petitioner, Frank Maguire, has contacted the clerks and wishes the opportunity to respond to the submissions that we have received. Accordingly, he has given us a paper, but we have not had time to circulate it. As members already have a lot of paperwork, we have decided to hold the petitioner's submission back until we have decided what to do with the petition.

Scott Barrie: The petition raises an important issue and I found the papers interesting. I had formed an opinion when I read the petition but the other documents let me see that the situation is not as straightforward as I had thought at first.

I would like to think that we can do something to resolve the issue, but I am not sure what that would be, as many parts of the legal jigsaw are involved. The fault—if you want to use that word—does not lie all on one side. We have been given a lot of information and I think that we need time to consider whether we are able to do something to resolve the situation.

That is a long-winded way of saying that we should consider the documents that we have before us but we should not make a firm decision today.

The Convener: I will draw out some of the main issues. The petitioner claims that in personal injury cases, written pleadings delay court proceedings, because the pursuer must prove their case and so must make a detailed submission when the pursuer and the defender write up their cases. Peter Beaton from the Scottish Executive has pointed out that that is the law: the pursuer makes a case, which the defender denies in the pleadings. However, the petitioner points out that the defender often issues a string of simple denials, which means that the pursuer cannot tell whether their case is strong or weak.

Although Scott Barrie is correct to say that such matters are never one-sided—I am sure that both sides are involved in causing delays—I believe that the petition raises an issue that needs to be examined.

The papers contain a comment from Lord Prosser in the case of Ross v British Coal 1990. He said that simple denials are not acceptable. The fact that a High Court judge said that strengthens my view that the issue needs to be examined.

The Association of Personal Injury Lawyers comments on some of the issues highlighted in the petition. A related matter is the interpretation of the Prescriptions Act 1973. A lot of cases have been time-barred because of the interpretation of the part of the act that states that a person can bring a claim no later than three years after it was "reasonably practicable" for them to know about the existence of the disease and its cause. Interpretation of that has been strict.

Interpretation is a matter for the courts, but if it is causing undue delay and unnecessary unfairness, it is a matter for the committee. I have not formed a view on which option we should proceed with, but in principle I believe that we should proceed. I would not be unhappy for the committee to take oral evidence from the petitioner, but if we do so we would have to hear from the range of people whom we have asked for evidence. I am not against that; it is a matter of whether members want it to be included in the future work programme.

Scott Barrie: I concur with that suggestion; it is perhaps what I was trying to suggest. It would be difficult to come to a final decision on what to do today. The petition raises many issues that cut across the legal and justice systems. It would not be a bad idea to examine the matter in the committee's future work programme.

Mrs Mulligan: I want the committee to pursue the petition and to have further discussions on it. We can see from the evidence that has been submitted so far that there are problems in pursuers bringing their case to completion. They are not able to resolve the problem on their own, so legislative changes may be required. I do not know about that, but I want the committee to examine it.

Tavish Scott: In the light of the remarks that colleagues have made, I believe that several of the options before the committee could be pursued, including writing to the Lord President to seek information on which of the working party's recommendations will be implemented and writing to the Minister for Justice about the points that have been raised. Information could be gathered over the summer to allow the committee to consider the matter and make a decision in the autumn.

The Convener: I will outline what we will do next. Members feel that, in principle, we should proceed and are not opposed to including the matter in the committee's future work programme. Would it be helpful if I asked for a summary of the points raised, as some of them are complex legal issues?

Members: Yes.

The Convener: The letter that I mentioned from the petitioner, Frank Maguire, will be circulated. It would be wise to ask him to respond to everything that has been said.

I think that Tavish Scott suggested that we call the Lord President to give evidence. A report is on the table, which will supposedly address some of the points that have been raised. We should familiarise ourselves with the contents of that report.

Tavish Scott: There is not much point in calling the Lord President to give oral evidence until, as the clerk has rightly suggested, he has replied in writing to the points about the working group's recommendations.

The Convener: Once those points have been clarified, we can address whom we should invite to give oral evidence. We will deal with written evidence at the moment.

It seems sensible to write to the Minister for Justice—he should know that we are picking the matter up and that would allow him to comment.

Consultative Steering Group Principles

The Convener: Item 4 is the Procedures Committee inquiry into the application of the consultative steering group principles in the Scottish Parliament. Members will recall that at our previous meeting we were asked to produce, at very short notice, some ideas for a report, which we did. I hope that members have had the chance to read the report, J2/01/19/2, which is included in the committee papers. I thank the clerks for making sense of what we said at our previous meeting.

We will go through the report page by page. Members may draw the committee's attention to any points that they are unhappy with.

The only comment I have on page 1 is about paragraph 4 on sharing the power, which mentions the Carbeth hutters. We should mention that we are still waiting for action on that. Although it is a success story, the hutters have now waited for action for quite a long time.

I see that members are happy with page 2. Are there any points on page 3?

Mrs McIntosh: I especially like paragraph 11. I have commented on the issue before.

The Convener: Yes; Lyndsay McIntosh has commented before on the strain that travelling to Edinburgh to give evidence to the committee places on the resources of small organisations. That issue is addressed in paragraph 11.

Scott Barrie: Paragraph 15 mentions the Dunard Library. Where is that?

Mrs McIntosh: It is at the Hub; it is where there are three wee steps.

Scott Barrie: Is that what that part of the Hub is called?

Mrs McIntosh: Yes.

Scott Barrie: Sorry. I did not fully understand that.

The Convener: You have been there.

Scott Barrie: I know that I have been there, but I did not know what it was called.

The Convener: I thank the clerks again for the excellent report.

"Youth Justice in Scotland"

The Convener: Members may have read in the press that Audit Scotland has published an initial report on youth justice. It will undertake a full performance audit of the sector over the next year or so and will produce an in-depth report, which will be useful for the work of the committee. It has been suggested that we appoint a reporter. I suggest that we ask Scott Barrie whether he would take on that role, as he has a background in this area and an interest in youth issues.

Scott Barrie: I would be more than happy to do it. As the briefing note says, I am a member of the Audit Committee, which is meeting this afternoon; I hope that it will concur with the Auditor General that we should take the matter forward. The Audit Scotland report highlights many pertinent and important issues, not least the fact that in Scotland there are distinct criminal justice processes for under-16s and over-16s. The workings of the system vary locally and it is difficult to talk about the youth justice system, as there are so many local variations. It is time to have an overview. Although that would not be the remit of the Audit Committee, as it would consider the matter from a different perspective, it is incumbent on the Justice 1 Committee and Justice 2 Committee to take a keen interest. I am more than willing to update the committee on the progress of the report over the next year.

The Convener: Thank you. It had not occurred to me that you also sit on the Audit Committee. It will be doubly useful to have you as the reporter.

There are big issues about equality in how youth justice is administered around the country. Glasgow has specific problems. At a future meeting, we could have a discussion to give Scott Barrie guidance on evidence that he should take. We should guide him through this, as Audit Scotland's survey could take up to a year.

Scott Barrie: That is an important point. I am well aware that the children's hearing system is under tremendous pressure in certain parts of Scotland, yet some brilliant work is being done locally in the same areas. In my professional life, I was frustrated by how hit or miss youth justice is. Imaginative and innovative things can be done for certain young people, then the worker who had those skills or ideas moves on and it is necessary to reinvent the wheel. That point will come out from the performance audit. A weakness in the current system is that good practice is not continued or built on to any great extent. Although it is important that things are done at a local level, we must have a national strategy.

The Convener: There will be a timely briefing from the Auditor General at 2 pm today.

Crown Office and Procurator Fiscal Service Inquiry

11:00

The Convener: Item 6 is the Crown Office and Procurator Fiscal Service inquiry. Members have before them a paper summarising the written evidence that we have received so far and outlining the next steps that the committee might want to take. If members would like to comment on how we should proceed, the clerks can consider the matter over the summer. That will give us a head start when we return after the recess.

Our visit to the Crown Office the week before last was very helpful. Unfortunately, we did not have enough time to see everything that we wanted to see. However, the visit made the way in which things operate there much clearer—certainly to me. We have an open invitation to make a second visit, if members would like to take that up. I certainly would. It would be better if we all went at the same time, but if members would like to visit in groups that, too, will be possible.

Following on from the written evidence that we have received, I invite members to identify any specific organisations from which they would like to take oral evidence and to make any further suggestions relevant to the inquiry.

Tavish Scott: I was sorry to miss the visit to the Crown Office. If another could be arranged for the near future, that would be extremely beneficial.

I have not kept a particularly close eye on this matter, but in his submission David Hingston refers to

"prosecutions and complaints being made by members of the public about the quality of the service".

I have had to deal with two or three cases in my constituency where that has been an issue. How much has the committee looked into that? Is that an issue that we should investigate?

My other point relates to the police complaints procedure, which is currently the responsibility of the fiscal service. I know that the Executive intends to make proposals in that area—sooner rather than later, I hope. Does the committee consider that to be an important issue? How much do we intend to focus on the police complaints procedure? I accept that there is separation of responsibilities, but the two or three constituency cases with which I have had to deal raise profound questions about the transparency of the current system and the pressure that it puts on the fiscal service. It would be interesting to look into that.

The Convener: Those are helpful comments. The draft terms of reference for the inquiry list a number of issues that we said we wanted to consider. That is why we have set aside up to a year for the inquiry—we know that the more we look into this matter, the more we will discover. Quality of service is not mentioned specifically on the list. However, in the light of the evidence that we receive we may want to consider including it.

The Justice 1 Committee is conducting an inquiry into the procedure for dealing with complaints against the police. However, Tavish Scott makes the important point that we cannot examine services in isolation. Throughout the budget process, this committee has said that it believes in working towards a more joined-up justice system. We cannot carry out an inquiry into the Crown Office and Procurator Fiscal Service without considering its liaison with other agencies. I have expressed a particular interest in examining its liaison with the police. There is probably scope for considering the question that Tavish Scott raises.

Other MSPs will have had experiences similar to those of Tavish Scott. I have not yet spoken to an MSP who has not received correspondence by the tonne about constituents' experiences with the fiscal service. We have asked the general public not to discuss specific cases in their evidence to us, so we should not make an exception for MSPs in that respect. However, we could ask MSPs to comment generally. They know that the inquiry is under way, but they may need to be encouraged to provide us with information.

David Hingston suggested that we should include small rural offices in our programme of visits. We had considered doing that, but it is not on our agenda at the moment.

Scott Barrie: I do not rule that out. Once we have made the visits that are arranged and discussed them, it may be appropriate for one or two of us to visit a small rural office by way of comparison. That is preferable to saying simply that we will visit more and more offices. If we find that the issues raised by the four visits that we have already agreed are identical, what would be the point of further visits? However, if the issues raised are different, it may be worth visiting a small rural office as well.

Tavish Scott: I recall that it was representatives of the Crown Office who said that we should not visit small rural offices. That made me extremely suspicious. Scott Barrie is right to say that it would be best to visit the larger offices before visiting a smaller one for the purpose of comparison. I suspect that we will find that in such offices work load is the main issue, rather than points of law.

The Convener: The committee agrees that it

would like to visit a small rural office. Once we have completed our planned visits and have a sense of how matters are proceeding, we can schedule a visit to a small office.

Scott Barrie: Although we are not planning specifically to visit a rural office, at least one of the offices that we are planning to visit covers a large rural area—I was going to say hinterland, but that is rather pejorative—even though it is based in a medium-sized town. The issues raised by our visit to the Stirling office may be different from those raised by our visit to Aberdeen, for example.

The Convener: What we mean by a small rural office is a one-person operation. However, we can draw up a list of options and ask members to express a preference.

Do we need any more information from the Crown Office? Do we need to know more about how it measures work load increases? We have asked questions about how it calculates the number of staff that it requires. Another issue is the roles of legal and non-legal staff. We have received a submission from the union that represents non-legal staff. We may also want to seek details on recruitment, experience and retention of staff. We have received written evidence on the training of advocates depute and of legal staff. If members require further information, we should seek to obtain that over the summer. Do members agree that it would be useful to secure more information on how staffing requirements and work load are measured?

Members *indicated agreement.*

The Convener: Members will have seen in the press that a memo has been circulated in the Crown Office saying that no one is to speak to the committee unless they have been cleared to do so by the Crown Agent. That is probably not unusual and I do not really mind it, because the employees of the Crown Office are civil servants. However, we would like to think that, if we wanted to speak to a particular individual, we would be able to approach them and they would not be debarred from giving evidence. We are currently considering whom we would like to call to give evidence. We thought that we should establish whether someone wanted to give evidence before making a formal request that they do so. In my view, we should invite some regional fiscals to appear before the committee so that we can ask them about the situation in their areas.

Mrs Mulligan: Annexe B to the paper, which lists organisations from which we may want to take further written evidence, is fairly comprehensive. That evidence may help us decide which individuals or groups we wish to invite to give oral evidence. I will not rule anyone out at this stage but, once we have seen the written evidence, we can decide what points we want to pursue in oral evidence.

The Convener: From whom would members like to hear during the months following the recess? Would you like to hear from the police, from fiscals or from someone else on the list?

Scott Barrie: It would be useful to invite the police quite early, as there are a number of issues that concern the police in relation to the Procurator Fiscal Service. It is not just about procurators fiscal filing the reports and liaising with the police on possible prosecutions; it is also about the police time that is taken up giving evidence. There are many different aspects to that relationship. Additionally, we should take evidence from different levels within the police force; as we have heard, the view of one level in the force may be slightly different view from that of another. It will also be useful to take evidence from consumers of the court service, through organisations that represent victims and work with offenders and to ask about their experiences of the court process and the PF system. Those are the two groups that we should invite early on.

Mrs Mulligan: I agree with Scott Barrie. It is important that we take a range of views from throughout the police force and from different geographical areas.

The Convener: We could invite the Association of Chief Police Officers in Scotland and the Scottish Police Federation.

The inquiry will be quite detailed and we may risk losing our way—if we have not done so already. Using the terms of reference, we could draw up a couple of pages of common questions that we could ask every witness in addition to any specific questions. That would allow us to track all the evidence and plough our way through it. We could keep the answers for the record when we draw up our report.

Are there any other points?

Tavish Scott: I have a final point, concerning

"the perspective of victims, witnesses and next of kin",

which is mentioned in annexe B. In my constituency, citizens advice bureaux play a huge role in helping those groups, not only through giving advice. I expect that their national organisation will have a perspective to give on the Procurator Fiscal Service; local bureaux certainly do, as they have to deal with the system day in, day out. It is therefore worth asking them for evidence too.

The Convener: That is a good suggestion. We will add the citizens advice bureaux to the list of possible witnesses, as they have to deal with people asking about victim support.

That brings us to a logical conclusion on the inquiry. We will be working through the summer, so I ask members to keep in touch about any ideas that they have. We would like to be ready in September to step up a gear on the inquiry.

Scott Barrie: On the issue that Mary Mulligan raised at the beginning of the meeting, do we have any proposed dates for visits to the PFs' offices?

Gillian Baxendine (Clerk): We need to contact members, which we will do this week, and to confirm dates for the various visits at some point during the recess. It will depend on what suits the particular groups.

Scott Barrie: As five members are here, perhaps we could find out immediately after the meeting when members will be available during the recess.

Gillian Baxendine: Yes.

The Convener: Item 7 also relates to the Crown Office and Procurator Fiscal Service inquiry. Members have a paper setting out the role that an adviser might fulfil and suggesting potential candidates. Members are reminded that individuals' names should not be discussed in public. I invite the committee to agree in principle that we discuss the appointment of advisers.

Members *indicated agreement*.

The Convener: Do members have any comment on the role and qualifications—the CV, in other words—of the person whom they would like to appoint?

Members *indicated disagreement.*

The Convener: My only comment is that the adviser should be someone with experience of being in the Procurator Fiscal Service or dealing with the service. Other than that, they should have a legal background.

Members *indicated agreement*.

The Convener: As agreed, we now move into private session to discuss the details of the appointment of advisers.

11:14

Meeting continued in private until 11:30.

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ISBN 0 338 000003 ISSN 1467-0178