JUSTICE 2 COMMITTEE

Wednesday 8 May 2002
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
† 18th Meeting 2002, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Professor Christopher Gane (Adviser)

WITNESSES

Elizabeth Carmichael (Scottish Executive Justice Department)
Sharon Grant (Scottish Executive Justice Department)
Jo Knox (Scottish Executive Justice Department)
Gordon McNicoll (Office of the Solicitor to the Scottish Executive)
Jane Richardson (Scottish Executive Justice Department)
Stephen Sadler (Scottish Executive Justice Department)
Gillian Thompson (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

† 16th and 17th Meetings 2002, Session 1—joint meetings with Justice 1 Committee.

Scottish Parliament

Justice 2 Committee

Wednesday 8 May 2002

(*Morning*)

[THE DEPUTY CONVENER *opened the meeting at 10:01*]

The Deputy Convener (Bill Aitken): Good morning, ladies and gentlemen. The convener has been held up in Glasgow on parliamentary business, but I hope that she will join us shortly. We will get the show on the road. I welcome Professor Chris Gane, who is attending his first meeting as our adviser, and utter the customary admonition: all members should turn off their mobile phones and pagers.

Before we start the main evidence session, I want to deal with a couple of matters. We wrote to the Executive to ask for a family law update. The Executive has replied that its programme for the session contains a commitment to publish a draft family law bill; it hopes to do that before the end of the year. Thereafter, the timing of the introduction of the bill to Parliament will depend on the Executive's legislative priorities following the elections in May 2003. Members will be relieved that we will not be landed with a further complex piece of legislation at this stage.

We have received a letter that slightly corrects oral evidence that we took on 24 April for our inquiry into the Crown Office and Procurator Fiscal Service, when the Lord Advocate appeared before the committee. At column 1224 of the *Official Report*, Robert Gordon refers to "trainees" and "training grades", but he should have referred to new deputes. Specifically, 30 people have been offered posts as new deputes rather than as trainees. That should clear up any confusion.

Criminal Justice (Scotland) Bill: Stage 1

The Deputy Convener: The main item of business this morning is stage 1 of the Criminal Justice (Scotland) Bill. It gives me great pleasure to welcome the Scottish Executive officials who will speak to us about the bill. I ask Jane Richardson, who will lead for the Executive officials, to introduce the members of her team and speak to us briefly about the bill.

Jane Richardson (Scottish Executive Justice Department): We are grateful for the opportunity to give evidence on the general principles of the Criminal Justice (Scotland) Bill. I am the bill team leader; I also have policy responsibility for the public protection proposals in part 1 of the bill.

The committee will have seen from the policy memorandum that the bill deals with a broad range of criminal justice issues. Policy responsibility for the various topics ranges widely across the justice department. We have tried to limit the officials who are attending today's meeting to those with substantial interests in the bill. However, because we wanted to ensure that we would be able to answer members' questions, a number of us are present. It may be helpful if I take a moment to introduce my colleagues and briefly explain their interests.

Jo Knox works for the community justice services division and deals with victims' rights, which are covered in part 2.

Stephen Sadler is from the criminal justice division and has a variety of interests in the bill. He deals with the bill's proposals for a new interim anti-social behaviour order and a specific power of arrest for breach of a non-harassment order, as well as with the bill's proposals relating to bribery and corruption. Stephen is also responsible for the policy on trafficking in human beings, about which the Deputy First Minister wrote to the committee in his letter of 29 April.

Elizabeth Carmichael is head of the community justice services division and is here to deal with questions relating to the bill's provisions on sexual and other offence reports. She will also be able to answer questions on any issues relating to non-custodial punishments and local authority functions.

Alan Quinn is head of the parole and life sentences review division. He is responsible for the provisions in part 4 that deal with consecutive sentences and the release of prisoners.

Sharon Grant is from the community justice services division and deals mainly with the proposals for monitoring of offenders on release—

the electronic monitoring provisions in the bill—and for the establishment of drugs courts.

Gillian Thompson is from the civil law division and deals with the provisions in the bill relating to the physical punishment of children.

Finally, I introduce colleagues from the Office of the Solicitor to the Scottish Executive who are involved with the bill: Jan Marshall, Charles Garland and Gordon McNicoll.

The committee has received copies of the policy memorandum and the explanatory notes on the bill. Those provide a comprehensive explanation of the policy intentions and legislative provisions of the bill. We have also provided the clerk with extracts from relevant existing legislation, showing how it would be amended by the bill's provisions. We hope that members will find that helpful.

The key objectives of the bill are to protect the public; to provide victims with a greater role in the criminal justice process; to ensure more effective sentences; to protect children; to provide more effective means of dealing with young offenders; and to develop a modern and efficient criminal justice system.

The bill is in 12 parts. I do not want to take up too much of members' time, but I would be happy briefly to run through the bill's contents, if the committee would find that helpful.

Part 1 is concerned with public protection. It deals with the proposed new arrangements for the assessment and minimisation of the risk that is posed by serious, violent and sexual offenders, including those with a mental disorder. The key elements of the proposals are the setting up of a new body, the risk management authority, which we hope will become expert in the assessment and minimisation of risk; the introduction of a new lifelong sentence, the order for lifelong restriction, for serious violent and sexual offenders who present a high risk to the public; and arrangements for dealing with offenders with a mental disorder who are also high risk.

Part 2 is about victims' rights. The proposals would give the victims of certain crimes the right to make a statement about the impact of those crimes. Victims would also be able to obtain information about the release of their assailant and to make representations to the Parole Board for Scotland before a decision was made on that offender's release. The proposals would also extend police powers to pass on information about a victim to nominated agencies that can provide counselling and support.

Part 3 contains a variety of proposals for changes to the law covering sexual and other serious offences. Those changes include substantial increases in the penalties for possession, and possession and distribution, of indecent photographs of children. The proposals would give the court the power to impose an extended sentence for abduction and provide a legislative basis for certain recommendations in the report of the expert panel on sex offending, chaired by Lady Cosgrove, regarding reports to the courts.

Part 4 deals with custody, detention and the calculation of sentences. It also provides for the imposition of electronic monitoring or tagging of an offender's whereabouts as another licence condition.

Part 5 relates to drugs courts, which would be set up to deal with persons dependent on or with a propensity to misuse drugs. Under the proposals, a court may be designated as a drugs court and a judge, when presiding over a drugs court, will have certain specific powers to deal with offenders.

Part 6 deals with non-custodial punishments and includes the introduction of an interim anti-social behaviour order and a specific power of arrest for breach of a non-harassment order. It also provides for wider use of supervised attendance orders and restriction of liberty orders.

Part 7 deals with children's issues. It contains proposals to clarify the law on the physical punishment of children and provides the necessary power to enable Scottish ministers to set up pilot schemes to enable children's hearings to deal with 16 to 17-year-old offenders who are involved in petty offending.

Part 8 deals with a number of provisions that are intended to improve the efficiency of procedures for taking evidence, court procedures and other jurisdictional matters. Part 9 is intended to improve the effectiveness of Scots law in dealing with the international aspects of corruption and to comply with the UK's international obligations. Part 10 deals with the proposals to enhance the system of criminal record checks.

Part 11 deals with efficiency measures in relation to local authority functions and extends the funding powers for criminal justice social work to enable social workers to provide certain services to those who are arrested or detained in police custody. It also allows funding to be paid to groupings of local authorities. Finally, part 12 deals with a number of miscellaneous criminal justice matters.

I do not want to take up too much more of the committee's time, but it might be helpful for me to mention briefly the proposed amendments to the bill about which the Deputy First Minister wrote to the committee on 29 April. In that letter, the minister proposed to lodge two amendments at stage 2. The first would introduce a new offence of trafficking for the purposes of sexual exploitation,

and implement an European Union framework decision. The second proposed amendment would repeal the existing mandatory detention requirement under law for those who are acquitted of murder by reason of insanity. The amendment will make further changes to the associated provisions of the Criminal Procedure (Scotland) Act 1995 in order to ensure compliance with the European convention on human rights.

I hope that my brief summary of the broad policy objectives of the bill has been helpful. My colleagues and I are happy to deal with questions as best we can. If the committee agrees, my colleagues will reply directly to questions that relate directly to their interests.

The Deputy Convener: Thank you for that clear explanation. I now hand over to the convener so that we can begin to ask questions.

The Convener (Pauline McNeill): Good morning. I apologise for my slight lateness—I was taking part in a discussion on "Good Morning Scotland" on this very subject.

Bill Aitken (Glasgow) (Con): I gave the appropriate explanation, convener.

The Convener: Thank you, Bill.

I thank Jane Richardson for her opening statement. The bill deals with a range of topical issues that are, I am sure, important to the Executive. This morning, the committee wants to get a layperson's understanding of some of the technical aspects of the bill. I think that I speak for all members when I say that it would be useful to have practical examples of how the bill will affect the criminal justice system. I ask members to indicate if they have questions.

Bill Aitken: Would one of the witnesses run through the tagging process and the checks that exist?

Sharon Grant (Scottish Executive Justice Department): I will use the present restriction of liberty order projects as an example.

At present, a court may make an order to tag someone, restricting that person to a place, or from a place, for a certain number of hours a day up to a maximum of 12 hours restriction to a place and 24 hours restriction from a place. Both types of restriction may apply for up to a year. After the court has made the order, it is faxed to the electronic monitoring company, which records the details of the order on its computer system. The company then makes arrangements to visit the offender at home to explain the tagging process to him or her. It fits the tag—usually to the ankle—and installs a monitoring unit, which is like a small video box. The tag is a transmitter and sends a signal to the electronic monitoring unit, which is linked to a telephone line that sends a signal back to the electronic monitoring company's central computer system. If the offender leaves the place to which he has been restricted, the tag will send a message to the monitoring unit, which then alerts the electronic monitoring centre that a violation, or breach, has taken place. The contractors are obliged to follow up that breach within a certain time scale, first by telephone, to confirm that the offender is not available, and secondly by a visit to the offender's residence.

I should have said that, before the order is made, a pre-court assessment is undertaken by the social work unit, which discusses with the offender the issues around being restricted to or from a place and explains to family members what the restriction of the offender will mean for them.

10:15

Bill Aitken: Can you explain the mechanics of the system? How is the tag fitted? What happens if the offender takes it off?

Sharon Grant: If the offender takes off the tag, the system records a strap tamper. That sends a signal to the monitoring unit, which is followed up by the contractor in the manner that I described.

Bill Aitken: What time scale would be involved between the signal being sent and the offender being contacted?

Sharon Grant: Contact, by means of a telephone call, usually takes place within 15 minutes of the tamper.

Bill Aitken: What if the person is using a mobile telephone?

Sharon Grant: A land line would be used.

Bill Aitken: The system down south has a history of being circumvented. Are you prepared to guarantee that it is foolproof?

Sharon Grant: In the four years that we have been piloting the system, we have had no major incidents. The tag can be cut off, the offender can leave the house or can be late for their restriction period, but those would be breaches of the order. The contractors are obliged to notify the court that someone has breached their order and the court would take action at that point.

Bill Aitken: You said that there had been no major incidents. Would you care to outline the minor incidents?

Sharon Grant: The minor difficulty is that offenders who have chaotic lifestyles cannot be prevented from breaching their orders. However, the system is so exact that they cannot avoid detection. The monitoring unit always checks that the transmitter is working. The company performs 28-day equipment checks to ensure that

everything is working. The monitoring unit stores information for up to five days and the system is backed up with a battery in the event of power loss.

Bill Aitken: Does the company have any discretion about whether it reports breaches?

Sharon Grant: No. It is contractually obliged to report breaches.

Bill Aitken: To whom at the court would the breaches be reported?

Sharon Grant: The company would fax a brief report to the sheriff clerk's office, which would record the breach. The sheriff would then decide whether he wanted to cite the offender for the breach or take no further action.

The Convener: There are a few more questions on that topic. Once we have covered those, we will turn to the bill and move through it logically. There are a lot of important issues and I do not want to miss anything.

Stewart Stevenson (Banff and Buchan) (SNP): Are tagging orders available to people who live on their own?

Sharon Grant: Yes. However, an assessment is undertaken before anyone is tagged and that is taken into account by the social work department when it prepares its reports for the court. Factors such as whether someone is responsible for looking after their parents or has a pet are noted.

The system will be a direct alternative to custody if the provision in the bill is successful. If the offender fails the assessment, the only alternative is prison.

Stewart Stevenson: That means that the restriction is not necessarily to the space within the walls of the offender's home but could be a little wider.

Sharon Grant: No. Contractors usually restrict the area to the parameters of the home. If the offender goes out of their front door, a violation will be recorded.

Stewart Stevenson: So someone who lives on their own would be unable to leave their house to go shopping or do any of the other activities that a single person would require to undertake.

Sharon Grant: It depends on the hours of restriction. The court might consider the offending pattern of the offender. If the offender is prone to housebreaking in the evening, it is likely that the court will impose a restriction period of 6 pm to 6 am. There are offenders who housebreak during the day and the courts usually restrict them during that period, but they also take into account home circumstances. Quite a few assessments are made that are not converted into orders for reasons such as the person living on their own or having family commitments or arrangements that would cause difficulty.

Stewart Stevenson: I take it that the system can cope if the telephone line is damaged.

Sharon Grant: The system can cope with that. There is a back-up battery in the monitoring unit and in the transmitter that is worn by the offender. The monitoring centre will send out a monitoring officer who will remove and replace the box, and download the information into the computer system in the control centre.

Scott Barrie (Dunfermline West) (Lab): I have two brief points, one of which is about the technicalities of the tagging system. Are there such things as black spots, as there are with mobile phones?

Sharon Grant: When the monitoring officer goes out to install the equipment, he does a range check around the house. He checks to see whether the monitoring unit will pick up the signal when the offender is wearing the tag. At some point, he will ask someone to put their foot into a metal bath, because old metal baths sometimes block the signal. If the signal is blocked, the range can be adjusted or another monitoring unit can be fitted so that the signal will be picked up.

Scott Barrie: My second question picks up on an answer that you gave to Bill Aitken about the breach process. Would that process be akin to a breach of community service or probation orders, for which there is a formal court procedure, or is there a way of circumventing how the courts work?

Sharon Grant: It is a formal breach procedure in court. If an offender is cited, he has to appear in court. It depends on how quickly the sheriff wants to see the offender.

The Convener: When there is a breach or the offender has tampered with the tagging system or removed the tag, how quickly is he likely to appear in court? Is it a matter of days?

Sharon Grant: It can be anything from days to weeks before the offender first appears in court. I do not think that that is any different from any other form of community disposal. We are considering ways of fast-tracking breaches of community disposals.

The Convener: What types of offenders would the system be available to?

Sharon Grant: Over the four years of the pilots, the system has been used for a range of offences, such as theft by housebreaking, car theft, shoplifting, and some drug offences. The pilots have been pitched at high-tariff disposal, so the people who have been tagged are generally those whom the sheriff or courts are thinking of sending

to prison.

The Convener: Given that tagging is an alternative to custody, might the public be concerned that if those offenders who would have normally gone to prison commit a breach, it might be weeks before they go to court? If the offender has been convicted of housebreaking or car theft, the breach might leave them free to commit crime during that period.

Sharon Grant: In general, when the order is breached, it does not stop—the offender continues on his order. The electronic monitoring staff are trained to explain to the offender the seriousness of breaching the order. After a breach takes place, we find that the offender generally settles down. When the offender is given a court date, the monitoring centre gives an update report to the sheriff, which sets out the offender's compliance since the breach and states whether the offender has continued to comply with the order. The report may have an effect on the sheriff's determination of the breach of the order.

The Convener: Is the system costly to implement?

Sharon Grant: A six-month order costs about £13,000.

The Convener: Depending on which figures are used, that is not cheaper than prison.

Bill Aitken: It depends on which prison—

The Convener: Or on whether they are the unbelievable figures of Kilmarnock prison or those of the Scottish Prison Service.

The costs are similar to those for a prison sentence.

Sharon Grant: I am sorry, I understand that the figure is £6,000. The figure that I quoted was for a six-month prison sentence.

The Convener: Is that £6,000 for a six-month period?

Sharon Grant: Yes. The more offenders that are tagged, the cheaper the system becomes.

The Convener: I am sure that we will come back to that.

Bill Aitken: What happens if the offender needs to go to the dentist urgently and the dentist's surgery is a mile from the offender's home? How is that circumstance covered?

Sharon Grant: As far as routine dental and doctor's appointments are concerned, the offender is told, in person and by way of literature, that such appointments should be made, wherever possible, outwith the restriction period.

We recognise that emergencies arise, and we have had instances in which the offender or a close family member took ill and the offender had to go to hospital. In such an emergency, if the offender breaches the order without advising the monitoring centre, the centre will follow up. If the offender disappears for four hours and tells the monitoring centre that he has been in hospital, the centre will verify with the hospital authorities that the offender attended the hospital.

Bill Aitken: Let us say that the offender is one of those fellows who break into cars and houses. If he genuinely has a hospital appointment—an appointment card can be shown—what check is made that he spends all the time that he is missing from the house at the hospital?

Sharon Grant: The offender will show the appointment card to the monitoring centre. The centre will then telephone the hospital for verification of the time of the appointment. The centre will also verify the time that the offender left the hospital. If the appointment is likely to last for one or two hours, the monitoring centre will do a drive-by, which means that a hand-held monitoring unit is used to pick up signals from the tag. Monitoring centre personnel can stand outside the hospital with the monitoring unit and pick up the signal from the tag.

Bill Aitken: They can, but will they?

Sharon Grant: They do. They are contractually obliged to do so.

Bill Aitken: Thank you.

The Convener: Can the system interfere with hospital equipment, as do mobile phones?

Sharon Grant: No. The system has been tested. Offenders can go into hospital wearing their tags and have procedures carried out without the tags affecting hospital equipment.

The Convener: Thank you. We move to part 1 of the bill, which deals with protection of the public at large.

Stewart Stevenson: I have a simple question, which is in the context of criminal justice. Is it envisaged that the risk management authority could extend its remit over time to other risk management activities in other parts of the Scottish Executive?

Jane Richardson: Broadly, the idea behind the risk management authority is that it should deal with the risk assessment of and the risk minimisation of offenders. The authority's initial remit is envisaged to be the provision of guidance and advice on the risk assessment of and risk minimisation of offenders, with particular interest in the category of high-risk offender, which would attract the new sentence. However, it will be open to the RMA to develop its expertise on risk

assessment and risk minimisation in a wider field. The existing provisions would need to be extended to allow extension of the high-risk offender category.

10:30

Mr Duncan Hamilton (Highlands and Islands) (SNP): Why was it decided that the risk management authority should not be directly responsible to ministers? Will you tell us about the accountability of that body?

Jane Richardson: It was agreed that the authority should be at arm's length from ministers because of the nature of its work. We would like the RMA to become the centre of expertise on risk assessment and risk minimisation. After research and review, it was thought that the best way for the organisation to operate would be to work independently, but to be accountable through the public authority route. That would also mean that expertise that would not necessarily be available from central resources or central services could be employed to provide the service.

Mr Hamilton: Will you explain further your point about expertise? Why is it likely that there would be a deficiency of expertise if the authority were somehow closer to the Executive ministers?

Jane Richardson: The Executive does not necessarily employ people with the expertise required to work in the RMA. However, the RMA will be a public authority and will be accountable in that respect.

Mr Hamilton: For the sake of clarity, will you explain exactly how its accountability will work?

Jane Richardson: The bill will provide for the normal accountability route for a non-departmental public body. The authority will provide annual reports to Scottish ministers and the Scottish Parliament and will be structured in accordance with the statutory requirements for a public body.

The Convener: It would be helpful if the committee could have an overview of how orders for lifelong restriction will operate.

Jane Richardson: Certainly. I apologise, but I missed a point, which my colleague has pointed out to me. Ministers will also be able to issue directions to the RMA if they see fit, so there is also a degree of control in that respect. The bill provides for that.

On orders for lifelong restriction, the MacLean committee, which considered how to treat very high-risk offenders, concluded that it would be desirable for such people to be subject to a more constructed sentence. It is hoped that the potential for high-risk offending would be identified as early as possible and, where an individual is being prosecuted for one of the offences prescribed by the bill, either the prosecutor or the court—if the court sees fit—can consider whether, if there is a conviction, a risk assessment report should be completed on that individual. If that is the case and the risk assessment report shows that the individual meets the statutory criteria and is therefore high risk, the individual will be given an order for lifelong restriction. That means that, in respect of any other lifetime sentence, a punishment part will be set at the time of sentencing.

In addition, the individual will be the subject of a risk management plan, which will be their individual plan and which will accompany them for the rest of their life. Initially, the Scottish Prison Service will prepare the plan. When the individual approaches release, the plan will transfer with them to those who will be responsible for supervising them post-release. The provision will allow a lead authority to be responsible for the preparation and review of the plan, and reflects the steps that will be required to ensure that the risk posed by the individual is kept to an acceptable level as far as public protection is concerned.

Was that answer of help? Did I give you the information that you were looking for?

The Convener: Yes—that will do to start with.

If an order for lifelong restriction is in place, the plan will exist for the rest of an individual's life. As the years go by, what will that mean in practice for the offender?

Jane Richardson: That is where we will look to the RMA to produce guidelines, standards and a framework that the lead authorities that are involved in the care and supervision of the individual can work to. That will provide for consistency in the approach taken by those authorities. When the individual is still in custody, the risk management plan will deal with issues that the SPS may consider could contribute to the minimisation of the risk posed by the individual. Post-release, the plan will deal with supervision and treatment and with rehabilitation programmes.

The Convener: I am beginning to understand how the plan will operate, but I am not clear about what the plan will mean in practice for the individual. What is the lifetime restriction? Will the plan restrict what an individual can do and where they can go?

Jane Richardson: The plan could include restrictions on the individual's movements, in much the same way as conditions that are imposed by the Parole Board for Scotland could include such restrictions. However, the plan would be tailored more appropriately to the needs of high-risk offenders. The overall objective is to

ensure that the risk that the individual presents is kept to a minimum.

The Convener: Which agency will conduct the supervision?

Jane Richardson: The agencies that are responsible for offenders at present will remain responsible for them. When an offender is released, local authority criminal justice services will be responsible for maintaining supervision, looking after the offender and dealing with him in much the same way as they do at present, except that the supervision will be much more tailored to the individual's needs.

Mr Hamilton: I have a couple of questions. My first is partly based on Jane Richardson's comments on the option for ministers to direct the risk management authority. I am curious about the advantages of such a provision, given that the risk management authority will be a non-departmental public body. On one hand, the authority will have the advantage of independence, yet, on the other hand, that advantage is diminished by the ability of Scottish ministers to direct particular functions of the authority. In addition, it seems that ministers will have the power to make directions although they will not be responsible for the authority in a more direct sense. That seems to be a slight contradiction. Secondly, perhaps you could direct me to the provisions in the bill that will allow an appeal against a decision of the authority.

Jane Richardson: I will deal with your second point first, if that is acceptable. I take it that you are asking whether a direction issued by the risk management authority is appealable.

Mr Hamilton: Yes, exactly.

Jane Richardson: The bill makes provision to allow a direction of the RMA that is viewed as unreasonable to be appealed by the body to which the direction is given.

Mr Hamilton: I beg your pardon. Is the direction appealable by the individual who is affected by that direction?

Jane Richardson: The RMA has no control over individuals. It will be able to issue directions in the form of guidance to bodies such as the Scottish Prison Service or the local authority, which, for the purposes of the bill, are known as lead authorities. If the lead authority considers that the direction is unreasonable, it may appeal.

Mr Hamilton: I was asking about the link between responsibility and accountability. You were making an additional point about the fact that ministers could direct that body in a particular instance. It might be useful if you could give us a comparison with another NDPB in the same position. I can think of many where, technically, there is accountability but Scottish ministers say that they are not responsible and they cannot direct. What comparison would you give?

Jane Richardson: I can only refer to the provisions that we have set up. It is not necessarily helpful to try to compare with another NDPB. It is proposed to set up the RMA broadly following the guidelines for the setting up of new NDPBs. I understand that the power of direction is a routine power that ministers adopt in those circumstances.

Mr Hamilton: Can you give us an example?

Jane Richardson: I am sorry, but I am not familiar with many other NDPBs. As I said, we have followed the guidelines for the construction of an NDPB.

The Convener: The committee would find it helpful in understanding the status of the agency if the Executive could tell us whether it is a new arrangement or whether there is something to which we could compare it. Is that fair?

Jane Richardson: Yes.

The Convener: In relation to serious, violent and sex offenders, what is it about the provision that will make the public safer? The issue is protection of the public.

Jane Richardson: As I said earlier, the issue is about protecting the public. The proposal seeks to ensure that those individuals will be assessed and dealt with in a uniform way. They will be given an order for lifelong restriction and that means that they might be subject to supervision for the rest of their lives.

When the MacLean committee considered the current treatment of high-risk offenders, it acknowledged that there was a lack of uniformity in how those individuals were being dealt with. It is important to note that we are talking about a handful of people per year. That is not to undervalue the provisions in any way, but we are talking about a small number of high-risk people.

The MacLean committee established that those people were not being dealt with in a uniform way. Some were getting determinate sentences and others were getting discretionary life sentences. The proposal for the order for lifelong restriction will ensure that they are dealt with in a uniform way and that they will be subject to proper risk assessment and risk management for the rest of their lives.

The Convener: It would also be helpful if you could define what you mean by a handful. I realise that we are talking about a small number of offenders, but it would be useful to get some statistics. Is that possible?

Jane Richardson: We considered the issues and tried to apply a rule of thumb to the number of

individuals that get discretionary life sentences. We are looking at approximately 10 per year at the most.

Stewart Stevenson: Grampian police are incurring substantial additional costs in looking after the sex offender Stephen Beech. The orders for lifelong restriction will potentially involve geographical constraints and create quite significant workloads for police in particular areas. Is it envisaged that local authorities will be given specific funding for that burden that might be placed upon them?

Jane Richardson: The agencies that are responsible for high-risk offenders after they have been released will, broadly speaking, be doing what they are at the moment. However, the RMA, using an order for lifelong restriction, might be able to assist those agencies to do that in a more concerted and uniform way. The bill provides for the RMA to make recommendations to Scottish ministers if it thinks that additional funding might be required to assist a local authority or any other lead authority to implement a risk management plan.

The Convener: Part 2 of the bill deals with victims' rights. I know that members want to ask a few questions on that subject, but first it would be helpful to hear an outline of how the victim statement system would operate.

10:45

Jo Knox (Scottish Executive Justice Department): You will appreciate that this is a new process that is yet to be tested in the courts. For the first time, victims will have a right to have their feelings about a crime relayed in the court. We have consulted extensively and have sought to strike a balance between what needs to be in the bill to enable this scheme to operate and the administrative details that we will take forward by means of a steering group that will involve the key agencies.

We are proposing a limited pilot scheme so that we can evaluate it properly. What would happen is that when a crime that falls within the range of prescribed offences is reported, the police will inform the victim that they might have an opportunity further down the line to make a statement about the impact of the offence. If the perpetrator is caught and the case proceeds to court, the procurator fiscal, when he decides to proceed with the case—or earlier, in special cases, such as if he feels that there may be some danger to the victim—will contact the victim in order to allow them to make a statement.

It is proposed that, if they chose, the victim could make the statement unaided on a pro forma basis, but that a range of trained people would be available to help if that were necessary. That is important and will be developed as part of the detailed administrative arrangements. The statement would go to the procurator fiscal and would be placed before the court at the point at which there was a finding of guilt or a guilty plea was entered and sentence was to be passed. It will be possible for the victim to make additional statements if they want to update their position or if they think of something that they did not put into the initial statement.

Scott Barrie: When would the reports be compiled? Would it be prior to the trial or afterwards?

Jo Knox: The victim would be invited to make a statement at the point at which the decision was made to proceed with the case.

Scott Barrie: A person might be charged with a serious offence, but ultimately be convicted of a lesser offence and have certain charges deleted. If the victim statement made reference to some of the things that were contained in the original indictment—it might, for example, involve detailed descriptions of a physical assault—I can see that that might cause problems.

Jo Knox: There are problems in that regard and I have had discussions on that point with the Crown Office. We will have to give further consideration to how that can be dealt with in court as there is nothing in the bill that allows for amendments to be made to the statements. In the normal course of events, papers that are available to the court can be amended as charges change. We imagine that that would pertain to the victim statement as well, but it is a different piece of information and we must give serious consideration to the ways in which it might be amended.

Scott Barrie: How can we ensure that we do not give victims false expectations about the setting of the tariff for the offence? How do we make victims understand that, ultimately, it will still be the trial judge or the sheriff who will impose the sentence? How can we convey to people that this initiative will not be a complete change to the legal system?

Jo Knox: It is fundamental to the proposal that we achieve that awareness. The guidance that will be available to the agencies that are involved in advising victims and the guidance that is written for the victim will spell that out as clearly as possible. Part of the evaluation of the pilot scheme will be to see how successful we are in doing that. From the outset we would establish a culture that would ensure that people were clear about the purpose of the victim statement.

Scott Barrie: It is proposed that the age of 14 should be the cut-off point for a young person

being able to make their own statement and that it would otherwise be their primary carer who made the statement. Given that 12 is the age that is used when determining whether a young person can consent to medical treatment or legal representation, why was 14 chosen in this case? Might 12 be a more sensible age to choose, given that, in the arena of children's rights, there is a confusing panoply of ages for various things?

Jo Knox: You are right and, in the long term, we will probably choose to do what you suggest. One difficulty is that the initial proposals did not extend to children. That was simply because the scheme is untested. We are concerned about the implications of challenges to the victim statement. There is the possibility that the victim might be intimidated with regard to their statement and so on and we were seeking to protect children from the untested ramifications of the scheme. The bill allows for the age level to be reduced and we could give consideration to reducing it for the pilot scheme.

Stewart Stevenson: Would the victim statement be available to the accused or their representatives in advance of conviction?

Jo Knox: The bill does not allow for that at the moment.

Mr Hamilton: I understand the superficial attraction of the proposals and I think that most of the responses that we have received do so as well. However, I have a number of questions.

Victim statements, like the statements of the accused, are notoriously unreliable, as any practising lawyer or policeman would tell you. My brother is a policeman and he always says, "You have to remember that everybody—but everybody—lies to you." Given that such statements are unreliable, it seems odd that they will be produced unchallenged in court when every other piece of evidence or comment would be challenged. Am I right in saying that there is no right of rebuttal after the statement is given?

Jo Knox: It is intended that it will be subject to challenge.

Mr Hamilton: What would the challenge procedure be? On what basis would the defence lawyer challenge it?

Jo Knox: One would assume that matters of fact would be open to challenge. It would be hard to see how it could be challenged in terms of its impact. However, I suppose that certain aspects could be subject to challenge. For example, someone might say that the effects of the crime were such that they were unable to go outside their house, but they might have been seen outside.

Mr Hamilton: Have the rules of procedure that would govern that interaction, rebuttal and challenge been drawn up?

Jo Knox: No, not in detailed terms.

Mr Hamilton: Without those rules of procedure, how would we know whether victim statements could be challenged?

Jo Knox: I have been in discussions with the Crown Office about how those challenges could be made. We are giving the matter further consideration. It is crucial that victim statements can be challenged in court.

Mr Hamilton: When would the committee be able to see those rules of procedure and judge whether they are effective?

Jo Knox: The discussions that I have had with the Crown Office were uncertain as to the detail that would be required for the committee. However, we intend to complete that work as soon as possible.

Mr Hamilton: Can you give us a rough estimate? Will the rules of procedure be available in one, two, three or four months' time?

Jo Knox: They will certainly be available before the bill proceeds to stage 2.

The Convener: Let me clarify that point on behalf of the committee. If we are expected to scrutinise and determine whether the provisions on victim statements are workable, we would expect to receive the detail well before stage 2.

Jo Knox: I had not anticipated that those provisions would need to be in the bill, but we can certainly proceed on that basis.

The Convener: We have a constant debate with the Executive about the extent to which the committee scrutinises legislation. We have always taken the view that we want to consider the rules, regulations and procedures that accompany a bill. We are trying to ascertain whether the provisions on victim statements are practical and workable.

Jo Knox: I appreciate that.

The Convener: It would be helpful to receive that information—we can liaise with you on that point.

Mr Hamilton: This is a matter for stage 1. The bill contains the clear principle that victim statements should be capable of being rebutted. I would find it extremely difficult to proceed if the rules of procedure that govern the process of rebuttal cannot be stacked up with that principle.

I will ask a slightly different question. Is the policy thinking behind the victim statements initiative that sentencing is somehow inappropriate? In other words, are judges getting it wrong at present?

Jo Knox: No, not all. Victims feel that they do not have the opportunity to say directly what they feel about the offence. Matters of fact are related, but there is no information about how the offence has impacted on the victim psychologically. That is where the thinking has come from.

Mr Hamilton: If that is true, I am left confused by paragraph 68 of the policy memorandum, in which the Executive says:

"One of the key policy objectives is that the statements will"

have an impact on and

"inform the decision-making process."

I presume that either the statements will have an impact on—or change—the sentence, or they will not. If they are meant to change the sentence, as indicated in the policy memorandum, does that not imply that the present system is flawed?

Jo Knox: That is not the intended implication. The development of the idea of victim statements and the bill was driven by the views of victims and their need to have some part in the criminal justice process.

Mr Hamilton: But the thinking behind the provisions must have taken one of two approaches: either a victim statement gives the victim the opportunity to sound off and get their thoughts on the record, or it is an attempt materially to impact on the sentence that is to be passed down. If it is the latter, surely—by definition—the present procedure is not sufficient.

Jo Knox: In certain cases, the full panoply of information may not be available to the courts. A victim statement will be one aspect of the range of factors that a sentencer will take into account.

Mr Hamilton: Therefore, in your view, if we are improving the current process, it must be flawed.

Jo Knox: That is probably the victims' impression.

Mr Hamilton: But does that explain the policy thrust in the policy memorandum?

Jo Knox: The policy thrust behind the memorandum leads from the victim's perspective.

Mr Hamilton: So that is the policy thrust.

Elizabeth Carmichael (Scottish Executive Justice Department): The policy thrust comes from the "Scottish Strategy for Victims", which was published in January 2001. There are clear commitments in that strategy to increasing the participation of victims in the criminal justice system. Those commitments were the result of discussions that the Executive had and representations from victims' organisations. We considered the fact that there are victim statements in other jurisdictions; they have been evaluated and have been found to be useful. The policy thrust is to give victims a greater say and show them how the system works to their benefit. There seems to be a gap in perceptions. The policy thrust does not come from a problem with decisions that are being made, but victims might want a more transparent process.

11:00

Mr Hamilton: With the greatest respect, I understand that absolutely and accept that if there are problems with perceptions and people think that their views are not being listened to at a crucial stage in proceedings, that must be addressed. However, that is not the policy position that is outlined in the policy memorandum, which does not simply suggest that people should understand and participate in the process but includes a deliberate policy intention to impact materially on sentences that are passed down. Is that understanding correct?

Elizabeth Carmichael: That is not the intention. The intention is that victim statements will be taken into account with the other papers that go before the court at that time.

Mr Hamilton: So there is no attempt to impact on the type of sentences that are passed down.

Elizabeth Carmichael: Not directly. Victim statements will be part of the general papers that go to the court.

The Convener: I would like to be clear. I thought that the point of having victim statements was that the victim would feel more involved in the process and the judge could consider all the facts before sentencing, including the impact on the victim. If a judge in sentencing is not to make something of an impact statement, does the whole policy not simply fall apart? Surely the policy thrust must be to allow the judge in sentencing to take into consideration the impact on the victim.

Jo Knox: I am getting confused. That is certainly the intention. It is clear that I am missing a point that is being made.

The Convener: We will return to the issue.

Bill Aitken: I want to return to the issue of workability. I recall a case a few years ago in which Lord McCluskey deferred sentence in order to get a victim statement, but the court of appeal robustly threw out that decision. Did that happen?

Jo Knox: I am aware of the case.

Bill Aitken: So the High Court did not think that that policy was workable.

Jo Knox: We must consider further the stage at which a victim statement should be available to the court.

Bill Aitken: Has that been discussed with the judiciary?

Jo Knox: Yes.

Bill Aitken: What was its input?

Jo Knox: It responded to the consultation and raised issues that we are considering. That is one issue.

Bill Aitken: Would more distress to a victim be caused? Duncan Hamilton properly suggested that a victim statement will have to be tested and could result in the victim having to submit himself or herself to cross-examination. That could cause more genuine pain and grief to the victim.

Jo Knox: As my colleague Elizabeth Carmichael said, the policy was drawn up in consultation with victims' groups and a range of key agencies. We intend to pilot the scheme in a fairly limited way to evaluate its impact and effects before a further decision is taken to carry it forward. To some extent, I do not know the answer to your question. It is certainly possible that more distress could be caused.

Bill Aitken: Another point that struck me is that some people are more articulate than others. Some people might be able to put forward a particularly vivid picture of how an assault or rape affected them. Others who might have been more traumatically affected might not be able to be so articulate about their experience. How does one get around that anomaly?

Jo Knox: We propose to have trained advisers to assist people to complete their victim statement if they wish. They can be assisted in putting the words on paper, because it is going to be a written statement and not a verbal one.

Bill Aitken: Surely the exercise has to be spontaneous. I noticed that you stumbled over the term "words on paper". Is there not a problem with the possibility of putting words into people's mouths?

Jo Knox: The pilots for the procedures will help to show clearly where the problems are. We have taken a different route from that of the victim statement scheme in England and Wales, where the police take a victim statement following an evidential statement. One of the difficulties with such a procedure is that the victim statements have read like police evidential statements and have not proved to be particularly helpful.

The Convener: We will move on from that subject to part 3, but it might be helpful if you could clarify some of the issues we have talked about.

Stewart Stevenson: Given that England has recently moved to introduce a formal definition of rape into statute, rather than relying on common law, was that considered for the proposed bill?

Stephen Sadler (Scottish Executive Justice Department): In light of the High Court decision on the Abernethy judgment, our opinion at the moment is that that is not necessary.

Stewart Stevenson: In some quarters, it has been suggested that part of the reluctance of juries to convict when there is an accusation of rape is because of the absence of a lower category of offence—something that might be described as serious sexual assault. Was that considered when the proposals were being formulated?

Stephen Sadler: It was not considered. There are no grades of rape. It is a particularly serious and horrific crime and there is no intention of having sub-categories.

The Convener: As there are no other questions and we have dealt with part 4, we will move on to part 5.

Mr Hamilton: I wanted to ask a question on section 22 in part 4, which refers to the creation of a new post of "police custody and security officer". What is the definition of "police, custody and security officer"?

Jane Richardson: I am sorry. Our colleague who deals with that is not here today. Would it be convenient if we got back to the committee on that question to make sure that you get a proper answer?

Mr Hamilton: It is not my day, is it?

The Convener: We have a long list of things to do and that is on it.

We move on to part 5.

Stewart Stevenson: In formulating the proposals to introduce drugs courts—something I support—are we satisfied that there are sufficient resources in appropriate parts of Scotland to provide the drug treatment and testing that might be ordered by a drugs court?

Sharon Grant: The areas that are piloting drugs courts are in Glasgow and Fife, where drug treatment and testing order schemes have been established in the courts. We have built on the resources for those schemes and are resourcing the agencies that are involved in delivering the service in treatment and the court process.

Stewart Stevenson: I understand that there are no such facilities in the Highlands and that, in the north-east, there is a six-month waiting list for drug treatment. In the context of due legal process, is it considered adequate that people should have to wait for such a lengthy period, or that they should have to move out of their own area?

Sharon Grant: I will pass that question to Elizabeth Carmichael.

Elizabeth Carmichael: It would be helpful to know whether you are asking about DTTOs or about planning a drugs court.

Stewart Stevenson: My question is about DTTOs specifically. I envisage that the introduction of drugs courts will, in turn, lead to people being diverted from custodial disposals to disposals that will place a heavier burden on drug treatment facilities. I welcome that move, but wonder whether the introduction of drugs courts will work if the parallel facilities are not in place. I am trying to establish the extent to which you have considered that issue or planned a response to it.

Elizabeth Carmichael: We have tried to plan for DTTOs, which are the only orders that pay for treatment in addition to the criminal justice matters that they cover. DTTOs are quite expensive, but additional resources are attached to each DTTO to pay for the necessary treatment. We use DTTOs before we set up a drugs court, because they help to build up the resources and treatment facilities in an area.

When we consider setting up a drugs court, we work closely with our colleagues in health who deal with the drug strategy. Additional resources are directed at the areas in which there are drugs courts. For example, additional money from health has gone into Glasgow and Fife to ensure that services are provided. I cannot talk about the provision in general of health services but, in the criminal justice system, we accept that the provisions in the bill will not be successful unless the treatment facilities exist to support them. We are providing the money to build up those facilities.

Stewart Stevenson: What do you regard as the maximum appropriate period of time between the DTTO being imposed and the start of treatment?

Elizabeth Carmichael: Reviews take place at monthly intervals. Therefore, the treatment plan should be in place a month after the order has been imposed. My colleague who deals with DTTOs is not here, but I have not heard of problems with delays in getting people into treatment under DTTOs.

Stewart Stevenson: Therefore, the criminal justice system is managing to get treatment for people who have serious drug problems within relatively short periods of time, although people outside the criminal justice system experience serious delays.

Elizabeth Carmichael: We have considered that point, too. That is partly why we put in additional resources. We did not want the policy objective of promoting drug treatment for offenders to lead to longer waiting lists for other people. Ministers have put in additional resources to support the criminal justice policy objective. I cannot speak for the health side of the matter, but I know that people will not have to wait longer because of the action that is being taken.

The Convener: Part 6 deals with non-custodial punishment. I would like to clarify the provisions on non-harassment orders. Do those provisions refer to the Protection from Harassment Act 1997? How do they fit in with non-custodial punishments?

Stephen Sadler: Yes, the provisions relate to the 1997 act. The bill provides for a statutory power of arrest for breaches of non-harassment orders. The consultation on stalking and harassment clearly identified that gap in the legislation.

The Convener: What does that mean? Why are non-harassment orders included in part 6? Are you creating a new offence, or are you changing the way in which such orders are used?

Stephen Sadler: A non-harassment order—that is, an order to prevent harassment from occurring—can be civil or criminal. The consultation suggested that the effectiveness of such orders was reduced by the absence of an automatic or statutory power of arrest in the circumstances of an order being breached—another offence needs to be committed at the same time as the breach occurs. The bill is intended to increase the effectiveness of the existing non-harassment orders.

The Convener: Therefore, the bill will amend the 1997 act.

Stephen Sadler: Yes.

Scott Barrie: On the proposal for an interim anti-social behaviour order, I think anything that speeds up the court process is to be welcomed. One of the disadvantages with the orders is the complexity involved and the length of time that it seems to take to get through the court procedure. However, I am concerned that we might be introducing another hurdle in the process and making the process longer. I hope that it is not the intention that local authorities will have to go through an interim procedure before they get to the full hearing.

11:15

Stephen Sadler: It is intended that, the first time that the case comes before the court, the sheriff will be able to impose an interim order, which will stay in force subject to any decision of the substantive hearing. At present, there are delays while the case is rescheduled. The proposal will mean that the decision can be made at an earlier stage, not that there will be an additional hurdle.

Scott Barrie: I appreciate that but, presumably, an individual would be able to appeal an interim order and that could lengthen the process.

Stephen Sadler: There will be a right of appeal, but the interim order will stay in force pending the outcome of the appeal. The order will be in force and effective from the first hearing, which will help to achieve our policy objective, which is to try to stop the anti-social behaviour or nuisance at the earliest opportunity. Under the proposal, the order will take effect at an earlier time than it does at present.

The Convener: Has the Scottish Executive considered the creation of a specific offence to deal with stalking and harassment? We contributed to that consultation process and I wondered whether that idea had been considered.

Stephen Sadler: A comprehensive research project is under way into the nature and prevalence of stalking and harassment in Scotland. The research is due to report in September. There is nothing in the bill to deal with stalking as we are awaiting the outcome of the research and consideration of the findings.

The Convener: Part 7 deals with children and contains a controversial proposal. I have received a letter from the Executive, which says that the policy objective is to refer as many 16 and 17-year-olds as appropriate to the children's hearing system. It is unclear to me so far what is meant by "appropriate" and I have heard varying interpretations of the way in which the provision in the bill would be used. Earlier, Jane Richardson used the phrase "petty offending", but the correspondence that I have had talked about "appropriate offenders". We are not clear about what sort of offenders the pilot scheme would apply to. Could you clarify that?

Elizabeth Carmichael: It is probably my letter that you are talking about. The advisory group on youth crime was concerned that there seemed to be too sharp a division between the children's hearing system and the adult court system. As a result of that, young people aged 16 and 17 were going through the adult court system quickly and were heading towards custody. The advisory group wanted a bridging system that would allow an easier transition.

It was never the intention that serious or violent offenders would be included in that new system; the group's concern was with the petty offenders and persistent nuisances who are at the critical stage in their development at which they will decide whether to desist from offending or to progress into more serious and frequent offending. The proposal was that they be dealt with in the children's hearing system. However, the Lord Advocate will revise the guidelines to set out what is appropriate. It will then be up to the individual procurator fiscal to decide which young offenders would be referred. There are a number of backstops. When we considered the list of 16 and 17-year-old offenders, we were looking at crimes of dishonesty, such as shoplifting and pilfering, which are not serious offending. That is the definition that is being used. I hope that that helps.

The Convener: It helps a bit.

The Executive must be clear. Is it using the phrase "petty offences" or "crimes of dishonesty"? You are further confusing me by talking about "crimes of dishonesty", because we have talked about "petty offences" and crimes that are "appropriate". Now you are saying that the term is "crimes of dishonesty". I want to get to the issue of whether the general public would see them as petty offences. We need some clarity from the Executive. Which 16 and 17-year-olds are going to be referred the children's hearing system who are not under a supervision order already?

Elizabeth Carmichael: The problem starts at age 16. If the person is under a supervision order, they could still be retained in the children's hearing system. The problem is those who come into the adult system at 16.

For nuisance value cases, we have introduced diversion from prosecution. That is another way to stop young offenders from going into the court system and will happen when the fiscal decides that it is not in the best interests of the public to prosecute.

The Convener: That definition is far too wide, which is a problem. I do not know whether it is just me but there seems to be no clarity as to offences or the definition of the term "nuisance value". I am sure that the committee wants to understand what nuisance value cases might be. They might be referred to as nuisance value cases but the public might see them as something else. Are you saying that we should allow a provision in the bill that is wide enough to let procurators fiscal do what they want?

Elizabeth Carmichael: I was trying to explain—and I obviously have not made it clear—that diversion from prosecution stops a group of low-level offences from going to court.

At the moment, offences at the next stage up are going to court. Those offences are persistent and petty and are mainly crimes of dishonesty. The proposal is that they will no longer be dealt with in the court system. It is also important that that is done on a pilot basis because we recognise that the proposals will have to be tested.

Scotland has a high custody rate, which is being fuelled by the number of young offenders who are coming into the system. The advisory group did

not discuss holding them in the children's hearing system as it is at present; it considered providing additional resources to the children's hearing system so that there would be additional offenders' programmes that the system could use for those young offenders. The children's hearing system would also be supported by multi-agency teams, or local authority teams working with children and families, plus criminal justice social workers. We would recruit and train new panel members for children's hearings.

That all has to be put in place before the pilots start so that it can be tested. That is the groundwork that has to be done before we consider the pilots.

The Convener: I understand the policy objective. However, the Executive must be clearer about which 16 and 17-year-olds would go into that system. Are you saying that the new system will take as many 16 and 17-year-olds as possible?

Elizabeth Carmichael: No, it will take them only where appropriate. The difficulty is that although the policy can say what group will be targeted for the pilots, the Lord Advocate, as the independent law officer, will issue guidelines to make that happen.

Scott Barrie: I want to follow on from Pauline McNeill's questions. The terminology that is used is important. The Scottish Executive's policy memorandum refers to

"16 and 17 year old minor offenders".

We need to be clear about the type of offences that we are discussing. I am broadly sympathetic to what the Executive is trying to achieve. There are many positives, particularly for first-time offenders who may have committed an offence around their 16th birthday and have never been in trouble before, but suddenly find themselves in an adult court system. It must be conceded that the adult court system does not deal with some 16 and 17-year-old offenders—even repeat offenders—particularly effectively. In some areas, there will be a series of deferred sentences.

The Convener: Do you have a question?

Scott Barrie: I was leading to it. It is important to be clear. Will the tariff system that exists in the adult court system be used to determine broadly which cases should be referred back to a children's hearing? If a sentence of no more than three months' custody is attached to an offence, could that offence be considered by the children's hearing rather than by the court, which could impose a sentence of three years?

Elizabeth Carmichael: We were looking at lower-level summary offences. I checked the figures this morning. Some 58 per cent of all young offenders are given sentences that are under three months. We are considering that group. The Executive is considering the group more broadly, as we are concerned at the high number of short sentences in prisons. The SPS has openly said that it finds it difficult to deal with people on such short sentences. That is not an argument for longer sentences, but more effective work in reducing reoffending might be done in the community not only with young offenders but with people who receive three-month sentences. The concern about young offenders is that their rate of reoffending is much higher. We are grappling with that issue.

Scott Barrie: Is there any way of putting that in the bill or making it clearer that that is the Executive's intention?

Elizabeth Carmichael: That is a good idea. We will need to take it away and consider it.

Mr Alasdair Morrison (Western Isles) (Lab): I have read the notes and the submissions and I would like further clarification of what is intended by section 43.

Gillian Thompson (Scottish Executive Justice Department): The intention behind section 43 is to clarify the law so that parents and courts have a better idea of what constitutes reasonable chastisement.

Mr Morrison: I have read the submissions by members of the public and a whole host of organisations. I am alarmed by the frequency with which the wooden spoon is deemed a reasonable form of physical chastisement. Would a wooden spoon be regarded as an implement? Will you define what is covered by the word "implement"?

Gillian Thompson: We decided not to define implement in the section so as not to rule anything out. That leaves the court the opportunity to examine what is deemed to be an implement. I suggest that it would regard a wooden spoon as a prohibited implement.

Mr Hamilton: I have three questions. In case I am confused, section 43(3) mentions

"(i) a blow to the head;

(ii) shaking; or

(iii) the use of an implement"

as not "justifiable assault". I want to be clear. Does that refer to everybody under the age of 16?

Gillian Thompson: Yes, it does.

Mr Hamilton: So it applies to everybody under 16.

Gillian Thompson: That is correct. In any case that involves somebody under 16, those elements would be excluded from the defence of reasonable chastisement.

Mr Hamilton: I have two questions on your policy memorandum. Paragraph 231 says:

"The aim of section 43 is to help parents and carers avoid unnecessary and excessive physical punishment. The Scottish Executive has commissioned research which will establish a base line for the incidence of physical punishment in Scotland, of injuries to children, and of parental attitudes to physical punishment."

It strikes me that that would have been much more useful before the bill was introduced.

11:30

Gillian Thompson: The intention behind the research that we have commissioned is to establish a baseline by which we can measure the effect of the bill after it has come into force. A number of fairly well-recognised pieces of research exist on the physical punishment of children and its effects on them. If the committee would like to have copies of some of the available empirical research, I am happy to make those available to you.

Mr Hamilton: That would be useful. We will take you up on that. Am I right in saying that it might have been useful to know the parental attitudes in Scotland on the issue before we kicked the process off?

Gillian Thompson: We consulted in 2000 on the physical punishment of children.

Mr Hamilton: You had 220 responses.

Gillian Thompson: We did, but within those 220 responses were a number of organisations that took account of the views of large numbers of parents. That is not only 220 responses.

Mr Hamilton: I understand that, but we are still talking about a tiny fraction of the population having responded on a potentially divisive issue.

Gillian Thompson: We put the consultation on the web and tried to make it as widely available as possible.

Mr Hamilton: I have a question on one of the alternative approaches that you highlight in the policy memorandum—the no-change option. You state that the problem with no change is that

"there would be no clear statement of the law in statute, and parents would have to be advised on the basis of cases under the common law."

There is an argument that states that that is precisely the kind of flexibility that you have just advocated for fiscals and the legal system in general—to be able to take the matter on a case-by-case basis. Why does the Executive view the direction of parental attitudes as a matter for legislation and statute? Why is legislation the appropriate response to the problem?

Gillian Thompson: The bill picks up on a number of things that have developed over the years, beginning with the Scottish Law Commission's report in 1992, which recommended changes to the law on physical punishment. That was followed by a European Court of Human Rights case, although that related to a case south of the border. The United Kingdom Government at that time accepted that the law had not acted sufficiently to protect the individual concerned. What we are setting out in statute on the ban and the aspects that the courts have to consider is based on the A v UK judgment of 1996.

Mr Hamilton: As you outline in the policy memorandum, the common-law position is that

"physical punishment of a child will normally constitute the common law crime of assault, but there is a right to administer moderate physical punishment to a child."

Gillian Thompson: That is the common-law position.

Mr Hamilton: Do you have examples of cases in which that common-law position has proved to be insufficient? Will you provide the committee with such examples so that we can see exactly the kind of case that you are trying to combat?

Gillian Thompson: I can provide the committee with some information about a case that was drawn to our attention some time ago.

The Convener: I am sure that you are as alarmed as everyone else by how the bill is constantly referred to as the smacking bill. I hope that we can let others see that there is more to it than that. However, as you can imagine, that is the provision on which we have had the most submissions so far. It is one of the most controversial provisions in the bill. I am interested in the practicalities of implementing such a provision. I presume that the starting point would be that it would be a criminal offence to smack a child under the age of three. Is that correct?

Gillian Thompson: That is correct.

The Convener: Given the fact that Scots law requires two sources of corroboration, how would the provision work in practice? If someone saw a parent smack a child under the age of three at a supermarket and decided to report that, what would happen?

Gillian Thompson: Gordon McNicoll might want to comment on that. Many people have commented on the issue of such situations at supermarkets. However, reports are already made in connection with suspected difficulties with children and parents. It would be for the police to decide whether a situation had occurred that required them to investigate further.

In relation to the corroboration of evidence, a decision would have to be made as to whether it was in the best interests of the child to ask them to

give evidence. Failing that, it would have to be ascertained whether there was any medical evidence of physical injury to the child. Beyond that, there might be consideration of whether it was in the public interest to pursue the case.

Gordon, do you want to add anything?

Gordon McNicoll (Office of the Solicitor to the Scottish Executive): No, I have nothing to add to that.

The Convener: You are suggesting that, in such circumstances, corroboration would concern whether there were signs of physical assault on the child and the testimony of the witness.

Gillian Thompson: The situation would be no different from the current arrangements. We are not introducing any special arrangements relating to the bill.

The Convener: Does that mean that someone would have to examine the child at an early stage?

Gillian Thompson: That might be the case, yes. It would depend on the individual circumstances. It is difficult to talk about what might happen in theory.

The Convener: Has the Executive considered whether it would be possible to get forensic evidence of smacking, as distinguished from evidence of assault against a child with an implement or by a battering?

Gillian Thompson: No. So far, we have not pursued the issue of forensic evidence in relation to smacking children.

Bill Aitken: Is it not true that most smacking incidents occur in the home?

Gillian Thompson: I suppose that that view could be taken.

Bill Aitken: How, then, could a case of this type be proved except by having closed-circuit television in every house? The provision seems to be unenforceable and lacking in credibility.

Gillian Thompson: The Executive regards it as no different from any other law that prohibits actions that might take place in the home.

Bill Aitken: Surely it is. This is a very intrusive provision. The convener is correct to say that it is unfortunate that section 43 has attracted such attention. However, it is controversial because it is regarded by many as intrusive and an unwarranted interference in the way in which people bring up their children.

Gillian Thompson: The Executive believes that the bill strikes the right balance between the desire to protect the most vulnerable members of society from unintentional harm and the desire not to impinge on parents' right to bring up their children as they see fit.

Bill Aitken: If the harm was unintentional, there would be no mens rea and therefore no crime.

Gillian Thompson: That is true. However, the intention behind section 43 is to clarify the law so that people are in no doubt that, in certain instances, it is against the law to chastise their children physically.

Bill Aitken: As has been said, surely the common law of assault applies. If someone took an implement to their child, that would normally be assault. If someone smacked a child long and hard and unnecessarily, that would also be assault. The courts have upheld that view in recent cases. Why is legislation needed?

Gillian Thompson: As I have explained, when drafting the bill, we looked back at the development of views on physical chastisement in the past few years. The A v UK judgment on the factors that must be taken into consideration suggested to the Executive that there might not be a standard approach to such cases throughout Scotland. We will put it beyond doubt that using implements, shaking and blows to the head will be illegal acts. Ministers have said that there is an age below which children should not be hit.

The Convener: I remind members that some questions are for ministers. Officials can answer only to an extent.

Bill Aitken: I will return to the current law. I am not certain of any appeal court judgments on appeals by the Crown against the acquittal of a person who has been accused of assaulting a child through unreasonable physical chastisement. Do any such judgments exist?

Gordon McNicoll: I am not aware of any such judgments.

Scott Barrie: Why was the age of three decided on? The provisions are neither fish nor fowl: they do not impose a complete ban, but they do not leave the law as it is. Surely that is a poor compromise.

Gillian Thompson: Ministers took the view that they wished to protect the most vulnerable children and that there was an age below which smacking should not take place. It is reasonable to argue that, up to the age of three, children are developing mentally and physically and that most harm might be done up to that time. Research suggests that, up to the age of three, a child might not understand the intention behind physical punishment and that, before the age of four, a toddler's ability to understand notions of right and wrong is limited. That evidence is listed in the material that I can give the committee today.

Mr Hamilton: The answers to Mr Aitken's

questions brought some issues to mind. A v UK sets out four aspects that the court must take into account: the nature and context of the punishment; the duration and frequency; the physical and mental effects on the child; and the personal characteristics of the child, including sex, age and state of health. Which of the three acts that the bill specifies would not be covered by those factors? I presume that a blow to the head, shaking and the use of implements would all be covered, in addition to the common-law position.

Gillian Thompson: Ministers have taken the view that it is right to set out, so that it is completely beyond doubt, what courts must take into account when considering such cases. I can add nothing to that position.

Mr Hamilton: That is the position that ministers have taken, but—

Gillian Thompson: That is the position. That is what the bill sets out.

Mr Hamilton: I understand that. My question relates to the need for the bill. I suggest that each of the aspects that we seek to enshrine in the bill is covered by the factors from the case that you quoted, let alone the common-law position. What has been added?

Gordon McNicoll: The purpose of listing the factors is to put it beyond doubt that they must be considered by the court.

Mr Hamilton: Which factor is in doubt? If we take into account the A v UK case that you mentioned, which factor is not covered?

Gordon McNicoll: Listing the factors puts it beyond doubt that each of them must be considered. There will be no doubt that in all cases the sheriff will have regard to all the factors.

Mr Hamilton: Who is in doubt? I do not see the element of doubt that the bill tries to remove. Which of the factors is in doubt and who is in doubt?

Gordon McNicoll: With respect, it is not for me to speculate about who is in doubt. The intention of ministers is to make it clear that courts will consider the factors in all cases that involve the physical punishment of a child. The matter will not be in doubt, because the factors will be set out clearly in legislation.

11:45

Mr Hamilton: Do you have evidence that the courts do not take those factors into account or that the law does not work?

Gordon McNicoll: As has been explained, the purpose of the provision is to clarify the law. It might be that in 99.9 per cent of cases—perhaps even in 100 per cent of them—the court considers all the factors, but the view of ministers is that, to put the matter beyond doubt, the bill should specify that the factors must be taken into account.

Mr Hamilton: Did you say that it is possible that in 100 per cent of cases there is no doubt whatsoever? It might well be that the bill deals with a situation that does not arise.

Gordon McNicoll: The bill is intended to make it clear beyond doubt that courts must consider all the factors.

The Convener: I must stop you there, Duncan. Some of those questions are clearly for the minister. I promise that you will get the opportunity to ask them again when we hear from the minister.

George Lyon (Argyll and Bute) (LD): I have a question on that point, convener.

The Convener: I will come to you. Stewart Stevenson is first.

Stewart Stevenson: The minister helpfully responded to the suggestion that I made in the committee last year that a survey should be conducted on the incidence of physical punishment on children. Given this morning's discussion on the lack of clarity in the public's mind about the present law, the need to clarify the law and Mr McNicoll's reasonable reluctance to speculate about who is in doubt, is it the intention to do any research or survey work to establish how far the public is in doubt? That fact seems to underpin the justification for proceeding with section 43 as it is cast.

Gillian Thompson: I believe that the research that we have commissioned will be available in the late summer. A range of questions are being asked of people who have young children. We are considering those issues and examining the incidence of the use of physical punishment and people's attitudes to it. We are also examining people's knowledge of the present system and of the proposed changes.

Stewart Stevenson: Does that address my point about testing people's understanding of the present legal requirements?

Gillian Thompson: Yes.

Stewart Stevenson: Will the introduction of an age limit in section 43(3)(a)—whatever it might end up being—increase the risk of chastisement for those above the age limit? How do you plan to monitor and test that?

Gillian Thompson: Ministers have made it clear that, aside from the legislative vehicle of section 43, the Executive supports organisations that promote positive parenting strategies and alternatives to physical punishment. It has been suggested that if no smacking is allowed up to a

certain age, parents will start to smack their children after that age. We hope that parents will always think twice before they smack their children.

A lot of alternative strategies are available. The Executive is working on an implementation plan, which will include an information campaign to explain to parents what the new law means. It will also point out other sources of information from which they can get support to manage children who have behavioural difficulties and gain an understanding of alternative strategies to smacking their children.

Stewart Stevenson: It has just occurred to me that I should ask this question. To your knowledge, will the results of the research be available prior to the closing date for the submission of amendments at stage 2 by MSPs?

Gillian Thompson: Yes. I anticipate that the final results should be available by August, which means that we will see the evidence before we move into stage 2.

George Lyon: I want to follow on from Duncan Hamilton's comments. For the sake of clarification, are you going to present us with evidence of court cases where prosecutions have failed due to a lack of clarity in the law?

Gillian Thompson: I have information about a particular case where—

George Lyon: Just one?

Gillian Thompson: At the moment, yes. Between now and when we write to the committee we will perform some investigations.

The Convener: That deals with part 7 of the bill. Part 8 deals with evidential, jurisdictional and procedural matters. Are there any comments or questions from committee members on that part? If there are none, part 9 deals with bribery and corruption.

Stewart Stevenson: Will the responsibility that is outlined in section 55 extend to actions that are undertaken by foreign nationals employed by a Scottish-domiciled person, partnership or company?

Stephen Sadler: If the actions are taken on behalf of a UK company, the legislation will apply.

Stewart Stevenson: That means that quite an onerous burden may be placed on companies operating from Scotland or the UK.

Stephen Sadler: Yes. The terms of the international agreements that the UK has signed up to are clear that domestic legislation needs to be clarified in this way.

Stewart Stevenson: Is it envisaged that the preferred way forward in such cases would be for the foreign national to be dealt with under their own jurisdiction?

Stephen Sadler: In this legislation we are taking steps to ensure that they could be dealt with under Scottish jurisdiction. Individual cases may fall to be decided on the circumstances of the case itself.

Stewart Stevenson: But the bill does not seek to extend the remit of Scottish law to cover the foreign nationals.

Stephen Sadler: No, not as far as I am aware, but if that is not correct I will write to you.

The Convener: Part 10 deals with criminal records. There are no questions on that part. Part 11 deals with local authority functions. There are no questions. Part 12 deals with miscellaneous and general provisions. I have a question on public defence. I am aware that some research has been carried out on that subject but, to my knowledge, there has been no parliamentary discussion of the principles of the Public Defence Solicitors Office. Could you shed light on why the provisions in part 12 are being brought forward, given that an independent evaluation is being carried out?

Jane Richardson: My colleague who deals with the PDSO is not with us today because, as I said, we were trying to keep the numbers down. My understanding is that the proposal in the bill is a fairly minor one, and is intended to enable the experiment to run beyond the time set out in the sunset clause in the primary legislation. I also understand that further research will be undertaken into the operation of the PDSO scheme. We can provide you with further clarification.

The Convener: That would be helpful. Do you know why there is a need for further research? Is it because the first results were not liked?

Jane Richardson: I think that it is required to continue to prove the exercise, but I will clarify that point for you.

The Convener: Professor Christopher Gane is here, but he cannot directly ask questions. Professor Gane, is there anything that you think the committee needs to ask?

Professor Christopher Gane (Adviser): No. I think that we have covered the issues fully.

The Convener: We will take one more question before we let the witnesses go.

Stewart Stevenson: Section 61 refers to civilian police custody and security officers. Is it intended that they will be granted the status of prisoner custody officers, or is there another formal way by which civilian police custody and security officers will be licensed and regulated?

Jane Richardson: My understanding of the arrangements in section 61 is that they enable the setting up of this new type of officer under the control of chief constables.

Stewart Stevenson: Is it intended that there will be a central register at a Scottish level, as there is for prisoner custody officers?

Jane Richardson: I imagine that once the procedure is set up, that will be examined.

Stewart Stevenson: Some further clarity on that would be helpful to the committee.

The Convener: We will come back to that topic. That is the end of our questions for today. I thank all the witnesses. I know that it must have felt like a grilling, but we try to do our job as a committee. This is an important bill, and we want to draw out all the details so that we are not just concentrating on one or two controversial areas. We are grateful for the evidence that you have provided this morning. You are going to get back to us on a number of issues. I do not know if you need a summary of those.

I am particularly keen that Executive officials and the Minister for Justice clarify some of the policy objectives behind this bill, because from the committee's point of view it is not a good starting point that the policy objectives behind victim support statements and children's hearings are not absolutely clear. I know that your person was not available today to clarify the precise details on prisoner custody officers, but we would like more information on that. There were one or two other issues that we would like more information on. The *Official Report* will tell us what is outstanding. Once again, thank you very much.

Coffee is available. Would committee members like to have some, then come back to discuss the further evidence that the committee would like to take and then deal with the petition? We will take a short break.

11:57

Meeting suspended.

12:11

On resuming—

Petition

Paedophiles (Sentencing) (PE490)

The Convener: Item 2 on our agenda is public petition PE490. I refer members to paper J2/02/18/6, which is a note on the petition. Paragraph 7 suggests that the committee should take the petition into account when scrutinising parts 1 and 3 of the Criminal Justice (Scotland) Bill. I ask members to note that the petition has received significant support—5,000 signatures.

Stewart Stevenson: It is right that we should take account of the petition. However, the bill offers considerable scope. Section 1 introduces orders for lifelong restriction; section 18 increases the penalties for paedophiles for having, and for supplying, pornographic photographs from the current six months and three years respectively; section 20 makes assessment mandatory on release; and section 24 provides for consecutive sentencing. I am content that, when considering those sections, we will have scope to address the matters that the petition quite properly raises.

Bill Aitken: I agree.

The Convener: For the record, the petition calls on the Scottish Parliament to amend existing legislation in relation to the sentencing of convicted paedophiles or to introduce new legislation to ensure tougher sentencing. I do not see why we cannot address those issues in the coming weeks as we consider the bill.

Members *indicated agreement.*

Criminal Justice (Scotland) Bill: Stage 1

The Convener: Item 3 relates to the Criminal Justice (Scotland) Bill. Professor Gane has provided members with a summary of written evidence. There are also some suggestions of witnesses from whom we may wish to take oral evidence. Having heard from the Executive today, members may wish to think about which matters they consider the most important.

The press has given a high profile to many issues in the bill, but members will agree that the bill contains many other issues that are also important. I want members to have a full opportunity to consider and understand all the bill's provisions. There is relief all round that Professor Gane will be able to guide us in the coming weeks.

Stewart Stevenson: Now that the evidence has been received and we are starting to grapple with the bill, I have grave concerns about the timetable. The bill is complex and wide-ranging. I suggest respectfully to my colleagues that the present timetable makes it unlikely that we will be able to give the bill the required quality of scrutiny.

Mr Hamilton: I intended to seek clarification of the timetable.

12:15

Gillian Baxendine (Clerk): Under the current timetable, the intention is to complete stage 1 consideration, including the stage 1 debate, by 13 September, which is the second week after the summer recess. In other words, we would have to report by the first week after the summer recess.

Mr Hamilton: How many weeks from now does that give us?

Gillian Baxendine: We have about six weeks—I cannot remember exactly. The original intention was to start stage 2 of the Land Reform (Scotland) Bill at the same time as considering the draft report, which will probably take two to three weeks. That would leave us about one half day and two full days to take oral evidence.

Mr Hamilton: In my opinion, there is absolutely no prospect of that happening. There is so much in the Criminal Justice (Scotland) Bill that I do not believe that the proposed timetable is feasible.

The Convener: As well as the provisions in the bill, two issues have been raised in a letter from Jim Wallace—the trafficking of human beings and the mandatory requirements in relation to insanity in murder cases under the European convention on human rights. Two big issues have been added to an already full bill and I am mindful of the committee's views. The timetable is quite tough, so we might have to review it along the way.

I ask members to put their minds to witnesses from whom they would like to hear. On 15 May, we will hear from the Association of Chief Police Officers in Scotland, the Scottish Police Federation, the Scottish Consortium on Crime and Criminal Justice, the Convention of Scottish Local Authorities and the Association of Directors of Social Work. That list is just to kick us off. We have in mind the all-day session on 22 May. Members may wish to address the subject matter to which they want to give the highest priority.

Mr Hamilton: Until we know how many evidence-taking sessions we will have and until we have received answers to some of the issues that have been raised today, the task in hand will be difficult. I am sure that all members are happy with the first session. I propose that we hold the first session and make a call at that point. I am not suggesting postponing for the sake of it—I think that we are genuinely not in a position to arrange the second session.

Gillian Baxendine: It is open to the committee to schedule as many sessions as it needs and we can try to make that happen. However, it would be helpful to find out from whom members might want to hear on 22 May—even if the list that we produce is not exhaustive—to allow us to line up those witnesses.

The Convener: Duncan Hamilton is correct. We cannot take evidence on the children's hearing system until the Executive clarifies what the relevant provision is all about, because the whole line of questioning hinges on that. To be fair, the Executive usually comes back to us quickly. We can chase that matter up. We are also still waiting for clarification on the provisions in the bill that relate to victim statements.

George Lyon: Do we want to prioritise various provisions by giving them more time than others when we take evidence, or will we simply divide up the bill according to the number of parts? In my opinion, some prioritisation is necessary, especially in light of the evidence that we have heard today—a huge number of questions remain unanswered. We have not obtained sufficient clarity to enable us to proceed.

The Convener: That is a good suggestion.

George Lyon: We need to decide what the priority areas are.

The Convener: If the committee could prioritise the areas that it wishes to examine, we could see where that takes us. That would not exhaust our options. Even with a provision that is non-controversial, members might want to take

evidence to satisfy themselves that they understand the measure and that it is practical. It would be helpful if the committee could point to the areas that they consider to be of the highest priority.

Bill Aitken: It is a bit unfortunate that the physical punishment aspect of the bill is the one that has attracted so much controversy, because I find other aspects of the bill of more concern, particularly the vague proposals about victims' rights.

I am also particularly concerned about the efficacy of some of the non-custodial punishments that are being suggested. I suggest that—this largely goes along with what Duncan Hamilton said—we go ahead with the next meeting as planned, as it is fixed, but that we should set something for 15 May. We could perhaps also consider part 1, on protection of the public at large, about which there is quite a lot that we might have wanted to get on with. Thereafter, let us map out the timetable according to the sections.

Scott Barrie: I understand why Bill Aitken is saying that. The problem is that there is a whole-day meeting the following week, so the witnesses would be given only a week's notice—I assume that we will ask a lot of people to come for the whole-day meeting.

The Convener: The problem is that ACPOS and the consortium will want to speak to the committee about the children's panel provision. If we do not speak to them about that, we would have to ask them to come back. We can go through the list that Professor Gane has given us and members can indicate their preferences as to whom they want to call to the committee. We can take the list as a starting point.

Mr Hamilton: It strikes me from today's evidence that the biggest absence has been statements about exactly what the Executive wants to achieve. You are right to suggest that today's witnesses could not have answered some of those questions. Would it be useful to suggest that we have an early meeting with the minister to establish the answers to those questions? I presume that it would be easier to secure his attendance at such short notice than that of some of the other groups. If we do that, we will get the policy statements upfront, after which we can think about the rest of the issues.

The Convener: That seems to be a good suggestion. Is there support for that?

Members *indicated agreement*.

George Lyon: Would that be scheduled for the morning meeting on 15 May or 22 May?

The Convener: We should say to the minister that we need to speak to him before we start questioning others in case we go down the wrong route.

Gillian Baxendine: If members tell the clerks whom they want to see and in what order, we can work out the detailed logistics.

The Convener: We want to see the minister early and we will probably still have to see him at the end of the process. That is unusual, but it is necessary.

We will go through Professor Gane's paper. That will give members a chance to indicate what subject areas they want to give priority to and to suggest witnesses.

We will start with part 1, on the protection of the public at large. I am interested to hear from the Parole Board for Scotland. Would members like to hear from any other organisations on that list? We will hear from representatives of the ADSW, because they are scheduled to attend on 15 May.

Bill Aitken: The Faculty of Advocates will have to give evidence.

The Convener: Scottish Women's Aid might provide a perspective on whether part 3 of the bill on sexual and violent offenders is going in the right direction.

Stewart Stevenson: Despite my interest in the subject, I do not think that the part on sex offenders needs to be looked at in great depth at stage 1. Perhaps we will be quite well informed when we discuss it at stage 2. There has not been a lot of feedback on that part of the bill.

The Convener: Professor Gane, why do you think that we should take evidence from the British Psychological Society?

Professor Gane: The reason why I suggested that we should hear from someone from that society, which is, if you like, the professional body, is that considerable discussion took place in the MacLean committee about how robust the science is on risk assessment. That is a developing area and I know that concerns were expressed that the science was not robust, as the MacLean committee accepted. Given that the measure involves a significant intrusion into individual liberty, it is important for the committee and the Parliament to be sure that it has a defensible basis and that there is a reasonable consensus about it in the scientific community.

The Convener: So we will begin by taking evidence from the Parole Board for Scotland, the Faculty of Advocates and the Scottish branch of the British Psychological Society. From whom shall we take evidence on victims' rights?

Stewart Stevenson: I suggest that we take evidence from Scottish Women's Aid and the

Commission for Racial Equality. The area of criminal justice with which the CRE deals has recently acquired a higher profile. There has also been an increase in the number of offences linked to race.

The Convener: Professor Gane, you suggested that we should take evidence from the CRE at some point.

Professor Gane: The CRE made a general submission, as well as particular points. It takes the view that throughout the bill issues are raised that fall well within its remit. It would be sensible for us to take evidence from the CRE at an early stage, so that we can identify those issues. We could then pursue them with other witnesses.

The Convener: A list of organisations from which we may want to take evidence on victims' rights has been circulated. Those organisations include Victim Support Scotland, Save the Children, Scottish Women's Aid, the CRE, Age Concern Scotland and the Faculty of Advocates. It is important that we hear from Age Concern Scotland.

Mr Hamilton: How would it work if we invited Scottish Women's Aid to our first evidence-taking session?

Gillian Baxendine: I suspect that we will end up asking witnesses about different parts of the bill when they appear before the committee. That is preferable to inviting them to give evidence two or three times.

The Convener: We are taking a similar approach to the one that we took with the Land Reform (Scotland) Bill. If we are short of time on some issues, we will have to cut to the chase. I would not mind hearing evidence on Scott Barrie's question about whether the age limit for offenders whose cases will be handled by children's hearings is right. However, we can deal with that further down the line. We are pretty clear on the issues.

Mr Hamilton: The issue of statements has also been raised. I would like to hear more about the status of those—how they will be cross-examined and tested. Would it be possible to hear from practitioners in the area? I understand that we have not yet received a submission from the Law Society of Scotland, but that that is in train. We could take evidence from the society on the issue that I have raised. Alternatively, we could hear from one of the bar associations.

The Convener: We could also take evidence from the Sheriffs Association. I suppose that that is the issue that needs to be clarified. If the Executive tells us that statements are meant to have an impact at sentencing, we may want to take evidence from the organisations that have been mentioned.

Mr Hamilton: In part, is this not a question for the Lord Advocate? That point was made very clearly.

Gillian Baxendine: Evidence on procedural issues that we have taken from Crown Office officials in the past has been quite helpful.

The Convener: Shall we ask to hear from the Crown Office?

Members *indicated agreement*.

The Convener: At the moment we plan to take evidence from Age Concern Scotland and from a representative of the Crown Office.

Mr Hamilton: We may also want to hear from the Law Society of Scotland, if it has made its submission by that point.

George Lyon: Some of this is subject to clarification by the Executive of its policy objective in making provision for victim statements, about which there is huge confusion. After taking evidence from the Executive, we are still unsure of that and are seeking evidence from representatives of other organisations that will clarify it. We are going round in circles on the issue.

The Convener: I think that we will get an answer pretty soon. Usually we receive a written statement from the Executive clarifying the issues that members have raised. We will see that before we hear from the minister. Professor Gane, can you guide us on whom we should take evidence from if the Executive says that part of the objective of victim statements is to influence sentencing?

Professor Gane: In that context, it is unlikely that the committee would be greatly assisted by the Sheriffs Association. I am not sure that the Sheriffs Association would feel that it was in a position to comment on those provisions, as its members tend to be rather circumspect about such things. A balance could be struck if the committee were to hear the view of the Crown Office—after all, it will implement the provisions—and the view of either the Law Society or the Faculty of Advocates.

12:30

The Convener: Okay—we could hear from the Crown Office and the Law Society. I suggested the Sheriffs Association because representatives of the association gave evidence when we dealt with the Protection from Abuse (Scotland) Bill—they were very helpful and enlightened the committee. We can come back to that point.

Let us move on to part 3, which deals with sexual offences. We are going to hear from the

ADSW and Age Concern Scotland. Their evidence could also cover part 3.

As members have no other suggestions on part 3, we will move on to part 4, which deals with prisoners. The Parole Board for Scotland and the ADSW are already going to give evidence. Do members want to hear from the Scottish Children's Reporter Administration? I believe that the reporter has expressed a keen interest in giving evidence to the committee.

Members *indicated agreement*.

The Convener: What about evidence on drugs courts? As such evidence does not appear to be a priority for the committee, shall we put it on hold?

Members *indicated agreement*.

The Convener: Are there any priorities among the list of potential witnesses on non-custodial punishments?

Professor Gane: Two issues seemed to come out of the evidence. First, in some people's view, the various services and agencies do not seem to be properly integrated, particularly in the area of anti-social behaviour. The committee should explore those issues. Secondly, there were concerns about the impact of anti-social behaviour orders on other important policies, such as security of tenure. If those provisions are not a priority for the committee, we could discuss them at a later date. However, from the reasonably long list of potential witnesses, I would have thought that Shelter Scotland has a view that needs to be explored. It is interesting to note that the submission from the Chartered Institute of Housing in Scotland also picks up on some of the practical implications of the anti-social behaviour provisions.

The Convener: When we consider non-custodial punishments, I presume that we must examine the issue of anti-social neighbours and the impact of alternatives to custody.

Professor Gane: Yes.

The Convener: Those areas are quite distinct. Although I am clear about the move towards alternatives to custody, I am concerned that the procedures are not properly joined up. Who did you suggest could give evidence on that point?

Professor Gane: Diane Janes's submission was quite interesting. I do not know her, but she is the sociable neighbourhoods national co-ordinator for COSLA.

The Convener: Do members want to call Diane Janes, if she is available? We could call one other witness on inter-agency working and non-custodial sentences. Non-custodial sentences will probably be the Executive's biggest theme in relation to prison policy. The bill contains some of the features that will allow us to move away from custodial sentences, such as the provisions on restriction of liberty orders, tagging and public safety. We must take evidence on those points.

George Lyon: So we are to invite representatives of COSLA, Shelter Scotland and the Chartered Institute of Housing.

The Convener: I think that the COSLA representatives will be speaking about the anti-social neighbourhood aspect. We need someone to speak about the whole question of criminal justice social work and the management of non-custodial sentences.

Mr Hamilton: I know that everyone has had an opportunity to submit evidence, but there are people missing from the list from whom I would like to hear. On victims' rights, there is the issue of people giving statements in court. We heard some international examples of that today. I would be keen to hear, from the academic community or anyone else, about international comparisons relating to statements being given in court and non-custodial punishments. Could we do some comparative work in that regard?

I presume that the fact that organisations are not on the list does not mean that we cannot invite them to give evidence. Perhaps Professor Gane could tell us which the relevant organisations are to give evidence in the areas that I have mentioned.

The Convener: That is a good point. Can you think of anyone, Professor Gane?

Professor Gane: There is an enormous amount of literature on victim statements. Whether there is anyone reasonably local who is familiar with the Scottish environment is another question. I could do a quick check and let the committee know of anyone via the clerks.

The Convener: We could agree at this stage to call Diane Janes and either Shelter Scotland or the Chartered Institute of Housing to talk about anti-social neighbourhoods, and we could then give some thought to the kind of evidence that we want to take on non-custodial sentences. I suggest that we leave that open for suggestions at the moment; Professor Gane may come across someone from whom we could take evidence.

We should take on board Duncan Hamilton's point about international comparisons—I agree that a good starting point would be to hear about countries that have moved away from custodial sentences. We do not have a name at the moment, but I ask members to give some thought to that. Is the committee quite happy to proceed in that way?

Members *indicated agreement*.

The Convener: Part 7 of the note relates to physical punishment of children. The submissions on the subject are quite weighty, and we need to think about how we get a cross-section of opinion.

Stewart Stevenson: In view of the large number of individual submissions, we should give at least one individual, and possibly two, the opportunity to come before us—although I am not pointing at any particular submission in suggesting that. Given the large number of submissions, individuals would feel let down if the committee did not hear from some of them. I know, however, that that presents some challenges.

The Convener: Indeed. I am not opposed to the suggestion, but there is a question of how practically we would pick out two submissions.

Mr Morrison: We could pull names out of a hat.

Stewart Stevenson: It might have to be done that way. I genuinely think that, if we invite people to participate in the process, and given that we have received some quite weighty and serious submissions from individuals—we have had some others that perhaps have not made such a significant contribution to the debate—we should simply choose a couple of them.

The Convener: We can accept that in principle and give some thought to how it might be done. Is that agreed?

Mr Morrison: We need to acknowledge the difficulty in choosing one or two individuals. Is that a problem that the clerks could deal with?

The Convener: I will consider that in discussion with the clerks. We will come up with a suggestion, if we can, and we will put that before the committee before coming to a final agreement.

George Lyon: There seem to be two issues in the context of the bodies that we invite to give evidence. One concerns which organisations are for and against the policy; the other concerns implementation. How are the policy objectives to be put in place in a practical sense? There are questions about that, judging from this morning's evidence. Our evidence-taking sessions should focus on those two issues. I suggest that we select one or two organisations that are for and against the policy respectively. We could then invite the practitioners—the police and the Law Society of Scotland in particular—to state whether they think the bill is practical and enforceable, and whether they feel that it is necessary, given current law.

Mr Hamilton: That is the key point for me. We must hear from the Law Society or a similar organisation, because we are comparing a current law with a proposed clarification of that law. I did not get any satisfaction on that this morning.

The Convener: I agree. Let us pick witnesses who will cover all the issues, some who are in favour of the provisions—bearing it in mind that some people are in favour of the provisions, but think that they do not go far enough—and some who are opposed to the provisions.

What is the panel of children's organisations? Is it a consortium of some kind?

Professor Gane: The suggestion was that the organisations that are listed would form a panel.

Scott Barrie: Perhaps we should have someone from the Children are Unbeatable! Alliance, which incorporates all the children's charities.

Professor Gane: The reason that I did not propose the Children are Unbeatable! Alliance is because it is a single-issue pressure group. It was not clear to me from its evidence what particular insights, beyond the predictable, they would provide.

Scott Barrie: However, Children 1st, Save the Children, Barnardo's and Children in Scotland are the key players in that group and so a witness from the Children are Unbeatable! Alliance would cover all those charities.

The Convener: That is a fair point. We can bring them together not as a single-issue campaign, but for their expertise on children in general.

I have heard certain assumptions this morning that I would like to explore further. I do not accept the premise that every three-year-old does not understand right from wrong. I do not think that that is the general experience of parents. I want to know where that idea comes from. I know that the Scottish Executive unit on child development has done some research on that. That relates to Scott Barrie's question, which was to ask—pros and cons of the provision aside—why the Scottish Executive has settled on an age of three years. I can understand that a specific age must be chosen, but there is a general statement being made about children aged three and that must be backed up by something.

George Lyon: As I understand it, the age platform is negotiable and is subject to evidence that the committee takes. The Scottish Executive is not taking a hard line on an age of three, but has made it clear that it will reconsider the matter if there is evidence to suggest that the age limit should be lower. However, once again, we need evidence.

Stewart Stevenson: I would like the panel to reflect any special needs that children may have as a result of disability. Capability Scotland is an obvious choice. However, another group might be able to cover that adequately.

The Convener: We will probably have to come back to the matter because it is complex. Perhaps we could begin by taking evidence on child development? Perhaps someone from the central research unit could come and talk to us.

Mr Hamilton: The central research unit of what?

The Convener: The Scottish Executive. I am open to other suggestions.

Mr Hamilton: We might need some independent outside work as well as work from the Scottish Executive. If the Executive has concluded that three is the appropriate age, the temptation will be for it to defend that position, rather than to be objective.

Stewart Stevenson: It has been proposed that we should hear evidence from psychologists.

Professor Gane: Psychologists would certainly be the obvious group to consult on child development.

The Convener: Okay, we will hear evidence on child development from an independent source as well as from the central research unit. That would give us a balance. Is that agreed?

Members *indicated agreement*.

The Convener: We could then move on to hear from the organisations that have submitted evidence. I do not think that we can take evidence from everyone.

George Lyon: The panel of children's organisations is a good suggestion.

The Convener: That panel would include Save the Children, Children 1st, Barnardo's and Children in Scotland.

George Lyon: We are trying to limit the number of people from whom we hear.

The Convener: We will sort out the behind-the-scenes orchestration of that, but we can consider the proposal.

Scott Barrie: It is also important to hear from the Community Practitioners and Health Visitors Association, given that it has a direct remit for dealing with pre-school children.

The Convener: Where would it fit in?

Scott Barrie: It would be included in the list of those who are in favour of the bill.

The Convener: On the panel?

Scott Barrie: Yes.

The Convener: So the panel would consist of Save the Children, Children 1st, Barnardo's and Children in Scotland.

Scott Barrie: I am not entirely sure that we need necessarily to talk to all those organisations, although we could do so if we wanted to. However, given that they are the key players in the Children are Unbeatable! Alliance, I am sure that they could come to some arrangement.

12:45

The Convener: We do not need to hear repetitive evidence. We need to hear from the organisations, but there are practical difficulties. They could help us to make an arrangement whereby we could talk to as many children's organisations as possible, in an orderly manner.

Mr Morrison: Can we see the list first, to see whether we can whittle it down?

The Convener: Yes, you will see the list before the witnesses come.

We need to clarify who will be on the panel and how it will be run. I think that I have got the gist of what the committee wants to do. Are there any preferences about organisations that are against the provisions from which we should to hear? The suggested organisations include the Scottish Teacher Parent Council, the Christian Institute, Christian Outreach Centres, Highland Christian Schools Trust and Families First.

George Lyon: Could we have some information about those organisations? I have not heard of a number of them.

The Convener: Can anyone assist us in explaining what the Christian Institute and Christian Outreach Centres are?

Stewart Stevenson: I cannot enlighten your darkness in that sense. It would be most useful to hear from organisations that work with children. That will automatically exclude some organisations. My view is that we should not be interested in opinions, but in experience.

The Convener: Does that mean that the Scottish Parent Teacher Council is in or out?

Mr Hamilton: I am not sure that I agree with Stewart Stevenson's point. The basis on which we decide whether someone's opinion is valid is a tad arbitrary. What strikes me from the list of organisations that are against the bill is that we are in danger of becoming hostages to those that have been activated enough to reply to the consultation. We need to step back from that. The organisations on the list are some of the organisations from which we want to hear. The committee is never going to reach a unanimous position on the morality of the issue, but we have to consider the practicalities of introducing legislation. By all means let us have a panel of organisations that want to progress the arguments in their submissions. I emphasise that we come

back to—

The Convener: Yes. I agree entirely. Our starting point is to consider what evidence we can get on children's development. We can hear from some of the organisations—for and against the bill—that have submitted written evidence provided, as Stewart Stevenson said, that they can be fitted in. We should finish by considering the practicalities of the legislation. That is where the Law Society of Scotland and the Crown Office and Procurator Fiscal Service might come in. We must decide which of the organisations that are clearly set against the bill we want to bring before the committee. It will not be easy to set up a panel, because the organisations are not necessarily connected. It would certainly be interesting to hear from Families First.

Professor Gane: The reason why I suggested the Scottish Parent Teacher Council was that it introduced in its evidence material that related to a survey that it had conducted on parental reaction. I have reservations about the methodology of the survey, but the council claims to represent a substantial body of parental opinion.

The Convener: We agreed that we want to hear from the Scottish Parent Teacher Council.

George Lyon: Whom does Families First represent?

The Convener: As no one can help on that point, we will see whether we can get that clarified. While we are doing so, I will take Scott Barrie's question.

Scott Barrie: Following on from Professor Gane's point, I wonder about parental attitudes. Given that young people are affected by the provision, perhaps we should also talk to them?

The Convener: Given that I said that on "Good Morning Scotland"—I did not really say it—I suggest that the youth parliament have refreshing and different views on the subject.

Scott Barrie: That is exactly my point.

The Convener: That might be a positive thing to do. It would appear that the Scottish youth parliament has its own justice committee. I do not know much about it, but—

Scott Barrie: They were telling us about it last week—

The Convener: The discussion is getting a bit messy. Let us see where we are on child development. We will start with a panel of children's organisations that will include Save the Children and so on. We will also hear from the Scottish Parent Teacher Council and we are checking Families First. We will finish with the Law Society of Scotland. Do members also want to invite someone from the Crown Office?

Stewart Stevenson: I was going to make another point.

The Convener: Let us tidy up the list first.

The only question that remains is whether we call Families First. Do we know anything about it?

Professor Gane: I know very little more about Families First than was revealed in its submission. It is interesting to note that the submission refers to some of the research that has been done in respect of the physical punishment of children. The views that it expressed were slightly more careful than the simple statement; "We do not like the Executive's proposals for the corporal punishment of children."

At some point, the committee will be faced with the argument that the ban on corporal punishment constitutes interference with the religious rights of parents. Given the sensitivity of the question and the fact that it is a matter of conscience for many people, it might be wise to explore the issue carefully. I am unconvinced by the legal argument, but the human rights argument will be made.

Stewart Stevenson: The point that I wanted to make was on that subject. I might have overlooked something, but we appear to have received evidence only from Christian organisations. It might be useful actively to solicit written evidence from Muslim organisations and possibly also from Jewish organisations.

The Convener: We wrote to all faiths asking for evidence.

Stewart Stevenson: I would have expected that. However, if a lot of weight is to be given to the predominant religious view that is held in Scotland, we should be especially careful that the Executive and the committee also have a view on the views of our minority faiths. If they choose not—

The Convener: We cannot force people to respond.

Stewart Stevenson: I know that.

The Convener: Professor Gane's point is important. As Stewart Stevenson also said, we need to ensure that we have covered every avenue. It is a matter of hearing the arguments from the religious points of view, whether Christian or any other faith. We do not want to close the door on that.

In principle, does the committee wish to hear those arguments?

Mr Morrison: We should hear them. We should draw up a list using the same procedure that we are using to choose the individuals who are to give evidence. It would be difficult to pick two or three.

The Convener: We will have to trawl through the submissions and see whether anyone who has written to us can be encouraged to give evidence.

Mr Hamilton: Is it possible for us to get a legal opinion on the subject? Professor Gane said that he is not convinced by the legal arguments that we have been given. Is Professor Gane, or someone else whom the committee could invite or commission, in a position to give us at least a definitive statement about the validity of the argument?

Professor Gane: The human rights argument will be made and, in that connection, it might be sensible to take evidence from an organisation such as the Scottish Human Rights Centre. The centre would give a reasonably objective evaluation of whether there is a genuine human rights concern.

The Convener: We should give further thought to how we can bring out the human rights perspective of the bill. We could do that in a variety of ways. One suggestion is that we take evidence from the Scottish Human Rights Centre. We will leave that on the table for the moment and give it more thought but, in principle, the committee would at least like to hear arguments on the human rights perspective so that it can take that into account at stage 1.

Where are we? We will have a panel of children's organisations and we will start by examining child development. We will take evidence from the Scottish Executive's central research unit and the British Psychological Society. We will also invite the Scottish Parent Teacher Council. I think that we agreed to ask for the Scottish youth parliament's perspective. The Scottish youth parliament's evidence could go beyond considering only the provisions on children and might include some of the other provisions that young people might be interested in.

We will come back to the question of how we deal with organisations such as the Christian Institute. We will give that some more thought while bearing it in mind that we want try to get something on that subject.

We will finish by taking evidence from the Law Society for Scotland and the Crown Office. That is the blueprint for the moment, but it is changeable.

George Lyon: Are we dropping Families First? I know that our list of witnesses is stacking up, but I thought we had agreed to take evidence from Families First.

The Convener: There does not seem to be a strong view on that, but we will clarify for the committee whom Families First represents. Members will then have another chance if they want that organisation to be called.

The Scottish Children's Reporter Administration could give evidence on the bill's proposals for a youth crime pilot study. Would that suggest that there has already been a pilot study?

Professor Gane: I do not think so.

The Convener: Parts 9 and 10 of the bill deal with bribery, corruption and criminal records. We have not received many submissions on those matters, but we will leave that sticking to the wall. We have also not received much evidence on local authority functions.

Under miscellaneous and general, the bill proposes to create security officers, which might constitute civilianisation of the role of police officers. We can put that point to the minister and decide what more evidence we need to take.

We have already agreed that we will hear from the Faculty of Advocates, the Association of Chief Police Officers in Scotland and the Scottish Police Federation. Those organisations will also want to give evidence on the miscellaneous and general part of the bill.

I want to clarify why we are continuing research into the public defender system. I have some concerns about that and I do not believe that there is any widespread support for that system. I would like to clarify why the Executive wants to do another round of research.

Do members want to raise any other points?

Mr Hamilton: I want to make a couple of basic points. If we take evidence first from the Executive, I presume that everything that we have just agreed is with the proviso that we will need to be flexible on who we hear evidence from.

The Convener: Absolutely. Our decisions on who we will take evidence from depend on how things progress and whether witnesses are available. They are also dependent on the evidence that the Executive gives. We have simply agreed a framework that gives us something to work with. Members will be able to change things if they feel that we are going in the wrong direction.

Mr Hamilton: Will you feed back to the conveners liaison group or the Parliamentary Bureau the committee's feeling that we do not feel that we are in a position to work to the timetable that has been given?

The Convener: Yes. We will report that we will struggle with the timetable, particularly as the two other provisions that were highlighted today are to be added to the bill. However, we will keep the bureau in touch with where we are.

George Lyon: In setting up the evidence-taking sessions, we should remember that we have an all-day session on 22 May. It would be useful to

examine part 7, which deals with children, in a straight run on that day. Given the fact that part 7 forms a big part of the bill's contentious provisions, it would be useful to hear the fors, the againsts and the practicalities all in one evidence session. It should be possible to do that on 22 May, provided that the witnesses can turn up on that day.

The Convener: I do not think that the committee will disagree to that proposal. If we can manage it, we will deal with part 7 all day on 22 May. That is quite a lot. We will see how we get on with that. At the moment, we have the minister down for 5 June, but that was supposed to be the tail-end of our stage 1 consideration. We will need to see how that goes.

You should know that the committee received a submission from the Law Society yesterday. Members can look out for that one.

The next committee meeting will take place on 15 May. However, I am sorry to say that our duties in respect of the budget are not yet complete. There will be a joint meeting of the justice committees on 14 May at 1.30 pm, when we will discuss the draft report on the budget process. That is quite important because we need to start focusing on the issues in the budget to which we want to draw attention.

That takes us to the end of our agenda.

Meeting closed at 13:00.

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