JUSTICE 2 COMMITTEE

Wednesday 12 June 2002
(*Morning*)

Session 1

£5.00

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

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 12 June 2002

JUSTICE 2 COMMITTEE
23rd 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)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)

*attended

WITNESSES

Hugh Boyle (Parole Board for Scotland)
Gerry Brown (Law Society of Scotland)
Michael Clancy (Law Society of Scotland)
Professor David Cooke (British Psychological Society)
Anne Keenan (Law Society of Scotland)
Professor Cynthia McDougall (University of York)
Dr James McManus (Parole Board for Scotland)
Roy Martin (Faculty of Advocates)
Valerie Stacey (Faculty of Advocates)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Wednesday 12 June 2002

(*Morning*)

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

10:13

Meeting continued in public.

Item in Private

The Convener (Pauline McNeill): Good morning and welcome to this meeting of the Justice 2 Committee. I ask members to switch off mobile phones and pagers.

We are dealing with the Criminal Justice (Scotland) Bill this morning. I have not received any apologies, but I know that members have business that they might have to attend to during the morning. I understand that there has been a power cut in parliamentary headquarters—that is what all the fuss and noise in the background is about. However, I understand that the technical set-up is okay and that we can proceed. Broadcasting staff can advise me if things change.

Before we discuss the bill, I ask members to agree to take item 6—consideration of our report on the Crown Office and Procurator Fiscal Service inquiry—in private. Is that agreed?

Members *indicated agreement*.

Criminal Justice (Scotland) Bill: Stage 1

The Convener: We have four sets of witnesses this morning, so—members will be pleased to note—the meeting should be shorter than usual. Our first witnesses are from the Parole Board for Scotland. They are Dr James McManus, the chairman, and Hugh Boyle, the secretary. Thank you both for coming to the committee to speak to us. We have half an hour or so in which to talk to you. Thank you for your submission, which has been helpful in giving us an indication of your areas of concern. We shall go straight to questions. If, at the end, there are any points that you want to come back on, I shall allow you to comment further.

Bill Aitken (Glasgow) (Con): Good morning, gentlemen. In your very useful submission, for which we are extremely grateful, you express the view that the order for lifelong restriction is

"a potentially useful addition to the powers of the High Court"

for a

"very small number of cases in each year".

From your experience and perspective, could you give an estimate of how many cases might be involved over a five-year period?

Dr James McManus (Parole Board for Scotland): The best indicator is the use that has been made of the discretionary life sentence. There have been between seven and 11 uses of that sentence a year in the past few years. That would be about the upper limit of what I imagine, from my experience, would be necessary. My worry, as I said in my letter, is that the way in which the lifelong restriction order is framed in the bill would lead to its being used in far more cases. That is a severe worry.

Bill Aitken: If the numbers that you put forward are accurate—they are not greatly different from the numbers that we might have envisaged—there might be an argument that, given the existing powers of the Parole Board for Scotland to apply restrictions as a condition of parole, there is no need for the fairly elaborate procedures that are likely to be set in place. Would you like to comment on that?

Dr McManus: I would partly agree with that, in that I do not see any pressing need to introduce the new order. It may be that it performs a function in reassuring the public that something is being done, but I do not think that, in substance, it will make any great difference.

However, I see a great potential for difference in the other functions of the risk management authority, as it will take overall ownership of the system. That will ensure that there is co-ordination between the custodial and post-custodial phases of any sentence and that someone is taking a real responsibility for the management of the risk at every stage in the process. The risk management authority will have a very important function in that regard. It must ensure that resources are available in the community when prisoners are released, so that the risk is safely managed on behalf of the community. That part of the bill has a lot to offer, but I do not think that the new order will add significantly to the armoury of the courts.

Bill Aitken: Perhaps you can talk us through how the order would work. Prior to allowing someone's release on parole, the Parole Board for Scotland would obviously carry out an assessment of that individual. Given that your prime consideration must be the public interest and public safety, you might also apply certain terms and conditions to that release. Could you explain the main differences between the existing system, in which your agency is heavily involved, and the new system under the lifelong restriction orders, leaving aside the obvious risk management considerations?

Dr McManus: At the moment, once the punishment part of a discretionary life sentence has been served, the case comes to the board with a dossier of information, which is generally compiled by the prison, but which includes input from a home social worker as well as a prison social worker and the trial judge. The board can receive about 150 to 200 pages of information, which goes to a tribunal of the board, in front of which the prisoner can appear with their legal representative. Scottish ministers are represented on the other side and an oral hearing is conducted, during which the three board members can question all parties in great detail. The hearings can last between one and eight hours, which means that all the evidence is well tested. The board assesses whether the risk that the prisoner presents could be managed safely in the community. Our priority is public safety.

We apply conditions to the licence to ensure that the risk is managed safely. Standard conditions include a prisoner's duty to report to a supervisor and to inform us about accommodation and employment changes. We can add extra conditions. In the case of a discretionary lifer, we would consider such conditions as residing in particular accommodation, which could be supported accommodation. At any rate, we must know exactly where the person is living and what the environment is.

Another condition that we would consider is employment. All the evidence shows that prisoners who obtain employment when they come out are much less likely to reoffend. We might also think about conditions in relation to offending behaviour programmes. We seek to put together a package that manages and minimises the risk in the community. In doing that, we are highly dependent under the present arrangements on local authority social workers and local authority social services. For example, a person might be released into a different local authority area from the one in which they were convicted. That can cause problems, because it results in the two authorities having to negotiate resource transfer to enable provision to be made for the ex-prisoner, which can cause delays and all sorts of bureaucratic problems. The bill will produce a single authority that has the authority as well as the responsibility to ensure that the resources are available in the community for proper risk management to take place after release.

Bill Aitken: Correct me if I am wrong, but I do not think that there have been too many instances of serious problems being caused by people who have been released on parole in recent years. Is that correct?

Dr McManus: Very few people are recalled. We are talking about an area of the board's work where we are pretty sensible—we do not take unnecessary risks. However, there have been problems in obtaining resources for some of the people who come out. Resources for accommodation can be particularly difficult to obtain in some parts of the country.

Bill Aitken: Therefore, one could advance the argument that the existing system is working perfectly satisfactorily and that, if it were beefed up to ensure that the necessary resources were available to the operations of the Parole Board, the sections of the bill that we are discussing might be unnecessary. However, that leaves out your point about giving the public a feeling of greater security.

Dr McManus: The risk management authority could make other contributions to criminal justice. For example, it could promote the developing science of risk assessment and risk management. The advances in psychology that are taking place need some kind of focus and a method of being translated into criminal justice practice in Scotland. The risk management authority could have a role in that regard.

That is a separate issue from managing individual prisoners; it is about improving criminal justice overall by improving the scientific input. I say "scientific", but not even the psychologists would claim that risk assessment and management is a total science yet, as there is still much uncertainty. Tremendous improvements in the psychology have been made—I am sure that

other witnesses will be able to tell you more about that.

The Convener: I want to clarify one or two aspects of your replies to Bill Aitken. You referred to the punishment part of the sentence. How much does that constitute—half or two thirds?

Dr McManus: The punishment part is set specifically by the sentencing judge. The judge will say that a prisoner must do a minimum of N years before they can be considered for release. With discretionary lifers, it has traditionally been the case that N must be half the determinate sentence. If an offence is worth 15 years, N would be seven and a half years. That is the minimum part that must be served before the case goes to the board—not the minimum part that must be served before release.

The Convener: That is the tribunal to which you refer.

Dr McManus: Yes.

The Convener: Does the victim ever make representations at that stage?

Dr McManus: That has happened from time to time, but not very often, partly because the victims would not necessarily have known when the case was coming to the board. We occasionally receive representations from the victim, but the bill will mean that more victims are likely to be involved if they want to be.

The Convener: I am interested in examining that further. I am trying to establish what happens now, so that we can make comparisons. In cases where a victim made a representation to the Parole Board, that information would be made known.

Dr McManus: The information would be part of the dossier that comes to the board, which the prisoner also sees—the prisoner has to see all the information.

The Convener: For how long do the conditions apply on licence?

Dr McManus: Until death. In some cases, if the prisoner has been out for 10 years and has been free of convictions, the conditions on the licence can be reduced, but the licence lasts until the person dies.

The Convener: So Mr Aitken's questions are valid because, from what you are saying, if we put the risk management authority to one side, there does not seem to be a great deal of difference between the orders for lifelong restriction and the conditions that apply under licence.

Dr McManus: It is interesting that even the MacLean committee report said that, if a court had considered and rejected an order for lifelong restriction, it could not impose a discretionary life sentence. The two are very similar.

The Convener: Concerns have been expressed about the fact that the Crown can ask for the order for lifelong restriction. Some say that that is not the Crown's usual role. Do you have an opinion on the matter?

Dr McManus: The bill provides for either the Crown or the court on its own initiative to ask for such an order. In Scotland, the Crown has been increasingly pulled into the sentencing process over the past 20 years. For example, the Lord Advocate's right to appeal a sentence involves the Crown in sentencing in a way that traditionally had not happened in Scotland. Given that we have an adversarial criminal justice system, it does not seem unreasonable for the Crown to be more involved in sentencing. If we had proper sentence hearings, that might lead in the long term to more rational sentencing, with the Crown presenting one side and the defence presenting the other side.

One of the things that amazes a lot of North American visitors when they visit Scotland and look at our criminal courts is the lack of discussion over sentencing. They are used to having proper sentencing hearings, at which the state will argue for a particular sentence and give reasons for it—those reasons are generally based on precedent. The defence will respond with its reasons as to why the sentence should be different. All the reasons are enunciated in court.

In our system, traditionally we do not know what sentence the Crown wanted. We hear the plea in mitigation in many cases—those are often according to a formula—and the court imposes a sentence without giving many reasons. If we had more sentence hearings, that would enhance the rationality of our sentencing system.

Stewart Stevenson (Banff and Buchan) (SNP): You mentioned that the risk management authority could or would—I was not certain which—be an instrument for resolving the transfer of resources from the local authority area in which someone had been convicted to the local authority area into which someone was being discharged.

Dr McManus *indicated agreement.*

Stewart Stevenson: I see that you are nodding. For my clarification—perhaps I have not read the bill properly—will you confirm that, as currently proposed, the risk management authority would not have that kind of responsibility?

Dr McManus: The RMA would not have executive authority to do that, but it would be in a position to do it. The original MacLean proposal was that the authority would have resources to move around, but that does not fit with the present model of social work provision in Scotland.

However, the authority will be in a position to ensure that resources are made available in particular areas and are transferred to meet the needs of the released prisoner.

Stewart Stevenson: By what mechanism would that be achieved? Would it be by arbitrating, by negotiating or by differentially assessing the risk, depending on whether such an agreement had been reached? How would it happen?

Dr McManus: I imagine that a lot would come down to the interpersonal skills of the membership of the risk management authority.

Stewart Stevenson: So we are talking about negotiation, essentially.

Dr McManus: Yes.

Stewart Stevenson: I just wanted to be clear about that. On reoffending, you said that the Parole Board for Scotland's priority is public safety, but you also referred to offending behaviour programmes. To what extent should the risk management authority take account of the programmes that a prisoner may or may not have participated in while in prison and indeed of how well they have responded to those programmes?

Dr McManus: In so far as the programmes have been validated, they will clearly be fundamental to the risk management authority's task. Its job is to examine risk and to organise things so that that risk can be reduced. It is not a passive observer; it is actively involved in ensuring that the risk is reduced to a level at which one would hope it can be managed in the community.

10:30

Stewart Stevenson: It is quite clear that the Scottish Prison Service and the agencies for what you term the post-custodial phase of the sentence are making substantial investments in programmes and activities directed at the reduction of reoffending. What evidence do you have of success or failure, or must we wait further?

Dr McManus: For most programmes, we must wait further. Another part of the risk management authority's job is to have research in place to find out which programmes are working and which are not. As we know from the Justice 1 Committee's inquiry, research has not always been built into programmes that have been introduced by the SPS. We do not know what results some of the programmes are having. It is clearly not rational to run programmes and resource them hugely without building in a validation procedure.

Stewart Stevenson: Is it nonetheless your opinion that we should continue to invest in programmes, both within and without prison, using the best available professional advice?

Dr McManus: Yes, indeed.

The Convener: The opinion has been expressed to us that prior convictions might not be the best predictor of future offending. Many people have difficulty with the issue, because it is not clear what other information could be used to assess future offending. What is your view?

Dr McManus: I think that prior convictions are an indication of where the person has come from. There is certainly evidence from research in other countries to show that, for example, a person's age when they first offended is a crucial determinant of likelihood of further offending. It would be wrong to ignore the person's history in predicting how they will act in future. It would also be wrong to pretend that using such information will ever be 100 per cent accurate in predicting future human behaviour.

We must be careful to ensure that the information that we are using about past convictions is of a good quality. I have some concerns about the provision in the bill to enable reference to be made to past allegations of criminal behaviour, some of which may never have been prosecuted, never mind have led to a conviction. There are some human rights implications in that provision. In fact, there are a lot of human rights considerations about the kind of information that will be available in the immediate post-conviction period, during which the risk assessment will be carried out. I am not sure that those issues have been fully teased out in the bill.

The Convener: A lot of people would share your concerns. It would be useful if you could explain the process by which you currently apply conditions to a prisoner based on the information that you referred to. Presumably that information goes beyond previous convictions.

Dr McManus: No, not these days. All we get now is a list of previous convictions. In the old days, before 1993, the Parole Board for Scotland used to get all kinds of information, the quality of which we could not assess—that was part of the problem.

The Convener: I thought that you said that, when the tribunal meets to decide whether a prisoner is going to be released after they have served the punishment part of their sentence, there is 200 pages of information.

Dr McManus: There can be up to 200 pages, yes.

The Convener: You said that the tribunal makes a decision based on that information as to whether to release the prisoner on licence. What is the difference between that kind of information and

information about previous convictions? I presume that the information that the tribunal uses is more extensive.

Dr McManus: Yes. Most of it is generated during the custodial period. It is mostly reports from prison staff of all grades who have had dealings with the prisoner during the period in custody. In addition, we get the trial judge's report, which the prisoner will have seen immediately after the trial and which covers matters that have been proved in open court. We also have reports from social workers, psychologists and psychiatrists who have been dealing with the prisoner. In every case, the prisoner has seen the full report and has had the opportunity to make written observations on it. They then have the opportunity to present oral evidence on the contents of the report in front of the board. There is a full and free opportunity for the prisoner to challenge any of the information that is in the dossier.

We are talking about a different phase of the process. The sentencing part of the project is still part of the trial, to which different rules apply. The release decision is not part of the trial; it is a totally separate decision. Although we are still bound by the Human Rights Act 1998 and still comply with it, the considerations at that stage are different from the ones at the sentencing stage.

The Convener: I am trying to understand what you said earlier. You said that orders for lifelong restriction are similar to the conditions applied to a prisoner out on licence, because they are for life. You use non-conviction information when applying a licence for life. There seems to be a similarity there, too.

Dr McManus: At the release stage, both processes would be identical, but the problem with the order for lifelong restriction is that it is imposed immediately after conviction or within the 90-day period after conviction. At that stage, we know only what is available through the court process about the prisoner. A release decision is made years later, when we have a lot more information about what has happened, including all the dynamic factors that the psychologists would want to take into account in determining the risk that the person poses. Our knowledge of the person is much greater at the stage of release. That enables us to tailor the licence to address the specific risk that the prisoner might pose.

The Convener: Would it be fairer if part of the assessment for an order for lifelong restriction was of a prisoner's behaviour?

Dr McManus: That has traditionally been difficult. We are talking about a sentencing decision. The sentence must be proportional to the offence and it would be unusual in a criminal justice system to take into account before sentencing information on what has happened after conviction. The sentence should be imposed on the basis of what has happened, rather than what might happen or what has happened since the offence.

The Convener: I hear what you are saying. It sounds like a very subtle but perhaps important difference.

Stewart Stevenson: I would like to develop that point a little further. In coming to a conclusion about whether a person should be convicted, a court of law considers corroborated evidence. Would it be fair to characterise the evidence that you view as uncorroborated but substantiated? In other words, do you weigh evidence rather more as a civil court deals with evidence, on the balance of probabilities? At the same time, you presumably apply tests to exclude what might be termed unsubstantiated evidence that might be put before the board. Is that a reasonable characterisation of the way in which you operate?

Dr McManus: That is a very good question. The criminal court is restricted to using acceptable evidence—that is to say, corroborated evidence generally. That would normally also be the case at the sentencing stage, because the two are linked. The evidence available to the Parole Board is of a different character. We have never worked out what the standard of proof is because, in imposing conditions on a prisoner on release, we are still acting under the terms of the original sentence. The original sentence justifies intervention with the person's liberty. When we decide on the conditions, we want them to be reasonable. We are using the administrative law test, if you like, rather than the civil law test or the criminal law test. The conditions must be reasonable in all circumstances—there must be some information that justifies them, but it might not be the same kind of evidence that is produced before a criminal court or a civil court.

Stewart Stevenson: I want to pounce on something that you said. You said that, in sentencing, the court should rely on corroborated evidence. How does that relate to victim statements and the issue of whether they are tested to an extent that would establish corroboration?

Dr McManus: That is interesting question for the committee in relation to other parts of the bill, with which the board does not have direct involvement. You have raised a big issue. Provision exists for a proof in mitigation, which is seldom used. I have indicated that I would like the proof in mitigation to be used more often. If a court is to take into consideration a victim statement before deciding on a sentence, that statement should be open to cross-examination.

Stewart Stevenson: How is the victim statement to be distinguished in the way in which the court deals with it from the general mass of evidence that is laid before the court?

Dr McManus: I cannot see an easy legal mechanism for doing that that would be consistent with Scotland's traditional criminal procedure.

The Convener: I seek further clarification on the kind of conditions that you apply to a prisoner. It is a new experience for me and, I am sure, for other members to be talking to the Parole Board about such matters. It would be useful to understand the standard set of conditions and the additional conditions that you might apply in certain cases.

Dr McManus: The standard set of conditions are—

Hugh Boyle (Parole Board for Scotland): To be of good behaviour and to keep the peace.

Dr McManus: Yes, good behaviour and keeping the peace are two of the conditions. The other standard conditions are reporting to the supervisor as required, informing them of any change of accommodation or change of employment and not travelling outside Great Britain without the express authority of the supervising officer. We hope that that requirement will be changed shortly to not travelling outside the United Kingdom.

Everyone is subject to those conditions, but almost everyone gets some extra conditions. Lifers always get extra conditions. The circumstances of the individual are considered. If there has been an alcohol or drugs history, for example, undertaking an assessment for alcohol or drugs counselling and taking such counselling as is specified will be made a condition. An additional condition could be to reside in a particular place, such as an aftercare hostel, a supervised aftercare hostel or a place in which psychiatric or psychological input is available. A psychiatric or psychological specification is rare, because we must have clear evidence about that and about the availability in the community of relevant psychiatric or psychological input. Not to contact particular people, such as a victim, might be an express condition of a licence.

A raft of conditions applies to child sex offenders to prevent them from being in places where children under the age of 17 might be, such as parks and playgrounds. Such offenders must obtain express permission before they undertake any form of employment, whether voluntary or salaried. Those conditions basically reinforce the conditions that the sex offender order would contain.

The board imposes any conditions that it thinks will contribute to the integration of the person and to community safety. Those are our aims with the conditions.

Stewart Stevenson: I have another question.

The Convener: Is it on the conditions?

Stewart Stevenson: No, it is an overarching question.

The Convener: Is it about the protection of the public at large?

Stewart Stevenson: Yes.

The Convener: On you go.

Stewart Stevenson: I simply want to ask what evidence Dr McManus has that the Parole Board contributes to public safety.

Dr McManus: Through the Scottish Executive, we recently commissioned, for the first time, some research on the outcome of Parole Board decisions. The evidence from that research shows that we are pretty effective in making the correct decisions about the people whom we release. We sometimes keep in people who come out and do not reoffend. The evidence suggests that we are overcautious, but that does not disappoint me. We should always be cautious in what we do. Public safety should be the primary concern.

Although the impact of the existence of a parole system is not quantifiable, the system undoubtedly provides an incentive for prisoners to engage in offending behaviour programmes, for example. It provides a reminder, especially to life-sentence prisoners, of the possibility of coming out if they do the appropriate things in custody. It provides a control mechanism within the prison. More important, it provides an incentive to the individual prisoner to consider why he or she is in that setting and what they can do to enhance their prospects of release—there is a possibility that the release can be advanced because there is a parole system. The system enables society to keep people in prison only when we need them to be in prison. Therefore, it contributes to the economy as well as to the moral welfare of society at large.

Stewart Stevenson: Can that evidence be provided to the committee or is it already available?

Dr McManus: The evidence from the research was published two weeks ago. I am sure that it can be made available to the committee.

Stewart Stevenson: The clerks are nodding. They obviously know where it is.

10:45

Bill Aitken: Our inquiries seem to be bedevilled by the fact that figures are not forthcoming, so I take encouragement from what you have said

about the recent research that you have carried out. Could you expand on that by giving us the number of prisoners released and reoffending rates?

Dr McManus: As far as my memory serves me, the reoffending rate during the parole period of people released was about 7 per cent. The reoffending rate of those who were not released on parole was about 40 per cent. Clearly the Parole Board is releasing the right people. I am giving the committee those figures off the top of my head, so I ask members to confirm them through reading the research.

Bill Aitken: I will take the figures with that health warning. If it turns out that those figures are totally inaccurate, you could write to the committee and put them right.

Concerns have been expressed about the reliability of the available methods and procedures for risk assessment. Are those concerns fair or do the current procedures produce reliable assessments of risk?

Dr McManus: That is a question for a psychologist, but my experience is that the reliability of the assessments is improving. One of our problems in Scotland for a long time has been that very few of the instruments have been validated on a Scottish population. We adopt them, traditionally from North America, where in some cases they have been extensively validated, but we do not know that they work in a Scottish context.

One of the problems is that Scots are different from Canadians and Americans. What we have needed for some time—I am sure that the committee will hear more about this later in the meeting—is validation in the Scottish context of the various tools that have been developed. Even the best of those tools will never give us 100 per cent reliability, because we are talking about human conduct and no science will ever be able accurately to predict that.

The Convener: The bill would require the court to make an order for lifelong restriction when the accused's behaviour demonstrates that

"he is indifferent to the consequences, for members of the public at large".

Do you have concerns about the inclusion of that provision in the bill?

Dr McManus: I do not have concerns about that in the end. An aspect that worries me is that we had all these debates in the 1960s about psychopathy, as it was then called. The great thing about the Scottish mental health system is that we did not use that word very often, whereas the English went on using it. The psychopath was always defined by the professionals at the time in this way: "Well, we cannae give you a definition, but we know one when we see one." It is a bit like the elephant.

I am worried that the psychopath is coming back into our legal system by the back door. One of the identifying features of psychopaths was that they did not care about the consequences of their actions. I am worried about somebody who commits a serious offence and does not care about it. It certainly indicates a higher level of risk than someone who sincerely says, "By gosh, I am sorry, I should not have done that and I will not do it again." However, I am concerned about whether we can elevate that into a personality type and have consequences such as lifelong restriction of liberty arising from it. I note in the bill that those criteria are alternatives. The person can be high risk or indifferent. I would not mind seeing an "and" rather than an "or" between those two criteria.

The Convener: I have asked you about the current process with regard to victims' rights. You said that victims do not often write to the board, but that they can do so. What weight do you give to victim statements in that process?

Dr McManus: The appropriate weight. It depends on what the victim says. It should be remembered that the board is always concerned about the future and the likelihood of reoffending. If a victim writes to us and says that an offence caused them so much pain that the person should never be let out of prison, that would not be relevant to the board's considerations. If we took that into account, we would properly be subject to criticism in judicial review. We look to the future.

When the victim issue was first mooted directly in relation to parole, I was concerned that victims' expectations about the impact of their statements would be raised and then would not be fulfilled—in other words, that we would further victimise the victim. I am assured by the bill that when victims are told of their right to write to the board, the Scottish Executive will explain to them what factors are and are not relevant to the board's considerations. Therefore, a victim will have not just an opportunity to write, but assistance in putting forward appropriate representations to the board. As a result, I have no worries at all about the victim's being involved. As I said, my major worries were the risks of further victimisation and raising expectations but not fulfilling them. I will have such worries until I see the quality of information that is provided to victims and the system under which that information is provided.

The Convener: As there are no other questions, do you want to say anything in conclusion?

Dr McManus: I recall being questioned about the accountability of the Parole Board when there was only one justice committee. The questions

were on the Convention Rights (Compliance) (Scotland) Bill. It was proposed that lifer decisions be taken away from ministers. In respect of the bill under discussion, the committee has not raised the issue of taking away ministerial decision making or mentioned the proposal for 10-year plus sentences to become the board's responsibility. As the law stands, there is an anomaly and it is good to see that anomaly being removed.

Since that appearance, I have thought more about accountability in the Parole Board. We have a strong presumption in a democracy that accountability means accountability to Parliament. That is correct, except in some areas. Parliament is certainly accountable for the law that it makes and the bodies that it creates under the law are accountable to it. However, it is not necessarily accountable for individual decisions that are made by those bodies.

That takes us back to the rule of law. The full expression is the rule of law, not of man. There are areas in which the Parole Board must take responsibility without democratic accountability for the decisions that it makes. Once the Parliament creates a system under which parole can be given and a system for the appointment of Parole Board members, it must accept that those are sufficient guarantees in a democracy to ensure that responsible decisions are made. I wanted to put that in the *Official Report* because of the feeling that we have in democracies that Parliament should be accountable for every decision.

The Convener: I thank you for your thought-provoking conclusion. I thank both witnesses for attending and giving evidence, which has been useful. They have given us information about the system and their opinions on the bill.

I welcome our next set of witnesses. Professor David Cooke is a forensic clinical psychologist and works at the Douglas Inch Centre and Glasgow Caledonian University. Professor Cynthia McDougall is from the University of York centre for criminal justice economics and psychology. We are pleased to have you both here. I am sure that your evidence will be useful to us. We have not received a submission, but we are quite clear about what questions we want to ask you. I will offer you the chance to comment at the end, if you want to emphasise any points that you feel have not been drawn out in the course of questioning.

Scott Barrie (Dunfermline West) (Lab): My first question follows on from Bill Aitken's last question to the witnesses from the Parole Board, in relation to risk assessment and its reliability. That is clearly crucial to part 1 of the bill and to how effective you and your partners can be in the process. How reliable are current assessment methods for violent offenders and sex offenders?

Professor David Cooke (British Psychological Society): As Dr McManus indicated, there has been a vast improvement over the past decade in the technical skills to predict violent and sexual offending. The methods are by no means perfect, but we can identify those who are at high risk. An important part of the bill, and an important part of the discussions of the MacLean committee, is that it is about risk management more than risk assessment. The task of the clinician involved in that process would be to identify people who are at high risk and then to try to falsify that prediction by putting in place treatment or management strategies designed to minimise that risk.

Those treatment strategies could be wide ranging. There could be treatment for specific symptoms or work on such things as victim empathy. There could also be treatment for paranoid symptoms, changing people's sexual fantasies or incapacitation. The emphasis should not be merely on prediction but on what we do when we identify someone we consider to be high risk.

Scott Barrie: Can you give us any indication of how reliable the current methods are in minimising risk in that management process?

Professor Cooke: We return to the issue of whether the tools that have been developed in North America predict risk accurately. We can discriminate well between people who are high, medium and low risk. We have done studies in Scotland where we have used those tools, followed people up, looked at reconviction rates and demonstrated that we are able to discriminate people into those broad groups of high, medium and low risk. Having identified those individuals, we then tailor the services that they receive and the restrictions that they are under on the basis of that risk.

Scott Barrie: I am well aware that in contemporary social policy we derive a lot of our models from North America. We heard in passing from our previous witnesses that there may be a difference in people in Scotland compared with those in North America. Do you agree with that? How do we need to adapt what we are learning from the United States and Canada?

Professor Cooke: The basic principles may well be the same, and the principal personal characteristics of individuals that predict violence may be the same. We have empirical evidence from Scotland to demonstrate that. It may be that the rate of certain characteristics is different. For example, the term psychopathy was mentioned earlier. Psychopathy seems to be an important predictor of violence. In fact, all the studies indicate that it is the most important predictor. The prevalence of that disorder seems to be different

in the United Kingdom and Europe compared with North America, and that will have an effect on its predictive utility. There are differences in the rate of some of the characteristics. Other aspects of the criminal justice system will affect how effective we are at predicting. If we have a better clear-up rate in Scotland than elsewhere, that will affect how well we can predict reconviction rates.

Professor Cynthia McDougall (University of York): We are achieving improvement in the methodologies. Much emphasis used to be placed on clinical assessments, which were informal, unstructured and open to personal biases on the part of the person who was doing the assessment. We acknowledge that that is not the way to do it any more. The process must be much more structured. We must define what we are looking for and must base the factors on the evidence. Although the results might vary from population to population, we are agreed on the methodologies and we are beginning to improve them. A lot of development is going on in that area and we are getting better at it—that is the good news.

11:00

Scott Barrie: What is the bad news?

Professor McDougall: We are not good enough yet.

Scott Barrie: Where are we in a continuum, compared with North America, say, which appears to be further ahead and more effective than we are? What still requires to be done and how much validation of what is happening is necessary?

Professor McDougall: We are behind the United States in carrying out research and collecting evidence, which is often the case in a range of areas. I can only speak for how things are changing in England and Wales. We are becoming acutely conscious of the need for a research evidence base, as we know that we can make mistakes if we do not observe the evidence. We are validating some of the instruments. Professor Cooke has done some work on that with the Scottish population, but we have not got far yet.

A risk assessment model has been developed in the England and Wales system—I was involved in its development—but the many longer-term data that exist have not to my knowledge been analysed. Everyone is so busy getting on with the assessment work that not enough time is being made to examine the quality of the assessments and what the outcomes from them are. That is true of a range of developments that we have made in criminal justice.

We must get better at evaluating what we do as we go along and we must build in the evaluation at the beginning so that we have early information about whether what we do is effective. We must take on board that strong message when we deal with the proposed measures in the bill. We must evaluate those measures from an early stage.

Scott Barrie: Who do you envisage will be part of the process? I presume that not only people with a psychology background would be involved and that a multi-agency, multidisciplinary approach would be required. Will you indicate all the different disciplines that need to be involved and how they could work together, given that such collaborative working has given rise to tensions in the past?

Professor McDougall: That is extremely important. I should say at the outset that I am quite new to reading the bill, I have been impressed by it and I very much agree with the principles. My only concern is our ability to deliver it. Will it be possible to meet the expectations that the bill sets? I would want to address that. Dr McManus has mentioned the need to examine the effectiveness of the assessment tools that we have and to improve them. We are on the right track. We understand what we need to do and we are in the process of doing that.

Much research is also required on the treatment methods. We must find out what we can do about the risks once we have identified them. We know that some measures work with some people in some circumstances if they are implemented in certain ways. We do not know which treatment methods work with the range of violent offenders, particularly psychopaths. Work is taking place on methodologies that might work with psychopaths, but they seem to respond differently from other kinds of violent offenders. Some treatment programmes attempt to develop victim empathy, for example. We have discovered that that is not a winning technique with people with psychopathic traits, who just do not seem able to experience empathy. We must change our approach, as we will never be able to turn such people into nice, friendly, cuddly people. We need to stop them from being violent and we must limit what we are trying to achieve in that respect.

Research needs to be done on assessment and treatment, but one of my big concerns is our skills base and how much training would be required to deliver the kind of programme that the bill proposes. There would need to be an infrastructure to support that. To go into a programme without developing support mechanisms and without a willingness to fund the necessary developments would be sad because it would create problems for the bill.

Scott Barrie: This might be a difficult question, but can you indicate the type and scale of resource development that would be required to meet the aims that you outlined?

Professor McDougall: If you gave me some time, I could do that. I work in a centre for criminal justice economics. Our economics approach is new to criminal justice but is based on the health economics approach that was developed in the national health service about 10 or 12 years ago that looks at financial investment costs and financial benefits. We are beginning to assess the benefits of criminal justice interventions so that we can decide where money should be placed to get the most effective results. That is a huge area of work, but somebody should be considering, at this stage, the costs of the propsals in the bill and whether people are prepared to fund those costs. I could not give you a figure off the top of my head, but proper funding, resources and infrastructure are required to deliver the bill's programme.

The Convener: On part 1 of the bill, there is a suggestion that procedure would mean that a single person, such as a psychologist, could make the risk assessment. Would that be adequate? If not, should there be inputs from other backgrounds and disciplines?

Professor McDougall: That further input would be necessary. We must agree on the criteria and methodologies for assessing, but I would not want to leave that to an individual discipline. There need to be checks and balances to ensure that we protect the public and are fair and just. I would not want to leave the risk assessment to one discipline. A multi-agency approach is necessary. I do not know whether David Cooke agrees.

Professor Cooke: I agree that the approach must be a multi-agency one. A range of factors must be taken into account that are not all just psychological and that would involve, for example, social and psychiatric areas.

The Convener: That is helpful. Professor Cooke, I believe that you had concerns about the risk criteria referred to in proposed section 210E of the Criminal Procedure (Scotland) Act 1995. Is that the case?

Professor Cooke: Yes. If I were asked to do a risk assessment on the basis of those criteria, I would have difficulty in translating the criteria into a psychological format. For example, section 210E(b) states:

"he is indifferent to the consequences, for members of the public at large, of the commission of such offences by him".

That seems to me to be too broad and to encapsulate too many offenders. I understood that the bill was focusing on a rather small and extreme group of offenders. Section 210E(a) states:

"there is a likelihood that he, if at liberty, will seriously endanger the lives"

and so on. It is not clear what "likelihood" means. Is the likelihood, for example, more than 50 per cent? Or is it 95 per cent?

Stewart Stevenson: I want to follow up on a small point about the relevance of international comparisons. Last week I visited a French prison. One of the things that I was told—which I cross-checked because I did not accept it when I first heard it—was that 60 per cent of the long-term male inmates were sex offenders. In our system, the figure is thought to be around, and probably just below, 10 per cent. Is there something about the way in which the French look at things, or does that simply tell us that we have to be cautious about international comparisons?

Professor McDougall: We have to be cautious about statistics, and about who the French are including in their sex offender group and how they are defining them. I do not know the answer to that, but I know that there are a lot of differences in the way that they view treatment programmes for offenders. It is a few years since I was there, but they were very much against tinkering with people's heads so to speak. People were in prison, they were being punished and they were being treated humanely, but the French were not very interested in programmes at that stage. That may have changed now if they have such a high number of sex offenders in their prisons.

Stewart Stevenson: I am afraid that I am going to disappoint you. As far as I could determine—and I asked firmly—they have no programmes of any kind for sex offenders or other prisoners.

Professor McDougall: So it has not changed. It is a philosophical difference.

Stewart Stevenson: In that regard, Scotland and the rest of the UK are substantially ahead. That is an opinion, and I am not here to give my opinion.

The Convener: Why change the habits of a lifetime, Stewart?

Stewart Stevenson: It is always nice to have a convener who is supportive.

I will move to the substance of the issue that I wish to explore with you. The committee has heard from others that one of the key predictors for future behaviour is past convictions. Is that your view? Furthermore, how does that inform us of the likelihood of the risk crystallising into a future offence, and the nature of a future offence and its impact on victims?

Professor Cooke: We have empirical evidence from Scotland from two studies, which show that previous convictions are important. As Dr McManus indicated, age at first conviction is, virtually universally, an important predictor of the rate of reoffending as an adult, but other criteria are important. Adult appearance rate in court is an

important predictor, as is the diagnosis of a drug disorder. The pattern of past offending is a good predictor of future offending. With violence in particular, a past history of violent offences is a good predictor of future violent offences. There is empirical evidence from North America and Scotland, and presumably from England and Wales, to show that that is the case.

Professor McDougall: The difficulty is the baseline problem. Some of our violent offenders have committed one offence, and it is difficult to predict continuing behaviour on that basis. If they are repeat violent offenders, strong deductions can be made about the continuation of the behaviour. The difficulty that we have arises from infrequent offenders.

From my research, I think that we can examine not only previous offending rates but previous behaviours. Patterns of behaviour related to the offence often are evident in a range of situations. Even in a prison environment, it can be shown statistically that the previous behaviour on the outside can be repeated in prison. For example, in the case of someone who committed their offence as a result of rejection—they were rejected and murdered somebody, for example, a woman in a relationship—in prison you will find that he continually loses his temper because officers refuse to allow him to send an extra letter or they refuse him some privilege that he wants. When patterns of behaviour are examined, it is found that it is hard for people to change and disguise them, and the behaviour patterns continue.

Professor Cooke: In the MacLean report we emphasised the need for much better descriptions of what happened in an offence, so that we can look for patterns of behaviour over time. We know that the reconviction rate for murder is relatively low, but there are individuals who are repeat violent offenders. We need to examine the pattern of their offences, of which we need clear descriptions when we are making a risk assessment.

Stewart Stevenson: Does that suggest going beyond the purely corroborated evidence that has been used to secure the conviction?

Professor Cooke: Yes.

Stewart Stevenson: Does that also suggest consideration of substantiated but not corroborated evidence in reaching that view?

Professor Cooke: Yes—that is essential. As a risk assessor, I would be negligent if I did not take into account such information when reaching a decision about whether someone was at high or low risk of reoffending.

Stewart Stevenson: You appeared to suggest a three-dimensional matrix that involved age at first conviction, whether drugs and other inputs were part of the equation and the type of offence. You used the word "empirical" to describe your statement. Professor McDougall referred to statistics. Is there an analysis or report that might be useful for the laymen on the committee in our deliberations?

11:15

Professor Cooke: Yes. "Evaluating Risk for Violence" followed prisoners in Scotland and examined the prediction accuracy of five approaches to prediction.

Mr Duncan Hamilton (Highlands and Islands) (SNP): You said that the evidence that you would consider when making a risk assessment would include convictions and patterns of behaviour. You have even gone further than that and agreed that you would consider substantiated but not corroborated evidence. The bill talks about something even more vague—it mentions taking into account allegations of criminal behaviour. Obviously, that is quite a stretch. Many people would say that that was not particularly fair. At present, are allegations brought into play? Is it fair to do that?

Professor Cooke: Allegations could be brought into play if such information was provided to the clinician who was undertaking the risk assessment—it would be taken into account. The bill allows such aspects to be challenged and tested in court. That provides a safeguard.

Mr Hamilton: Such information would probably be used only in exceptional circumstances but do you, as a matter of course, have no problem with the taking into account of allegations?

Professor Cooke: That comes back to evaluation of the quality of evidence that is provided and the individual's account of what happened; that is, whether he gave a flat denial or whether he admitted to some aspects. One would have to make a judgment. Such consideration would merely contribute to the overall risk assessment; it would not be a central part of it. However, it might inform one's understanding of the pattern of behaviour.

Mr Hamilton: Professor McDougall said that research into assessment and treatment, further skills and infrastructure were needed, and she painted a picture of the current situation in which those do not exist. Is that correct? Is it your evidence that such a situation does not exist and that until it exists, our support for the general principles of the bill should be conditional?

Professor McDougall: No. I do not say that that situation does not exist. The situation is improving and developing. We know many things. We have assessment tools that have developed and we feel

increasingly confident in them, but we have not reached perfection in relation to our risk assessments—we want to continue our research and to improve continually.

Similarly, on treatment methods, we have programmes that have been developed on the basis of what we know about violent offenders. We are evaluating and testing those methods in the populations that interest us. I would not want to say that we have the perfect assessment instrument or treatment programme, but we have gone a long way towards finding them. We certainly know what does not work and we are beginning to build on that information. We should not consider the matter to be a finite process, but a developing process.

The bill would provide a vehicle for developing our knowledge of assessment and treatment. One should build in the opportunity for continuous improvement and development. I would like an opportunity for new ideas to be brought in and developed. We must encourage new ideas and research methods to be brought in from the grass roots. The RMA should not be in isolation as an authority that comes up with the ideas, considers the research evidence and passes instructions out; it needs to be an organisation that invites and encourages new ideas that can be tested and evaluated.

Mr Hamilton: I understand that the bill could be a stimulus to new research. However, we are responsible only for passing or not passing the bill. I understand that it is difficult to know where on the continuum we are, but are we far enough down the road that the bill can safely be passed?

Professor McDougall: With the provisos that I gave earlier—that we make sure that we are able to train people and that we can provide the resources that are needed to deliver the aims of the bill—it would be worth while passing the bill. I am aware of the need to protect the public as far as possible and it is essential to ensure that we do not create any victims. However, we cannot do that by locking up huge numbers of people who might pose a risk. We have come some way towards protecting the public well and, although I do not claim that the situation is perfect, we are making progress.

Mr Hamilton: I am sorry if I am repeating myself, but that takes us back to where we started. We all agree that we have to go further. I know that it will be difficult to answer this question and it will be fine if you cannot, but I would like to ask it. If you were in our position, knowing what you know and irrespective of what we might want to do in future—which may or may not happen because resources may or may not be allocated as a result of the bill—would you support the bill based on what will happen the day after it is passed, rather than what might happen 10 years later?

Professor McDougall: If I were in members' position, I would say that it would be good to support the bill if there is to be proper resourcing and training and if the tools that are available are to be used correctly.

Mr Hamilton: In the absence of knowledge of whether there would be proper resourcing, training and so on, what would you say?

Professor McDougall: It would be disappointing if there were not sufficient resources to make the proposals work, because in that case the system would not work as efficiently as we all want it to. The system must be properly resourced and a full commitment must be made to making it work properly, if the committee and Parliament decide on that course. Does that answer your question?

Mr Hamilton: It does in the sense that we agree that, without resources, we would be in a difficult situation. However, I will cease my questions at this point. Resources are not your responsibility; it is up to the Executive to produce the goods.

Professor McDougall: That is right.

The Convener: In the absence of previous convictions, can you predict the likelihood that a person will commit violence? That is the situation that we would be in should the bill be passed.

Professor McDougall: I would feel uneasy about doing that unless there were clear evidence of violent behaviour, whether someone had been convicted or not.

The Convener: Yes, but would it be possible, in the absence of convictions in a court of law, to predict the likelihood that a person will commit violence?

Professor McDougall: If a person's past behaviour has not demonstrated any violence, I would feel uneasy about predicting violent offending.

Professor Cooke: Conviction is, however, only one marker of previous violent behaviour. Conviction for such behaviour occurs in perhaps only 10 per cent of cases.

The Convener: In other words, to make the right assessment of a person, one would need to have information beyond previous convictions.

Professor McDougall: One would need to know previous behaviour.

The Convener: My last question is for Professor Cooke. The witnesses from the Parole Board said that there are similarities between an order for lifelong restriction and the current system, whereby an offender is released on licence under conditions that apply for life. We have established

that the orders for lifelong restriction will involve a new risk management authority, which does not exist at the moment. Professor Cooke; you sat on the MacLean committee. In your view, why are orders for lifelong restriction needed if they are similar to what we have now?

Professor Cooke: One aspect behind the idea was that lifelong restriction orders would provide a mechanism by which more resources could be made available for high-risk people, so that the risk can be treated or managed. I am not an expert on the difference between the current arrangements and the new proposals.

The Convener: We have heard that prisoners will appear before the Parole Board tribunal once the punishment part of their sentences have been served. The Parole Board tribunal will provide information, which will in a sense be an assessment by social workers of a prisoner's behaviour in prison. That information will be used to determine whether the prisoner will be released on parole at that point. Standard conditions on restriction and place of residence can then be applied or, for more difficult offenders, further conditions can be applied.

The committee and the Parole Board take the view that there are many similarities between the old arrangements and the new proposals. Why is there a need to go a step further by asking the prosecutor to say in court that there should be an order for lifelong restriction? What is the essential difference between the two systems? Did the MacLean committee examine that?

Professor Cooke: We considered different stages of the process and different options. The risk assessment must be dynamic and it must carry on over the person's lifetime. We anticipated that people might be released into the community earlier if the right mechanisms are in place to ensure that they are unlikely to reoffend.

The Convener: The last question will be from Stewart Stevenson.

Stewart Stevenson: Perhaps the two academics before us can uphold their profession's fine traditions of objectivity by drawing to our attention any significant different strands of opinion in academia of which we should be aware. Perhaps they could also suggest what weight should be given to such views. I noted Professor McDougall's earlier comment that the French are against "tinkering with people's heads". Clearly, the French have a different view to that which prevails in Scotland and the United Kingdom.

Professor McDougall: In England and Wales, there is now firm agreement that decisions on interventions in criminal justice should be based on research evidence. Decisions are not necessarily based on philosophy, but on what the research suggests will work. Across the board in England and Wales, there is a big commitment to what works. I think that we should make such decisions in that way.

The kind of differences that occurred previously mainly arose from differences between a psychiatric approach, whereby the offending behaviour was treated as a mental illness, and a psychological approach, whereby the offending was treated as a behavioural problem. Those different methodologies are coming together and are being brought together. Although these approaches have always worked together in Scotland, they were two separate systems in England and Wales. Now the views are coming together and we are starting to put aside our ideological differences in order to find out what is effective when we consider and evaluate the research evidence. There is no longer a wide gulf in that respect.

Professor Cooke: I tend to agree with that. The groups who carry out risk assessment—in prisons, the health service or the social services—are moving towards an empirically based model of risk prediction. There are disagreements among academics about whether a purely actuarial approach is better than a structured clinical approach. However, many of those debates are about relatively small matters that have no great relevance to policy—they are academic issues that people get excited about.

Stewart Stevenson: Do you think that the French are simply being insular and have not considered what is happening elsewhere in the world?

Professor Cooke: There have been rapid developments in the past decade. I cannot comment on the situation in France. The approach that we are advocating is the approach that has been used in Scandinavia, Belgium, Germany, Spain, the UK and North America.

The Convener: Thank you. Are there any brief comments that you want to make to the committee?

Professor Cooke: I have nothing to add.

Professor McDougall: Professor Cooke and I are trying to be as honest and objective as possible. We are not giving a sales pitch. We are trying to say, "This is the way it is and this si what we know." We are confident about what we have done, what we know and what we will know in future. However, we are not trying to paint a glossy picture. That might have come across a little too strongly—it does not mean that we do not have belief in the methods that are currently being researched and applied.

The Convener: On the contrary, we are very

grateful for the expert evidence that you have given us in the short time that has been available. Thank you.

I will allow the committee a brief coffee break.

11:31

Meeting suspended.

11:44

On resuming—

The Convener: I invite the witnesses from the Faculty of Advocates to the table. We will take evidence from Roy Martin QC, who is the vice-dean of the faculty, and Valerie Stacey QC. I believe that Shelagh McCall cannot join us today. I thank you for your helpful submission.

We will begin our questioning with the issue of the protection of the public at large. We have had some discussion this morning—perhaps you heard some of it—about part 1 of the bill, about which there are some concerns. In your submission you suggest that the Crown should not play a role in asking the court to order a risk assessment report or in appealing against a refusal by the court to make an order for lifelong restriction. Could you expand on those concerns?

Roy Martin (Faculty of Advocates): Can I begin by tendering apologies on behalf of Shelagh McCall. I regret that she has been detained in the High Court, which is a great pity because both she and Valerie Stacey were members of the committee that drafted our response.

The concerns that you mention in your question are directed at three particular parts of the sections to be introduced to the Criminal Procedure (Scotland) Act 1995. Under the proposed new section 210B(2), the risk assessment order may be moved for by the prosecutor or required by the court "at its own instance". Under proposed new section 210F(1), the order for lifelong restriction may be moved for by

"The High Court, at its own instance or on the motion of the prosecutor,"

Furthermore, section 210F(3) gives the prosecutor a right of

"appeal against any refusal of the Court to make an order for lifelong restriction."

The Faculty of Advocates has no policy views on that. We consider the legislation and its possible consequences; it is for the committee and the Parliament to judge the policy considerations. However, it is fair to say that if the provisions are enacted, we will have moved another step away from the principle that the prosecutor is not interested in sentence. In a solemn case—sheriff and jury, or High Court—it is a formal requirement that the prosecutor move for sentence. That has always been the case.

More recently, rights of appeal against inadequate sentences have come to be part of legislation. The proposed provisions are another example of where the prosecutor appears to be given a power to take a greater interest in both the form of a sentence, were an order for lifelong restriction to be moved for, and the outcome of the sentence, were the prosecutor to be dissatisfied. It appears to the faculty that, given the appropriate information, it might be more appropriate not to support the principle and for the court to have those powers. After all, it is the court that will have heard the evidence or the plea of guilty and plea in mitigation—it is fully informed of the surrounding circumstances at the stage when it passes sentence for the particular offence.

The Convener: I hear what you say, but as the procurator fiscal has a role in moving for sentence and can appeal against a lenient sentence, surely the new provisions would be on the same spectrum?

Roy Martin: That is a matter of policy and a perfectly reasonable point of view. I suspect that the issue was more critical when the decision was made to allow a prosecutor to appeal against an inadequate sentence. It may be that the critical threshold was crossed at that point. The moving for sentence, which has always existed, was a procedural formality rather than a quantitative assessment of what the penalty should be. I accept the convener's point.

The Convener: In your submission, you express concern that, when preparing a risk assessment report, the assessor would be permitted to have regard to allegations of previous offending that have not resulted in conviction. We have heard evidence from other witnesses who are concerned about that. Will you expand on your concerns?

Roy Martin: That provision appears to be a potential matter of principle that would amount to a departure from previous procedure. If the risk assessment report—and the procedure generally—is to take allegations into account, that may involve a range of different matters. It may involve some that are accepted by the accused person as matters of fact. It may involve others that are not accepted and that could be said to be more or less gossip or possibly even malicious and unfounded.

Perhaps most significantly, the proposal could involve allegations of crimes for which the person has already been charged and acquitted. In effect, the accused person would be called upon in the risk assessment exercise to account once again for that alleged crime. That may include a range of

different allegations. It may involve cases in which the accused has simply succeeded in being acquitted because the jury was not happy with the Crown evidence. It may also involve cases in which the accused has been acquitted emphatically, for example, because the complainer may have decided during a reasonable cross-examination that they were mistaken and that the crime was therefore never committed.

The proposal brings into focus the possibility of reviving a range of allegations that, in current thinking—in the faculty at least—would normally be regarded as having been laid to rest by the outcome of criminal proceedings. The simple answer would be to suggest that the risk assessment exercise should take into account allegations only if they have been the subject of a conviction, because that is a matter of objective fact at the later stage. That is a purist view. To go beyond that view is a policy issue.

Mr Hamilton: What is your opinion of the evidence that we heard this morning that it would be right and entirely fair to consider behaviour, perhaps even behaviour in prison? Would that be covered by what you suggest?

Roy Martin: It would not be covered if the behaviour was not criminal. Any form of social work inquiry that forms part of the general sentencing process can take account of the behaviour of an accused person. Such inquiries tend to be less serious than criminal charges that have been laid or might have been laid and in which there was no conviction. It is fair to say that, if one takes into account the general behaviour of an accused person for the purposes of a risk assessment, there is a certain illogicality to leaving out an aspect of their behaviour simply because it is so serious that it could have resulted in a criminal charge, or did and they were acquitted.

Those are matters of policy. If the committee and the Parliament were to decide that general behaviour that tends towards a criminal propensity was to be relevant and material for the purposes of risk assessment, a line would have to be drawn to determine whether that would include potentially criminal conduct or even tested criminal conduct on which there has been no conviction.

The Convener: We heard from the Parole Board today. Are you familiar with that process?

Roy Martin: I am sorry, convener, will you repeat the question?

The Convener: We heard from the Parole Board, which clarified the process whereby a prisoner comes before the board for release and what happens to the prisoner thereafter. Are you familiar with that process?

Roy Martin: I am not. I did not hear that evidence.

The Convener: I will summarise it briefly. Once a prisoner has finished the punishment part of their sentence, information is provided in the form of social work reports and reports on their behaviour in prison. That information is used to determine whether they are released on licence. If they are released on licence, standard conditions apply. Other conditions that restrict their movements in the UK could also apply. The proposals seem quite similar to the process that we have now; no standard test is applied with the order for lifelong restriction, but the conditions can apply for life. Are you saying that that system is wrong, or is it sufficient, because it judges offenders' behaviour in prison?

Roy Martin: I am aware of the general principle that there is a punishment element and a protection of the public element to sentences. I am not particularly surprised by the factors that are taken into account, but I do not have detailed knowledge of the procedure. It is fair to say that there are similarities between the current system and what the bill proposes. The difference might be that those are all within the ambit of the sentence that is imposed originally for the proved offence. If somebody is sentenced to life imprisonment, they are in prison for life, but they might be released, subject to their having satisfied the punishment element of the sentence and to their having satisfied the parole board.

It is also fair to say that in any assessment of whether offenders should be released on licence or on parole their behaviour in prison is taken into account. That is their behaviour after the offence for which they were convicted and it is to be derived from their confined circumstances in prison. Again, it is fair to say that there is a similarity between the current system and the proposal in the bill, but the bill does not go as far as introducing a second sentence for potentially indeterminate or unproven offences at the same time as sentencing for the original offence.

The Convener: We move on to the subject of victims' rights and victim statements.

Mr Hamilton: I would like to start by asking for your general view. In your submission you highlight a number of problems, some of which we have heard about before, but I am not clear whether the faculty supports victim statements in principle.

Roy Martin: If you will allow me, I will give Valerie Stacey the opportunity to respond to that. On behalf of the faculty, and as a faculty officer, I can say at the outset that we consider it important that we do not have political views on these matters, other than to the extent that they help inform us and others about the consequences. It is

fair to say that the faculty does not have a view about whether victim statements should be provided as a matter of principle or that there should be a system for their provision. We regard that as a clear example of a matter of policy in which we should not be involved. We are not encouraging or discouraging victim statements.

Valerie Stacey (Faculty of Advocates): We would expect any judge or sheriff, in sentencing, to be interested in what had happened to the victim. We are certainly familiar with being asked in court, either as prosecutors or as the defence, what the position is. If there were a plea of guilty, we would expect that the prosecutor would say as much as he or she knew about the effect on the victim. We have commented on the mechanics of doing that with what the bill proposes. We have tried to outline in our written proposals what we see as the potential difficulties.

Mr Hamilton: I understand the constraints that you are under and I understand that you do not want to give a policy position. I asked you the same question that I asked the Sheriffs Association, because if we are going to introduce victim statements I want to be clear about what the problems are in the current system. In evidence to us the Executive has said that it is not being critical of current procedure and it is not necessarily saying that there is anything wrong with the sentences that are being passed down at the moment; the Sheriffs Association seems to be of the same view. Is it fair to say that you do not have any evidence that victims' rights are not adequately taken into account at the moment?

Valerie Stacy: I am not sure about evidence about victims' rights, because that is a pretty wide subject.

Mr Hamilton: Let us call it the impact on the victims.

Valerie Stacey: It is my view that how much a court is told about the victim will vary from time to time, depending on the particular case. There will be a difference in how much information is available between a summary case that is heard in front of a sheriff alone or in the district court and a solemn case with a jury or a case in the High Court. I could not say that the amount of information would be uniform every time.

Mr Hamilton: I appreciate that. Would you say that the amount of information is broadly adequate or broadly inadequate?

Valerie Stacey: It is broadly adequate.

Mr Hamilton: On some of the specific aspects of the proposal, you make the useful point that if victims react differently—some victims might choose not to exercise their right to make a victim statement, for example—we might end up with inconsistent treatment of people who come through the system. In your opinion, would that be a basic unfairness?

12:00

Valerie Stacey: Yes, we highlighted that possibility because, as I understand the bill, the victim statement is to be available not only to the court, but to the prosecutor when they are deciding whether to take proceedings. At both those stages, the existence of a victim statement would offer scope for different decisions to be made. We must assume that, as the bill provides that if there is a victim statement, the judge must have regard to it, the judge will read it and so will the prosecutor. The fact that there is a victim statement, which the judge and the prosecutor have read, might lead to the making of decisions that are different to the decisions that would be made in the situation that would prevail if there was not a victim statement.

Mr Hamilton: It is explicitly stated in the policy memorandum that the victim statement is meant to impact on the judge's decision-making process. Would it be fair to say that one of your core concerns is that anything that could be seen to influence a decision must be open to cross-examination? Would you support the view that if the victim statement is to be put before the court, it should be done exclusively through the vehicle of the Crown leading evidence, which can be challenged?

Valerie Stacey: I could not support that proposal, because it would not work in the case of a plea of guilty, when there is no evidence or cross-examination. If someone pleads guilty, it is for the Crown to explain to the court what happened in the course of the offence; the Crown must give a narration of that. I would expect the Crown to tell the court something about the effect on the victim, about which it will have information. The defence then makes a plea in mitigation. There is no evidence or cross-examination if a plea of guilty is made.

Mr Hamilton: Would it be your position that to avoid irrelevant or inflammatory material and to prevent over-mighty expectations on the part of those giving victim statements, the appropriate way in which the victim statement should be presented should be through the Crown? Is that correct?

Valerie Stacey: Perhaps I am being pernickety, but the difficulty that I foresee, which is dealt with in our submission, is not so much with inflammatory statements—sheriffs and judges are used to hearing all sorts of things and we expect them to be able to deal with that properly—but with the fact that the victim statement might put

before the court material that was not properly before the court because of the plea of guilty. For example, if there were two charges and the Crown accepted a plea of guilty to one and a plea of not guilty to the other, the victim statement might well refer to the second charge, because the victim's position would be that the second charge happened, although the statement might not prove that. That would mean that the person sitting in judgment would hear, through the victim statement, about a matter that was not properly before them. That would not seem fair to the defence.

Roy Martin: We have faced the difficulty of not knowing the underlying purpose of the proposed victim statement procedure. Is it a therapeutic advantage to the victim to be able to give such a statement or is it intended to affect the sentence? The proposed procedure and the policy memorandum that the Executive has published suggest that the victim statement is intended to affect the sentence. That brings about possible inconsistencies, where one case has a victim statement and another does not.

Valerie Stacey is quite right that it is part of the sentencing process for the court to take into account the effect on the victim, just as it is part of the sentencing process for the court to take into account the circumstances of the accused and of the specific offence. There might well be cases in which there is an inadequacy of information before the sentencing judge, or in which the victim feels that there was an inadequacy of information before the sentencing judge, which is perhaps more important from the therapeutic point of view.

Having read all the papers, I find it very difficult to be able to address myself precisely to the sort of procedure that is proposed without knowing exactly what balance there is between benefit to the victim and effect on the sentence. I know from my experience some years ago as an advocate depute that the problem about dissatisfaction of the victim is most likely to arise either where there has been a guilty plea or where there has been a death. If there is a plea of guilty, there is no opportunity for the victim or complainer to give evidence on the facts of the case and to have their day in court, which I suspect many may find therapeutic. Where there has been a death—murder, culpable homicide or a driving case—something may be said about the deceased that his or her relatives take exception to and never have the opportunity to put right. Those are specific examples of situations in which I can well see that something might need to be done to ensure that there is not that level of dissatisfaction. That is not to say that the sentencing process itself in such cases would result in a different outcome.

The Convener: You are expressing similar views to those that we have heard in other evidence. Even Victim Support Scotland, which initiated some of the work, sees lots of problems with the proposals. However, the ultimate question remains. If any of us are committed to giving victims a bit more attention in court, whose duty should it be? Or is it just so problematic that we just cannot legislate for that at all?

Roy Martin: My view is that, in principle, it is the Crown's duty to prosecute and seek the sentence in the public interest. The Crown has a duty to ensure that the court is adequately informed about all the circumstances of the crime, including the effect on the victim. I would not wish to impose any further bureaucratic or administrative burdens on anybody. That gives rise to many of the difficulties that come from that conclusion, but it seems to me that that is the proper way for our system to operate. Where we have public interest prosecutions, the court should be apprised of the full circumstances.

Bill Aitken: Nonetheless, there could still be problems, could there not? For example, Valerie Stacey referred to cases where a matter may have been dealt with by a plea to a reduced indictment. Presumably, at that stage, the advocate depute or procurator fiscal will have agreed a narrative to be presented to the court. However, it is possible that the victim statement could be disputed. At the end of the day, the victim, whom we have all attempted to assist by not exposing him or her to the rigours of a court appearance, could have to go into court to be examined on the content of the victim statement. Have you any suggestions on how that situation might be avoided?

Valerie Stacey: That depends on accepting that the sentence will be different in some way because of what is in the victim's statement. Of course, that is the point of having a victim statement—so that the court can know what has happened to the victim and sentence accordingly. I wonder whether, in practice, there would be many occasions on which it would be necessary for the victim to appear in court as you describe. I know that the committee has heard suggestions—perhaps from the Crown Agent or one of the procurators fiscal who have given evidence—that the court could have a proof in mitigation in such situations, but one would not wish to have proofs in mitigation too often; it is not a desirable situation.

When judges hear from the Crown and the defence the agreed narration that Mr Aitken mentioned and consider the victim statement, they might be able to consider the whole thing and sentence accordingly without too much line-by-line scrutiny to see whether everyone agrees with every word in the statement. I wonder how much of a problem it would end up being in practice.

Roy Martin: It comes back to identifying the precise purpose of the exercise. The purpose could be to ensure that the victim gains therapeutic benefit from playing a part in a process that includes his or her statement. However, if the victim says something that is not accepted, for example by the Crown or, more particularly, by the accused, there would have to be a means of resolving that. One would simply have to face up to that.

Bill Aitken: You have clearly identified the major issue, which is that we are uncertain about whether the provision's intention is to influence sentencing or be a therapeutic exercise for the victim. Perhaps you could update us on the law in that respect. I recall a judgment several years ago by Lord McCluskey in which he deferred a sentence in order to consider a victim statement prior to sentencing. That caused some consternation at the criminal appeal court. Is that approach to the victim statement the current position?

Valerie Stacey: Yes. That case still stands. As I understand it, Lord McCluskey wanted not so much a victim statement about the medical consequences or whatever for the victim but more the victim's view on the sentence. I think that the Executive is suggesting in the bill that the victim statement should concern the effect on the victim rather than the sentence. The Lord McCluskey case, which was about 10 years ago, is relevant but different, because the victim was asked what sentence they thought the accused person should get.

Bill Aitken: On the question of balance, should the mechanics of drawing up victim statements be more tightly defined, bearing in mind the fact that the same assault could have different effects on different people?

Valerie Stacey: Yes. It would be difficult for a judge to feel that they were getting the same thing in the same circumstances because some people will be more eloquent than others. If a victim is good at expressing themselves in writing, their statement might be affecting. The statement of someone who does not express themselves so well might not be so affecting. I imagine that judges would be able to take that into account, but it is a worry that the effect of statements could depend so much on victims' personality and their ability to put things in writing.

George Lyon (Argyll and Bute) (LD): I return to the process of the victim statements. We have interpreted evidence from the Executive to mean that the victim statement should have an impact on the sentence that is handed down. In particular, paragraph 61 of the explanatory note states:

"the court must have regard to the victim statement … prior to determining sentence".

The Sheriffs Association suggested that a way round several of the difficulties with placing victim statements before the court would be to present the statement to the Crown Office and Procurator Fiscal Service. The statement would be filtered through that office and the substantive, relevant parts of the statement would be presented to the court. Is that a practical option?

Roy Martin: The ultimate view might depend on the ability of the Crown Office and Procurator Fiscal Service to manage such a system, but that option would be consistent with my view that, in our public prosecution system, the prosecutor should lay the relevant information before the court. The difficulty is that if the victim statement is made to the fiscal and the fiscal has to distil that into whatever narrative he or she gives at the time of sentence, any therapeutic benefit to the victim may be lost or minimised.

I am not a psychologist, but I imagine that it is the participation of the victim, using their own words—which is what the procedure attempts to provide—that will give them the maximum benefit. Therefore, the filtering option would satisfy the principle—which I seek to address—of the victim statement, but that option might have practical difficulties and, indeed, lose sight of the therapeutic advantage.

George Lyon: We have heard that victim statements have been introduced south of the border. Do you have any information about the role that they play in influencing sentencing policy, or are they purely for therapeutic effect?

Valerie Stacey: I am sorry, but I do not know how the system works in England.

George Lyon: We need information on that, convener.

The Convener: Yes.

Roy Martin: We could do some research on that, if it would assist the committee.

George Lyon: That would be useful.

Roy Martin: As we do not practise in English criminal courts, I am afraid that we do not know the answer, but it is an interesting point, because they may have met and addressed many of the difficulties.

The Convener: We move to part 7 of the bill.

George Lyon: In the submission, the need for section 43 is questioned. Will the witnesses elaborate on the views that are expressed in the paper?

12:15

Roy Martin: There is uncertainty about the mechanism that is proposed in the bill. The concept is clear enough: there is to be active discouragement of the striking of children at various ages—under three it will be forbidden entirely and above that age certain circumstances that might previously have provided a defence will no longer do so.

The existing common law offence is referred to in our representation and in paragraph 212 of the policy memorandum. In fact, as I understand it—and I am afraid that I have no active experience of the procedure in the courts—one is actually charged with the statutory offence of breach of section 12 of the Children and Young Persons (Scotland) Act 1937, which provides that if one "wilfully assaults" a child in one's care

"in a manner likely to cause him unnecessary suffering or injury to health"

one commits an offence, for which the penalties are specified. The exception is laid out in section 12(7):

"Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him."

It is a statutory offence, but the expression used is "wilfully assaults". One assumes that the common law concept of assault is an essential element of the crime. As I understand it—and this view is supported by writings such as Professor Gordon's book "Criminal Law"—an assault is committed by the deliberate act of striking another person. The expression "evil intent" has often been imputed into the concept of whether an assault takes place. The concept of mens rea—the intention to commit a crime—is essential in any common law offence. But experience probably shows—and Professor Gordon agrees—that evil intent, so far as assault is concerned, extends only to the deliberate intention to make the strike and to hit the person. Therefore, a parent may commit an assault on their own child in whatever circumstances, even in attempting to save that child from greater and immediate harm.

The way in which the bill addresses the issue is either unduly convoluted or too simple. It might have been possible to leave the Children and Young Persons (Scotland) Act 1937 as it has been for the past 60 years and simply repeal section 12(7), which provides the defence. A repeal could deal differently with children up to the age of three and children above that age, to address different exceptions for children of different ages. The alternative would have been to create an entirely separate statutory offence of striking a child, with the specified criteria on age and implements. The concept of mens rea in relation to assault would not enter into it—one would simply prove the fact that the child had been struck.

I am sorry if that is not helpful to the committee in its deliberations. The problem is that it is difficult to understand why the bill deals with the issue in the proposed way. There is certainly an argument that, subject to the repeal of section 12(7) of the 1937 act, the traditional statutory law could achieve the same purpose.

George Lyon: I am not sure whether that takes us further forward.

The Convener: You are saying that the defence is available under common law, and the Crown already brings charges under the common law.

Roy Martin: Yes. All one would be doing is restricting the defences, either at common law or under section 12(7) of the 1937 act, rather than doing it in a different way, and leaving section 12 and the common law crime of assault.

At that stage, one is going more into issues of policy—of whether one should allow children to be smacked, which is the common expression that parents use, whatever the child's age. They are not issues on which we express an opinion.

The Convener: How would the removal of mens rea—or whatever you want to call it in Scotland—help? I understand that you do not want to become involved in policy, but more parents would be caught by a statutory offence.

Roy Martin: That is right and is perhaps difficult to understand. If the law changes, it is inevitable that good, loving parents who otherwise would not go near a criminal court could be prosecuted and convicted.

The Convener: Your point is that a statutory offence would catch more parents because the court would not have to consider whether they had evil intent.

Roy Martin: Exactly—at any level. As a matter of legislative certainty, a statutory offence would make it much clearer that the activity was prohibited and that defences for physical punishment of older children were restricted.

The Convener: That is a different point from one that has been suggested to the committee—that because smacking a child who is under three would be unlawful, by dint of the law more innocent parents would be caught. You say that, as a point of legal technicality, a statutory offence alone would catch more parents, because the court would consider not what was in the mind of the parent, but simply their actions.

Roy Martin: Yes. That would make the situation less uncertain and take one away from the arguments that have been necessary because of the way in which the provisions have been drafted.

Mr Hamilton: That contradicts directly the policy intention, which I will quote. Bizarrely, I will read from the financial memorandum, but that is usually where the truth comes through. Paragraph 403 says:

"It is not expected that changes to the law on physical punishment of children will lead to substantial increases in numbers of prosecutions and convictions for assaulting children. Any assault on a child which merited imprisonment would almost certainly be covered by the existing law."

The position will remain static. The bill does nothing more than clarify the current position and has no intended impact. Your evidence flatly contradicts that.

Roy Martin: Yes, in a sense. I am saying that if the law is changed, it is inevitable that more prosecutions will be brought. The mechanisms that I have suggested would make the bill more emphatic. If, in truth, the Executive does not want more prosecutions, why does the law need to be changed? Our paper highlights that question. In the circumstances that we have narrated, the common law of assault or section 12 of the 1937 act would operate anyway.

George Lyon: As you said, your submission draws attention to

"the risk of bringing into the criminal justice system persons who would not otherwise come to the attention of the police or social services."

It has been suggested to us that, as at present, trivial cases would be dealt with through appropriate use of discretion by the police and the procurator fiscal. Does that answer your concerns?

Roy Martin: I am unhappy about that approach, because that seems to contradict the purpose of creating a criminal offence. If a criminal offence is created, it must be accepted that people will commit it and be convicted. To say that discretion will be exercised in every case is not an answer. Either the Executive faces up to and accepts the fact that otherwise good people who would not be in the criminal courts will be the subject of prosecution and possibly conviction, or it does not. If it does not accept that, why should the law be changed? I do not accept your answer. I do not know whether Valerie Stacey's view is different.

Valerie Stacey: The police and the procurator fiscal exercise some discretion over the treatment of all sorts of crime. The procurator fiscal receives reports on which he could proceed but for good reason does not. I expect that the same thing would happen with the offence that we are discussing, as it does already. To say that the law will be passed but that the procurator fiscal will not enforce it is not an answer.

George Lyon: Such a claim also contradicts the reason that was given for introducing this part of the bill, which was that it would allegedly clarify the current position and allow prosecutions to be made.

Valerie Stacey: The bill would not clarify matters. It would also mean that, if someone was reported to the police, the police would have to investigate and perhaps take statements. Cases that went up to the procurator fiscal and were then not prosecuted would still be very traumatic—although, of course, hitting children could also be described as very traumatic. The issue is about the balance of policy.

Bill Aitken: Over the past few years, there have been some well-documented and well-publicised cases that have involved the physical chastisement of children. To my mind, those cases have underlined the fact that the law has not necessarily got it wrong when it has dealt with such matters. Is the present law adequate?

Roy Martin: The answer to that question is a matter of one's judgment on social policy. We are aware of reference to a case in Portree. As far as we can identify, that decision was not a reported decision but was simply a summary trial in which the accused was committed. We know little about the detailed circumstances of that case.

Whether one considers that the law is getting it right or wrong when parents who chastise their children are acquitted or convicted is a matter of policy. I have no personal experience of such cases, but counsel may regularly attend circumstances in the criminal appeal court. There is no great swell of legal consideration of the issue in the courts to suggest that the decisions of summary level sheriffs or of the district court are being challenged.

Bill Aitken: Is that indicative of something?

Valerie Stacey: Yes. As Roy Martin said, there are not many appeals, as far as we can tell. We have not done a statistical analysis, but that is our impression.

George Lyon: The Executive's main reason for introducing this part of the bill was to provide clarity. Have substantial numbers of cases or investigations taken place in which the prosecution was unable to proceed because of lack of clarity in the current law?

Roy Martin: I am not aware of that. I suspect that that question could be answered only by members of the Procurator Fiscal Service who had carried out exercises or who had access to records.

Valerie Stacey: We do not know whether procurators fiscal have dealt with many reports on which they felt unable to make a decision.

The Convener: We must leave that subject for now, but we will return to it when we take evidence from the Law Society of Scotland. I am afraid that we must conclude shortly. I have noted the points that are made in your submission, especially on parts 4, 5 and 6, but those points are concerned, in essence, with drafting issues and further definitions. All that has been noted.

Sections 61 and 62 in part 12 deal with the introduction of the new post of police custody and security officer. We have not had much opportunity to examine the policy objective of or need for section 61, but we hope to do so. It would be useful to hear your views on those sections, as you have concerns about the definition of the powers.

Valerie Stacey: In essence, section 61 introduces people who will be called police custody and security officers, who will do work that is presently done by police officers. Our submission says that, if that is what is to be done, that is good and well, but one must be clear about exactly what powers such people would have. Only police officers have the power of arrest and apprehension. Although we sometimes hear about citizen's arrest, that is very unusual and uncommon. Generally speaking, arrests may be made only by police officers, not by security officers such as those who work in shops. The powers of the new post must be clear.

The Convener: Is this the first time that powers for detention have been passed from police officers to another professional body?

Valerie Stacey: No. HM Customs and Excise officers have powers in certain circumstances. It would not be the first time that powers have been passed from police officers to others. HM Customs and Excise is the immediate example, but there may be other examples. I am not saying that it is the first time that that has happened.

12:30

Roy Martin: I am not responsible for that part of the report and it is a matter of decision whether one replaces police officers with custody and security officers. However, before deciding what powers such officers should be given, one would need to have an analysis of the precise activities of a police officer that would be replaced and so identify at what point powers to arrest, detain and take samples and statements could not be performed by a custody and security officer if he were replacing a police officer. Then, if one were taking that route, one would have to decide to give the equivalent powers to such custody and security officers. It would then be possible to decide whether, for example, the power of arrest being given should be equivalent to that of a police officer or some other public officer, or whether it could perhaps be a much more restricted power. The faculty cannot obtain the factual information that I have suggested is necessary to identify what powers would be required.

Valerie Stacey: At the foot of page 57 of the bill, proposed new section 9(1C)(j) of the Police (Scotland) Act 1967 says that such persons will be able

"to use reasonable force (which may include the use of handcuffs and other means of restraint)"

where necessary. The police are trained very carefully in the use of force. One would hope that anyone who was entitled to use force to restrain someone else would be trained properly.

The Convener: You are saying that we need to define what we mean. However, you are also concerned about passing those important powers to another profession.

Valerie Stacey: Yes. As far as I know, such people will not have the training that the police have.

George Lyon: I have a point of clarification. Perhaps the Faculty of Advocates could provide a paper on the explanation that it gave of what changes might be made to the current law. The witnesses gave an excellent oral presentation, but I would like an additional paper that spells out in layman's language, for those of us who do not have a legal background, your points in respect of section 43.

Roy Martin: I shall do so to the best of my ability, with such assistance as I can obtain.

The Convener: Are there any brief points that you want to make, or have we covered everything? I assure you that we have noted everything in your submission.

Roy Martin: The committee asked about section 62 and we have not said anything about that. Our position is to question whether section 62 is necessary. Some of the supporting documents suggest that the law in Scotland is being brought into line with that in England and Wales. That might satisfactorily answer the concern about who is appropriate to be on a jury if they have some sort of conviction.

The Convener: That is a good point and I am sure that we will make use of it in questioning others. Thank you for your evidence.

I welcome our final set of witnesses, who are from the Law Society of Scotland. My apologies for keeping you waiting so long—we always save the best until last. I welcome Michael Clancy, director, Anne Keenan, deputy director and Gerry Brown. All three of you have appeared before the Justice 2 Committee too many times to count.

Thank you for your submission and for coming to give evidence once again.

We have probably exhausted the issue of the protection of the public at large, so do you have any comments to make in addition to those that you have heard?

Anne Keenan (Law Society of Scotland): One of our main concerns about section 1 relates to the criteria for risk assessment, to which evidence that you heard earlier referred. We were concerned that the test that appears in inserted section 210E appears to be a lesser test than the test that the MacLean committee proposed. The MacLean committee recommended in "A report of the Committee on Serious Violent and Sexual Offenders" that the order for lifelong restriction should be available

"in cases where the High Court was satisfied that there are reasonable grounds for believing that the offender presents a substantial and continuing risk to the safety of the public".

That seems to be different from the risk criterion that is set out in inserted section 210E, which refers to the "likelihood" that the offender will present a danger to the public.

The and/or position in inserted section 210E is rather anomalous—the offender might be either a danger to the public or indifferent to the consequences of his actions to the public and might not comply with normal standards of behaviour in society. That seems to be a lesser standard, which would mean that a greater number of offenders could be open to the order for lifelong restriction than the number that the MacLean committee envisaged when it compiled its report.

The Convener: That is an interesting point. We have been trying to get an indication of the numbers of offenders that an order for lifelong restriction would affect. We have heard evidence that it would be anything from seven to 12 offenders a year. You are saying that the test in inserted section 210E might broaden that out.

Anne Keenan: I believe that the test in inserted section 210E is a lesser test than the test that the MacLean committee envisaged in recommendation 17, which appeared to suggest that the order would apply to high-risk offenders. Recommendation 17 refers specifically to the

"substantial and continuing risk to the safety of the public".

I would have thought that the test in inserted section 210E would encapsulate a greater number of offenders.

The Convener: What does recommendation 17 of the MacLean committee report say?

Anne Keenan: There is a preamble to the recommendation, which might help the committee, if I can find it. The report discusses various situations in which the order for lifelong restriction would apply and goes on to say that it is not sufficient for there just to be a conviction for particular offences. The recommendation states:

"An OLR would be available only in cases where the High Court was satisfied that there are reasonable grounds for believing that the offender presents a substantial and continuing risk to the safety of the public such as requires his lifelong restriction."

The Convener: Thank you very much for that.

Bill Aitken: The evidence that is required for an OLR in some ways goes against the established principle of presumption of innocence. Accordingly, it might not be compliant with article 6 of the European convention on human rights. Have you given that any thought?

Anne Keenan: We certainly have, although I am not sure that it would necessarily be contrary to article 6, given that we are talking about a stage of sentence and the offender has already been convicted, so the presumption of innocence has passed. We are talking about criteria that would be taken into account for the purposes of sentencing. I have no particular concerns about the drafting of the bill in that respect.

Bill Aitken: You seem to support the section of the bill that deals with victims. However, you will have heard the evidence from the Faculty of Advocates that there are concerns. How can we get round the principal concerns? What is the purpose of the provision? Is it therapeutic, as the faculty suggested, or is it intended to impinge upon sentencing?

Anne Keenan: The Executive has stated that there is a twofold purpose to the victim statement—first, it will be therapeutic and secondly, it will have an impact on sentencing. The bill says that the court must have regard to a victim statement, so there will be an impact on sentencing. I presume that the court will consider the statement when it is considering a number of other factors, such as a social inquiry report about the accused.

In many ways, the courts already take into account some of that information. If there has been a trial and a victim has been asked how they were affected by the crime, their evidence will be one of the considerations that the judge will take into account when sentencing. It is not unknown at present for a judge to ask a fiscal whether, if there has been a plea, any information on the extent of the injury or damage that has been caused is contained in the police report. Some of that information will have been given to the court and will be under consideration. However, the proposed procedure appears to create a more formalised way in which victims—mostly in cases

in which there has been a plea—will have the opportunity to make a statement to the court and feel that they have been heard.

Bill Aitken: How do we overcome the difficulty of a plea being taken and various deletions being made from the indictment or complaint, when the victim statement refers to the effect of the full picture, if I may put it like that?

Gerry Brown (Law Society of Scotland): The practical problems are quite substantial. We do not yet know when the victim statement will arrive. There is a suggestion that it will arrive after the finding or plea of guilty. Let us assume that that is the case. Suppose that the defence has the opportunity to see that statement, and suppose also that there has been a plea of guilty to assault to injury, when the original charge was assault to severe injury, danger of life and permanent disfigurement, all of which elements have now been taken out. I cannot see anything that can be done, other than a continuation of the case to allow a supplementary victim statement to be produced. Some may view that as unsatisfactory. Others may say that you are giving the victim a voice to be heard in respect of that restricted plea of guilty, which will be accepted properly by the Crown in relation to the evidence.

Bill Aitken: How do you get round the conflict that might arise when a victim statement is disputed, perhaps quite vehemently, by the defence? The only recourse in a situation like that would appear to be to put the victim on oath so that he or she could be examined on the terms of the statement.

Gerry Brown: I shall answer that question in just a moment, but something else has come to my mind. In cases that involve multiple accused persons and one victim, the Crown may accept a plea of guilty from one and a plea of not guilty from the other three. Those pleas might be accepted in line with the evidence, and a further victim statement might therefore be required.

If there is a challenge, as there might be, to a victim statement, the only way round that that I can envisage is a proof in mitigation, where evidence must be led on oath.

Mr Hamilton: Every time that we take more evidence on victim statements, several more problems pop up. I find it surprising that, despite everything, you are still in favour of such statements. You have just given us two more problems—the continuation of cases, which will cause further delays and costs, and the idea that there might be differences if victims are asked to submit a new statement when there is a problem with the first one. The scheme is meant to be optional, so what if the victim chooses not to submit a statement at all?

There is no evidence before the committee that the current situation is flawed—in other words, that the impact on victims is not assessed. There is confusion about the purpose of the scheme and there are problems in relation to challenging statements and coaching witness statements.

According to Women's Aid and Victim Support Scotland, the scheme might increase intimidation of witnesses. The research in front of us, including the article in the *Criminal Law Review*, suggests that victim impact statements do not, and cannot, work. The Faculty of Advocates told us this morning that because people will make different statements, the sentences will be different, thus taking away a degree of uniformity, which is not necessarily fair. We are facing all those issues, most of which the Law Society of Scotland agrees are a problem, yet you still say that you are in favour of victim statements. Why is that?

12:45

Gerry Brown: The question whether a victim has a voice is a matter of policy. A pilot project is being proposed. The bill does not say that it is a pilot scheme and there is no sunset provision. We are suggesting that we should give it a try. At this stage, we do not know what classes of cases will be dealt with or which courts the scheme will apply to. Rather than prejudging the issue, we should keep an open mind. Many of us who appear daily in court are aware of the fact that the Crown presents a detailed history of the impact on the victim and that that is taken into account.

Anne Keenan: The witnesses from the faculty referred to the fact that the relatives of deceased victims—murder victims—may feel that they have not been given a say. Other victims, when a plea has been tendered, might feel that they have not been given adequate opportunity to express their feelings about how the crime has impacted on them. We cannot simply ignore that and say that, because there are several problems to be dealt with, we will not bother tackling the issue.

Mr Hamilton: I am not suggesting that.

Anne Keenan: I do not mean to suggest that you are. The Law Society of Scotland is saying that if the scheme is to be voluntary—as the bill suggests—we should consider ways in which to address the problems. Several problems have been highlighted, but if the bill were fleshed out in more detail we might begin to address them. The provisions would have to be expanded and the bill would have to address the right to challenge, for example. There should also be a sunset provision, which would specify a trial period. During that period, research should be done and we should find out whether victims think that the scheme is working in practice. On the basis of that evidence,

we can consider proposals to take forward the scheme and address victims' concerns about the criminal justice system.

Mr Hamilton: The problem is that we are not dealing with a white paper or a discussion document. We are dealing with a bill, and we must decide whether to support it.

Anne Keenan: That is why I suggest the inclusion of a sunset provision, which would state that the provisions would last for a certain period, and a provision for research. That is what has been done in relation to the Public Defence Solicitors Office.

Mr Hamilton: That might be useful.

You said that, at the moment, it is open to the sheriff to ask whether any evidence exists about the impact on the victim. It strikes me that we might be able to address the points that we are aiming to address under the current system, with a different form of direction. The policy intention that is expressed in the bill—not on sentencing, but on the therapeutic value—could be introduced by means of the current mechanisms. Do you have a view on that?

Anne Keenan: Are you referring to the fact that the Crown would make the submission in favour of the victim?

Mr Hamilton: Yes.

Anne Keenan: Norman McFadyen referred to the possible perception that the Crown would be merely distilling the evidence of the victim and that the views of the victim were not being put to the court directly. Parliament would have to determine whether it was satisfied that the Crown could do that properly. The question then would be whether the policy objective of achieving therapeutic value for the victim was being obtained.

Mr Hamilton: Do you doubt that?

Anne Keenan: Do I doubt that the Crown could assist?

Mr Hamilton: Yes.

Anne Keenan: I believe that the Crown prosecutes well in the public interest and can put sufficient information, if it has it, before the court. The question is whether the victim would be satisfied about the therapeutic element of the procedure. The Executive has stated that that is a key principle of the proposal.

Gerry Brown: A way round that—I think that the Sheriffs Association made this point—is that the victim statements in the victims' own words could be given to the Crown. In a situation such as that that Bill Aitken described, the Crown could—in the public interest and with the professionalism that we associate with it—cut out elements that were not relevant, such as those in my earlier examples.

The Convener: We are seriously considering the sheriffs' suggestion, which is why you have been getting that line of questioning.

George Lyon: To follow up on Duncan Hamilton's questions, I want to be clear about the Law Society's position on victim statements. I presume that you support the policy objective of introducing victim statements. Do you also support the policy objective of victim statements influencing sentencing, as well as providing a therapeutic effect for the victims?

Gerry Brown: Yes.

George Lyon: It is clear that you are flagging up the process of how that policy objective will be achieved.

The Convener: I would like your opinion of section 43 and the Faculty of Advocates' evidence on that section. I am probably more confused than ever about where we are on the legal question of physical chastisement. However, I will let George Lyon take the first line of questioning.

George Lyon: We would like you to clarify your position on what we heard from the advocates.

Gerry Brown: We adopt what the Faculty of Advocates said.

Michael Clancy (Law Society of Scotland): I am not sure whether we will be able to clarify anything.

George Lyon: Well, as an opening question, do you believe that section 43 is necessary?

Michael Clancy: That is a difficult question to answer and, of course, we will not answer it.

George Lyon: We might as well break for lunch, then.

The Convener: Why should you be any different?

Michael Clancy: When do you intend to adjourn, convener?

There are difficulties in section 43. That is plain from all the evidence that has been presented to the committee. We must find an expression that will comply with our obligations in terms of the A v UK case, which was the European Court of Human Rights case. It is difficult to reach that position in the way that section 43 tries to do. [*Interruption.*] I hope that the laughter outside the room does not mean that I said anything particularly funny.

The fact is that section 43 does not make an assault provision. Section 43 states:

"Where a person claims that something done to a child

was a physical punishment … then in determining any question as to whether what was done was, by virtue of being in such exercise, a justifiable assault".

The unusual phrase "justifiable assault" is the essential element. The current law has a defence of reasonable chastisement to a charge of assault. I am not aware of the issue of justifiable assault coming into play in any defence to an assault, except perhaps in self-defence. That is the anomaly. The bill does not create an offence provision, but it creates a new defence.

The Convener: That is exactly right. The issue that we are having difficulty with is whether or not there should be a defence. The Executive is trying to close down whom that defence should be available to. When we heard evidence from the Faculty of Advocates, I asked the witnesses about the whole issue of the common law versus statutory law. They seemed to be saying that a statutory offence would catch more parents because in that case the normal criminal mens rea would not be examined. I am not sure that that is exactly right, because the offence would have to be a strict liability offence for the mens rea not to be considered, and a statutory offence is not necessarily a strict liability offence.

Michael Clancy: You are right.

The Convener: Did you hear that evidence?

Michael Clancy: Yes, I heard what the Faculty of Advocates witnesses said, and you have very clearly encapsulated their views. However, whether any statutory offence would be a strict liability offence, or one that would depend on intention, depends on how that statutory offence is framed. That is what we do not have in the bill; we do not have that expression. Furthermore, issues such as reasonable chastisement are not adequately dealt with by that provision. It raises the anomalous situation. There is a train of thought relating to reasonable chastisement lurking around somewhere, and the bill does not say that reasonable chastisement is hereby abolished.

The Convener: Are more parents now charged with assaulting a child under statute or as a matter of the common law?

Michael Clancy: I have no statistics on that, I am afraid. You could ask the Lord Advocate.

George Lyon: From your professional experience, do you have any evidence of the courts applying the reasonable chastisement rule wrongly at the moment? Is there insufficient clarity in the current law?

Gerry Brown: No. I agree with the Faculty of Advocates that there does not seem to be a swell of concern about it, which would have exhibited itself either in public comment or in appeals to the appeal courts. That is certainly my experience.

George Lyon: Does the Law Society therefore support the Executive's view that the matter needs clarification and that that is the justification for the inclusion of section 43 in the Criminal Justice (Scotland) Bill?

Gerry Brown: It is fair to say that we are not sure that that section of the bill solves any problem at all.

George Lyon: That does not answer my question.

Gerry Brown: It is the only answer that I am giving, because I have four strapping youngsters, who could smack me.

The Convener: I think that we will have to regroup and attack here.

We have taken lots of evidence on the issue and have heard from people who have very firm views in favour of the bill and others who have very firm views against it. We have to make something of that. We are now trying to examine the practical and legal effect of changing the law in the specific way outlined in the bill. I am not sure that I am any further forward; perhaps we will not be able to predict the outcome.

I understand that procurators fiscal will use their discretion in every aspect of the law. They always decide which cases are in the public interest and which are not. However, people are using that process to say that, even though the Executive will remove the defence for smacking with an open hand for children under three, procurators fiscal will use their discretion sensibly not to prosecute innocent parents. I just do not see how such a broad-brush assumption can be made. Do you have a different view? Perhaps you can assist us.

Anne Keenan: Constitutionally, the independence of the Lord Advocate is protected by the Scotland Act 1998. As the convener said, we know that the Procurator Fiscal Service will use its discretion when considering cases. There is nothing in section 43 that would detract from that discretion. Therefore, it would be open to fiscals not to proceed if they thought that a case did not merit prosecution in the public interest.

The Convener: There would surely have to be a guideline from the Lord Advocate about whether to bring in parents who are not normally criminals.

Anne Keenan: The Crown Agent has indicated that guidance would be issued on the implementation of section 43.

The Convener: He told us that there has been no consideration of that. I know that it is not a matter for you, but I am just trying to gather whether, from your experience of the law, you agree that it is not possible just to assume that the

Lord Advocate or a procurator fiscal will not proceed against parents because of actions that do not contravene the current law.

13:00

Anne Keenan: Parents might be subject to criminal investigation by the police because of section 43. What happens thereafter in terms of prosecution policy will be a matter for the Lord Advocate.

The Convener: Fair enough.

Mr Hamilton: I want to be slightly clearer about what we are talking about in terms of the current legal defence. Will everything that is currently considered reasonable chastisement be considered justifiable assault under section 43?

Anne Keenan: We do not know.

Mr Hamilton: Okay, I understand. I am not trying to be clever. I am trying to find a way through my ignorance, but perhaps I cannot achieve that. Is justifiable assault a bigger concept than reasonable chastisement?

Gerry Brown: It may be.

Mr Hamilton: If you were involved in the first case in which someone used the defence of justifiable assault, I presume that your starting point would be to say, "Thus far, what we have understood to be reasonable chastisement was this." Therefore, that might become the building bricks for the new defence category.

Gerry Brown: I am not convinced that section 43 does away with reasonable chastisement, even for children under three.

Mr Hamilton: You just keep throwing these points in.

Gerry Brown: I merely expressed a personal opinion. However, I am not convinced that section 43 excludes children under three from the parental defence of reasonable chastisement. I know that others have given different opinions.

Mr Hamilton: Okay. I think that I understand that. I also want to clarify the common law position. One question that we asked the minister at the beginning of this process concerned section 43(3)(b), which refers to

"a blow to the head; shaking; or the use of an implement."

Is your understanding that all those things would be captured by the current position under the case of A v UK?

Gerry Brown: Again, it would depend on the circumstances. Shaking or the use of an implement could be part of a justifiable action by a parent to prevent a child from having an accident—for example, a child running on to a road.

Mr Hamilton: Yes, but I want to stick strictly to the idea of clarifying the law about the three actions in section 43(3)(b). My reading of the summary of the case of A v UK is that the law currently covers those actions. I put that point to the minister and his officials, but I got no satisfaction from them on that. Am I missing something whereby what is in paragraph (b) is not covered by the current position? Are you aware of a lack of clarity about that?

Michael Clancy: The difficulty is—after a short conference with my colleagues—

Mr Hamilton: I was nearly sending out for pizza.

Michael Clancy: The difficulty is whether a blow to the head, shaking, or using an implement against a child could ever be described as reasonable chastisement. That would depend on the circumstances. However, I would tend to say that those actions could not be described as reasonable chastisement. I do not know whether the actions meet the requirements of the A v UK case, which was based on a specific English provision in the Offences Against the Person Act 1861. I doubt whether we could expand on A v UK to say that it gives us an insight into Scots law.

Mr Hamilton: Am I not right in saying, from my limited and ignorant reading, that the tests that were set down there were sufficiently broad to catch all the categories that we are considering now?

Michael Clancy: Broadly, that is correct.

Mr Hamilton: If that is likely to be the case, that raises the question why we are bothering at all, which is where we started.

Gerry Brown: In relation to the investigation, the report to the procurator fiscal, the discretion and so on, you should remember that there are concurrent problems. I believe that Alan Miller of the Scottish Children's Reporter Administration told you that those matters may be referred to the children's hearings system. That is an important issue that has major ramifications. I believe that Alan Miller told you that discretion would be used wisely, but you have to be satisfied that that would be the case.

George Lyon: I return once more to the argument that is put forward by the Executive. When pressed about the possibility that parents might be caught by the provision and subjected to investigation for what we would regard as a light smack or for grabbing a child to stop them running across a road, the Executive says that procurators fiscal would use their discretion and not take action if they believed a reported incident to be a trivial matter. Do you think that that is a sensible way in which to proceed with a piece of legislation that attempts to put in place a definitive position

with regard to whether it is permissible to physically chastise a child under three? Part of my concern relates to reports being made as a result of ill-feeling between neighbours and so on. Such reports will be caught by the legislation and parents will find themselves being investigated on the basis of reports that were made for reasons of spite or malice. With that in mind, is the Executive taking a justifiable position?

Michael Clancy: That is the same for any offence. For example, anyone could, out of spite, accuse a parent of child abuse. Once we start trying to trammel the discretion of prosecutors, where does that end? As Anne Keenan indicated, we think that there might be a constitutional difficulty in trying to impinge on the Lord Advocate's rights under the Scotland Act 1998.

George Lyon: Gerry Brown, you indicated that you believed that the proposed legislation would not prevent the defence of reasonable chastisement being used in relation to children under three. Could you elaborate on that?

Gerry Brown: My opinion is based on my interpretation of the section. For the reasons that Anne Keenan and Michael Clancy outlined earlier, I do not think that the section excludes the defence of reasonable chastisement.

The legislation could be framed in such a way that it removed the defences of reasonable chastisement, self-defence or coercion due to necessity if the offence were made one of strict liability with no issue of mens rea, which would mean that, if a child under three were assaulted in any way, the issue would go to court. A simple example is that you either have a driving licence or you do not have a driving licence.

The Convener: You make that sound simple, but I do not know that it is. If the definition of an assault is any laying of a hand on someone else, there is a question about where one draws the line. Duncan Hamilton is right to say that there is a wider concept of justifiable assault. Physical chastisement cannot be taken in isolation from other aspects of the law. It is like narrowing down the definition of justifiable assault in relation to the Queensberry rules or the rules of football—if you cannot kick your opponent, that narrows down the scope and means that more people will commit an assault. I take it that someone who smacks a child under three with an open hand can no longer use reasonable chastisement as a defence. The fiscal will have to judge whether a particular smack was an assault.

In a sense, the faculty is right, although for the wrong reasons. There will be more parents who could potentially be caught out. Anne Keenan was also correct to say that there is a potential for more police complaints. The question is about what happens after that and we have no guidance on that because the Lord Advocate has said that, as yet, there has been no consideration of the policy guidelines.

Anne Keenan: You are right to say that the bill will remove the defence of justifiable assault. We are saying that we do not know what justifiable assault means—it is not defined. We are not sure how that sits with reasonable chastisement and other defences such as necessity and coercion. That must be addressed in the bill if it is to clarify the law, which is the stated intention.

Michael Clancy: In any event, whatever the outcome of the deliberations of the committee and the Parliament, there would have to be a substantial programme of publicity and education so that people were not caught unawares. Parents will have to be made aware of how the law has changed and what their position is in relation to it.

The Convener: That is the Executive's fundamental position. It wants to change the culture. That is a fair point. There are many other things in your submission that are vital to the evidence on the bill and we will take those into consideration. You commented on part 4, and on non-custodial punishments, drugs courts and so on. You have not commented on section 61—we talked to the Faculty of Advocates about this—and the powers that pass from the police to custody and security officers. Do you have any concerns about that?

Michael Clancy: No. There might be a small amendment to section 59, which relates to the Public Defence Solicitors Office, because it says:

> "In section 28A of the Legal Aid (Scotland) Act 1986 (c.47) (power of Scottish Legal Aid Board directly to employ solicitors to provide criminal legal assistance)—
>
> (a) subsections (2), (3) and (10) to (15) are repealed".

However, in my copy of the Legal Aid (Scotland) Act 1986, section 28A has only 14 subsections.

Bill Aitken: Oh dear.

Michael Clancy: I know, I heard that sigh. This is my first suggested amendment: "In section 59, page 55, line 7, leave out (15) and insert (14)."

The Convener: That is the easy bit.

Michael Clancy: I know.

The Convener: Thank you for coming. Your evidence is vital and the Justice 2 Committee appreciates your involvement in its work.

At the beginning of the meeting, which seems so long ago, we agreed to meet in private to discuss the draft report of our inquiry into the Crown Office and Procurator Fiscal Service. I guess that, because it is nearly quarter past 1, members will tell me that we have run out of time to do that. Do

members want to have a couple of minutes in private? I do not know how pressing—

Scott Barrie: We have two other pieces of business to deal with before that.

The Convener: So we do.

Bill Aitken: I suggest that we should deal with those items of business because we have to do so today. Perhaps we could defer discussion of our draft report to our next meeting.

The Convener: Thank you for that suggestion.

Some of the issues to do with the Criminal Justice (Scotland) Bill need to go to the conveners liaison group. I refer to the expenses that are attached to one or two visits that we might want to make and I would encourage members to support those visits. It has been suggested that we might want to visit one or two youth crime diversion projects that are already in place and the office of Reliance Monitoring Services in East Kilbride—I think that the committee would find that visit useful. I invite the committee to agree in principle to those visits, which need to be funded.

Members *indicated agreement*.

Subordinate Legislation

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2002 (SSI 2002/235)

13:15

The Convener: Item 4 is subordinate legislation. Members have a note from the clerks on the substance of the instrument. Do members have any comments, or do we simply wish to note it?

Bill Aitken: We should simply note it.

The Convener: Do members agree?

Members *indicated agreement*.

Joint Meeting

The Convener: Members may recall that, last year, the Justice 1 Committee and the Justice 2 Committee held a joint meeting with the Minister for Justice to take stock and to discuss plans across the justice portfolio. I invite members to agree to hold a similar meeting, at which they will have an opportunity to question Jim Wallace. They will also be able to question the chief inspector of prisons on his annual report. Given our passing interest in prisons, it would make sense if we were to hold such a meeting. Do members agree?

Members *indicated agreement*.

The Convener: I remind members that the next meeting of the Justice 2 Committee will be on Tuesday, 18 June. As we move towards the summer recess, committees are having to rearrange their meetings because the Parliament will be meeting on Wednesday mornings. We will hear from the Minister for Justice, who will give evidence on the Criminal Justice (Scotland) Bill.

As members know, our final meeting before the summer recess will be on Tuesday 25 June, when we will consider the Land Reform (Scotland) Bill at stage 2—I hope that members remember that bill.

Crown Office and Procurator Fiscal Service

The Convener: That leads us to item 6. Do members want to spend a minute on our draft report or shall we defer the item to our meeting next week?

Mr Hamilton: We should defer it.

The Convener: Okay. Members have the draft report and now have a chance to go through it. There is no reason why comments cannot be fed back to the clerks before next week's meeting—I would be grateful if members could find the time to do so. I know that one or two members have comments that they wish to make. The timetable for publication of the report depends on when comments are made. I ask members to bear in mind the fact that we have submitted a bid for a slot to air our report in the Parliament after the summer recess. I ask members to keep an eye on that.

Meeting closed at 13:17.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 21 June 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178