JUSTICE 2 COMMITTEE

Tuesday 18 June 2002
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
24th 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

WITNESS

Mr Jim Wallace (Deputy First Minister and Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 18 June 2002

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:35*]

10:15

Meeting continued in public.

Items in Private

The Convener (Pauline McNeill): Good morning. I welcome everyone to the 24th meeting of the Justice 2 Committee. We dealt with item 1 in private, for the purpose of agreeing our lines of questioning for item 3. I ask members to do the usual stuff and switch off their mobile phones and anything else that makes a noise and might disturb the committee. I have received apologies from Duncan Hamilton.

I invite committee members to agree to take in private item 5, which is consideration of the first draft of our report on the Crown Office and Procurator Fiscal Service.

Stewart Stevenson (Banff and Buchan) (SNP): Are we of the view that consideration of the report is likely to lead to sufficient disagreement or be sufficiently controversial to justify being conducted in private? I am mindful of comments that are being made. It must be a balanced decision.

The Convener: We normally discuss committee reports in private.

Stewart Stevenson: I agree. My question is a mild challenge to the norm.

The Convener: At the conveners liaison group, I put on record my feeling that we do almost everything else in public. We have a good record of debating our points in public.

Stewart Stevenson: We do.

The Convener: We meet in private only for a small number of reasons—when we are discussing a report or lines of questioning—and I propose that we do not depart from that unless the committee is otherwise minded.

Bill Aitken (Glasgow) (Con): That would be my view. It is preferable that as many matters as possible are aired in public. However, there is a danger that proper discussion of a report of this nature would be inhibited if it were held in public, which could inhibit our ability to produce a balanced report.

George Lyon (Argyll and Bute) (LD): I agree with that.

The Convener: So, are we agreed that we will take the item in private?

Members *indicated agreement*.

The Convener: Thank you. I also ask members to agree that draft reports should be dealt with in private at future meetings, notwithstanding what Stewart Stevenson has said. Is that agreed?

Members *indicated agreement*.

Criminal Justice (Scotland) Bill: Stage 1

The Convener: Item 3 is a discussion at stage 1 of the Criminal Justice (Scotland) Bill. I welcome the Minister for Justice, Jim Wallace.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): And a range of officials.

The Convener: Welcome to you all. I apologise for keeping you waiting. As the minister will know, the bill contains a lot of technical issues. Although we volunteered to be the lead committee on the bill, we did not have any idea of the number of provisions that it contained. As the Executive has kept adding to them, the task has become onerous. I thank the minister for the large memorandum that was sent to the committee in advance of the meeting. It has helped to clarify several issues that have been raised in evidence and I am sure that it will save time. I refer members to paper J2/02/24/2, which sets out some explanatory material. I hope that our lines of questioning can be narrowed down to points of further clarification and further issues that need to be raised.

I understand that the minister will not make an opening statement, so we will go straight to questions.

Bill Aitken: Good morning. Part 1 of the bill relates to the protection of the public at large. The committee is in some doubt not about the Executive's intentions, but about the efficacy of the provisions. At present, someone who is sentenced to a lengthy period in prison or life imprisonment for the type of offence that it is envisaged will be dealt with under part 1 would have their sentence reduced on licence following appropriate consideration by the Parole Board for Scotland. Quite onerous restrictions could be placed on the individual if he or she were to be liberated. I am a little puzzled about how the provisions in part 1 would change the current situation, apart from the fact that the risk management authority would be involved.

Mr Wallace: Part 1 seeks to put in statutory form, where that has been necessary, the recommendations of the MacLean committee's expert report on serious violent and sexual offenders, which the Executive substantially accepted and which Parliament has endorsed. We are dealing with the product of considerable investigation by what is widely accepted to have been a useful and hard-working committee.

The new sentence—the order for lifelong restriction—is required for an important reason. At present, a mandatory life sentence is imposed for murder. I will return to issues that relate to that. For an offence that is not murder, a discretionary life sentence or a determinate long sentence may be imposed. As Mr Aitken said, if a discretionary life sentence is imposed, conditions can be attached before a person is released by the Parole Board and when they are on licence, for life. That is not the case with determinate life sentences. For a person who is released on parole before the full term expires, conditions can be attached only during the residual part of the sentence. When that ends, conditions cannot continue. An important element of consistency is involved.

Bill Aitken asked about changes apart from the establishment of the risk management authority, but that is an important measure. The scheme does not involve separate bits; it hangs together. As we have said, we wish to establish the risk management authority because considerable differences exist in the approaches of agencies throughout Scotland. The authority will oversee risk management plans and ensure that best practice is disseminated and learned. That may come from outwith Scotland. The risk management authority will be able to identify good practice and minimise risks to the public.

We are talking about serious offenders. The number of people who are sentenced to an order for lifelong restriction may not be large, but the work of the MacLean committee suggests that the orders will play an important part in enhancing the public's protection from serious sexual and violent offenders.

Bill Aitken: The argument could be advanced that an alternative would be to establish the risk management authority administratively and to have it work in conjunction with the Parole Board more or less along the lines on which the board's officials work at present.

Mr Wallace: I assure the committee that careful consideration was given to the nature of the risk management authority. The work that is involved and the required interaction with criminal justice agencies could not be undertaken by the private sector. The body is very much considered to be part of the public sector.

Another criterion that the Executive applies in determining whether it should establish a non-departmental public body is whether an existing body could undertake the functions. Having examined the matter, we did not believe that other bodies or agencies could undertake the functions. We also believed that the body should be at arm's length from ministers. One would not expect day-to-day oversight and involvement from ministers, but the body will undertake important work, so it should have some line of accountability to ministers and to Parliament. That pointed to a non-departmental public body, which the bill proposes.

I assure the committee that the decision was not reached lightly. For the reasons that I have described, an NDPB was thought to be the best vehicle.

Bill Aitken: The Executive's memorandum of 13 June says that only High Court cases would trigger a risk assessment order. We have seen and heard evidence of concern about the range of offences that could trigger an order. Are you satisfied that a risk assessment order could not be triggered by a fairly minor conviction, albeit one that was dealt with in the High Court?

Mr Wallace: Yes. I am satisfied that an order for lifelong restriction would be unlikely to be issued for someone who had committed a trivial offence, albeit one that was handled in the High Court. It is unlikely that a trivial offence would be heard in the High Court, unless a person had been charged with more serious offences that fell away one by one, leaving only a breach of the peace.

The court would have to address established criteria before an order for lifelong restriction could be imposed. I firmly believe that the court would not use a sledgehammer to crack a nut. The order will be considered an important addition to the range of disposals that is available to the court. It is intended—and, because of what it involves, will be seen to be intended—to deal with serious sexual and violent offenders.

We should remember that safeguards are in place. It is open to the convicted offender to produce their own risk assessment report. A challenge can be made and any order for lifelong restriction can be appealed. Several safeguards are built in to make it highly unlikely that a minor offence would trigger what is intended to be a tariff or disposal for the serious end of offending.

Bill Aitken: Last week, the committee heard interesting evidence from Professor David Cooke, who said that he would find it difficult to apply the risk criteria that are set out in proposed new section 210E of the Criminal Procedure (Scotland) Act 1995. The word "likelihood" is used in that section. What is meant by that word? To what category of offender is the section directed? Is it intended to deal with individuals with personality disorders, for example?

Mr Wallace: As I read it, the section almost speaks for itself. It says that the criterion is that

"there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public".

The word "likelihood" is not being endowed with any great scientific meaning. The question is whether, having obtained all the information, the court considers that there is a likelihood—it is difficult to find a better word—that a person would, if they were in the community and not in prison, put the lives of the lieges in danger.

If a mental disorder is involved, the court can consider other disposals, including an interim hospital order. The order for lifelong restriction is not the only disposal at the hands of the court. The interim hospital order could be used, if a mental disorder had been diagnosed in the report to the court.

Bill Aitken: I do not seek to be pedantic.

Mr Wallace: I know that.

Bill Aitken: I do not want to enter into an argument about semantics. In general conversation, the word "likelihood" is reasonably clear.

Mr Wallace: That is what I thought.

Bill Aitken: However, we are discussing not general conversation, but the law. In different circumstances, Professor Cooke might be required to determine the possibility of someone committing further offences. Are you quite satisfied that the procedures are in place to define the appropriate criteria?

10:30

Mr Wallace: Let us remember that the recommendation is that, before an order of lifelong restriction can be imposed, there must be a formal risk assessment, which must be carried out not only by reference to criteria but in accordance with statutory procedures. I believe that the criteria are based on determining whether the offender represents a substantial or continuing risk to the public. The assessment report could identify a number of reasons why that likelihood exists. I do not wish to pin one specific ground to the word "likelihood". There might be a range of reasons why, having weighed all the evidence against the criteria, it is decided that there is a likelihood that a person could pose a danger if released.

The criteria are intended to reflect the recommendations of the MacLean committee, which considered the matter in detail. They must be workable and so must be neither overly prescriptive nor too tightly drawn. We have certainly endeavoured to strike the right balance. If the committee feels that any of the criteria should be reconsidered, we shall look at them again. However, the criteria follow on from the work of MacLean and we believe that we have struck the right balance.

As I have said, an order is always subject to the offender's right of appeal if there is a feeling that the court has not interpreted the criteria properly in the first instance.

Bill Aitken: There is likelihood and there is certainty and there is everything in-between. I

think that we would agree on that.

Mr Wallace: You will find very few scientists who are prepared to say that something is ever a certainty.

Bill Aitken: There may be a likelihood that a certain horse will win the 2.30 at Kempton, but are you prepared to put this month's salary on it?

Mr Wallace: Likelihood is not certainty, and there is always the possibility—which falls short of certainty—that a person would not endanger people's lives, which we should all be relieved about. Of course, the definition excludes the trivial whim—the possibility that the person in question just might, on a bad day, endanger people's lives. Likelihood is quite a high requirement to meet. Obviously it falls short of certainty, but we should remember that the underlying concern that we seek to address is the safety of the public. If the information that is available on an individual has been assessed and it has been decided that, if that person were to go out into the community without any restriction or management, there is a likelihood—it is more probable than not—that they would endanger the lives, or physical or psychological well-being, of members of the public, I believe that there is justification for society to give our courts power to make appropriate orders, subject to all the protections that exist for the accused person.

The Convener: The committee has heard evidence from many witnesses, notably from the Scottish Human Rights Centre, who have raised concerns about civil rights issues and about how civil rights are weighed against the protection of the general public. Proposed new section 210F refers specifically to the test of evidence when imposing the order for lifelong restriction, and proposes using the balance of probabilities. It has been suggested to the committee that the higher test of evidence—beyond reasonable doubt—should be used. Has any consideration been given to that?

Mr Wallace: I can certainly assure the committee on that point. Any committee members who know my personal commitment to human rights issues will know that I have given considerable attention to those matters. Having signed the certificate of competence on introduction of the bill, I am obviously satisfied, on the basis of the advice received, that the bill's proposals honour our European convention on human rights obligations. It is important to recall that an important part of the procedures allows the person who has been convicted to challenge and appeal against a sentence, so safeguards are built in for the accused person.

Please remember that we are dealing not with a finding of guilt but with somebody who has already been convicted. Therefore, the Executive took the view that the appropriate test was one of the balance of probabilities. Guilt beyond reasonable doubt has already been established in the case of such a person; it would not be reasonable to impose the same very high criminal test at the post-conviction stage.

Stewart Stevenson: I want to move from the theoretical to the practical application of the term "likelihood". I have an example in mind. For reasons of privacy, I shall construct an artificial example that is based on real examples. I suspect that other members may have similar examples.

Suppose that there is a member of the public who is a persistent petty thief, importuner and bad neighbour. I suspect that such a person would occasionally appear in the High Court for more serious crimes. In my judgment, and probably in the judgment of many others, that person would be judged to be likely, as part of a pattern of behaviour, seriously to endanger the psychological well-being of certain members of the public, such as his neighbours or others in the immediate vicinity. The person could be very far from being a murderer or a serious sexual criminal, but the psychological damage that he causes might be evidenced by a couple of nervous breakdowns among the people affected. In one case, his behaviour could even have led to the suicide of someone affected by his offending. Are there any circumstances in which such a person would fall within the definition of those who might be subject to a lifelong restriction order?

Mr Wallace: I think not. The reason is nothing to do with the risk criteria or references to the word "likelihood", but is explained in subsection 1 of proposed new section 210B, proposed by section 1. It says:

"This subsection applies where it falls to the High Court to impose sentence on a person convicted of an offence other than murder and that offence—

(a) is (any or all)—

(i) a sexual offence (as defined in section 210A(10) of this Act);

(ii) a violent offence (as so defined);

(iii) an offence which endangers life; or

(b) is an offence the nature of which, or circumstances … of which, are such that it appears to the court that the person has a propensity to commit"

the sort of offences listed in the subparagraphs above. Quite frankly, I do not think that the circumstances that Mr Stevenson described fall readily into that range of offences.

Stewart Stevenson: If that person committed assaults, which would bring the offences within the scope of the term "violent", would that change the circumstances?

Mr Wallace: We are talking about serious violent cases.

Stewart Stevenson: I am not questioning your intent, which I think is quite clear and which the committee understands. I am merely questioning the expression of that intent in the bill.

Mr Wallace: I certainly think that the court would have to be satisfied that the nature of the assault was such that it amounted to violence. There are many assaults that one would not readily label as serious violence or as assaults that endanger life. Many assaults come nowhere near endangering life.

An assault in a case that is being heard in the High Court may be of a particularly serious nature. It is difficult to make comments about which kind of assault would count based on hypothetical circumstances. One of the reasons why there would be a risk assessment order and why a report would have to be commissioned is so that trivial cases would not slip through the net. If you read all the provisions together, both the section that indicates the kind of cases that would trigger a risk assessment order and the section on the criteria that are applied, I think that it is clear that the kind of hypothetical circumstance that Mr Stevenson describes is very unlikely.

Bill Aitken: One of the most important basic principles of Scots law is the presumption of innocence. To some extent, the proposals go away from that. I am well aware—the Executive memorandum deals with the issue—that the offender has the opportunity to challenge the risk management plan. However, a number of witnesses have expressed concerns that the use of unproven allegations in the risk assessment process is not satisfactory. Will you comment on that? Will you also comment on whether there is a possibility that the proposals may breach article 6 of the European convention on human rights?

Mr Wallace: Ultimately that would be a matter for the courts to determine, but it is my firm belief that they do not do so. Otherwise, I would not have signed the certificate of competence before I presented the bill to Parliament. Therefore, by definition, I do not believe that the proposals breach the convention but, as in all such cases, that is determined by the courts, not by ministers.

The purpose of the risk assessment report is to try to ensure that the court has as much information as possible when it makes a decision on the level of risk that the offender poses to the public and whether an order for lifelong restriction might be appropriate. Information on unprosecuted allegations would be only one part of the sum of information that would be before the courts.

I recognise that this is an important point. That is why I have challenged and queried it at a number of stages in the preparation of the bill. On a practical matter, the information would be drawn from reputable sources. It would not include tittle-tattle that someone's granny said to someone else. It would come from Crown Office records and intelligence systems and it is intended that there will be a code of practice about the collection and use of such information. The important safeguard is that the offender can challenge any aspect of the risk assessment report, including information of that type. A safeguard is built in to the process; a challenge is allowed if the person does not accept the report.

Bill Aitken: I accept that tittle-tattle and apocryphal stories would not form the basis of any decision. Nevertheless, we are departing from the important principle that the facts should be proven beyond reasonable doubt. That is not happening in the risk assessments, is it?

10:45

Mr Wallace: The information is not relevant to establishing the person's guilt. Guilt, established beyond reasonable doubt, precedes the compilation of the report. As I have said, the person will have a right to challenge the information in the report. If a challenge was made and those who compiled the report insisted on its inclusion, there would have to be a proof to decide whether the information in the report had been established. The information does not establish the person's guilt.

Those circumstances mean that we are not requiring the higher standard of beyond reasonable doubt. The information will not convict a person and it is only one contributing factor to the totality of information that would be available in assessing the person's likelihood of being a risk to the lives of the public.

Bill Aitken: Will the decision be based on balance of probability?

Mr Wallace: Yes, because we are not determining guilt.

The Convener: When the decision is being made on whether to apply an order for lifelong restriction, we are balancing the risk to the public with the person's rights. There is a worry that we are encroaching on the territory of non-conviction information being used to restrict persons. You are putting the case that justifies doing that and, under part 5 of the Police (Scotland) Act 1967, such non-conviction information can be used when the view is taken that it is necessary to do so for the protection of children. Although the case can be made, we would not want the use of information that has not been proven in a court of law to go much further than it has already, because we are setting a trend. For at least the second time in

Scots law, information that has not been proven in a court of law can be used to restrict a person's movement. We must proceed with caution.

Mr Wallace: This is not something that one does lightly—far from it. I give the committee every assurance that the proposals did not appear in the bill without serious consideration being given to the points that have been made. It is proper that the committee and the Parliament examine closely specific proposals such as this. Important issues of public safety are involved. We are not talking about trivial matters of public safety, but about danger to life or physical danger. I believe that we have struck the proper balance.

The Convener: Bill Aitken asked you to clarify what is meant in section 210E by offenders who are "indifferent". Is that provision directed at offenders with personality orders? If not, at whom is it directed?

Mr Wallace: Can you repeat that? I want to be perfectly clear about the question that I am trying to answer

The Convener: Whom is the provision aimed at? Is it aimed at offenders with personality disorders or at another type of offender?

Mr Wallace: It could include people with personality disorders if there was a propensity, because of the personality disorder, for the person to be totally indifferent to the consequences of behaviour that could threaten the public. That need not necessarily be the result of a personality disorder. I do not pretend to be a psychologist, but I do not think that such indifference, or the section, is necessarily linked to a specific medical condition. If a medical condition emerged in the assessment, not only would the order for lifelong restriction be available, but other orders such as interim hospital orders would be available. It is not intended that the provision should be triggered by a specific medical condition.

The Convener: When the bill was drafted, what was in the mind of the draftsman? Why is that section in the bill? Is it a catch-all provision?

Mr Wallace: In one respect, it is a reflection of the MacLean committee's concerns. It also reflects circumstances in which the information that is obtained from an assessment shows that a person seems to be totally blasé and not particularly concerned about the consequences of actions that could pose a danger to the public.

I am being careful not to say that those circumstances arise only when a person has a personality disorder. I have seen and heard about enough cases where there is an almost theological dispute amongst psychologists over what amounts to a personality disorder. We would get ourselves into difficult territory if we stipulated that an offender had to have a medical condition.

Members might recall the public safety issues that were involved in the first piece of legislation that the Parliament passed. MacLean considered offenders with personality disorders and concluded that those offenders could be dealt with by orders for lifelong restriction, but such orders would not deal exclusively with people with personality disorders.

The Convener: A view has been put to the committee about the role of the Crown in asking for such orders in the High Court. The issue is not big, but I thought that I should get your opinion. There is a slight departure, because the Crown is getting more involved in sentencing. Have you considered that view?

Mr Wallace: Yes. It was considered by justice ministers and the Crown Office. When the Crown Office is preparing a case, it will receive a considerable amount of information, including information on prior offending. As a result, the prosecutor is well placed to assess prima facie whether an offender might meet the statutory criteria for an order for lifelong restriction.

You are right to say that, historically, the Crown Office has been less involved in sentencing. However, for some time the Crown has been able to appeal sentences that it thinks are too lenient, and it has done so. That does not take away the court's right to initiate an assessment.

Stewart Stevenson: In giving evidence to the committee, the chair of the Parole Board for Scotland, Dr McManus, suggested that although the risk management authority has not been given the powers to do so, it could play a role in ensuring that resources were available to support people who were subject to lifelong restriction orders. In particular, the risk management authority might take on the role of an honest broker in ensuring the transfer of resources from one local authority to another. Will you comment on that?

Mr Wallace: I do not think that the authority is intended to be a body that would determine the transfer of resources from one local authority to another. However, as the authority will oversee the operation of the risk management plans, the description of it as an honest broker is not inapt.

Stewart Stevenson: I put it to Dr McManus—who is chair of the Parole Board for Scotland and not of the risk management authority—that the presence or absence of such arrangements might influence the assessment of risk. Do you agree?

In other words, if resources were not put in place to support someone who was subject to a restriction order, the risk of them reoffending or committing further offences would be greater than

if the proper support was in place. In that context, the risk management authority would come in, but it has been given no formal powers in that regard.

Mr Wallace: The belief that underpins that section of the bill is that the risk management authority and the relevant orders are intended to improve public safety. To set up the authority and then have it effectively sterilised would, by definition, mean that the authority would not be as good for public safety as it would if it were functioning properly.

In our spending plans, provision has been made to establish the risk management authority. Costs to other agencies for the provision of services to support high-risk offenders should be met from existing budgets. It is important to remember that local authorities are already under a statutory duty to take responsibility for offenders at that level. We will, therefore, have a risk management authority that can help to manage the way in which people who are under lifelong restriction orders are supported. The phrase that Mr Stevenson used—honest broker—is appropriate. However, we should not lose sight of the fact that local authorities already have to take responsibility for offenders on release.

The Convener: We now move to the subject of victims' rights.

George Lyon: We have heard quite a lot of conflicting evidence about the bill's provisions on victims' rights. Victim Support Scotland seems to be unsure whether it fully supports the bill as it stands. Concerns have been expressed about the intent and purpose of the measures, the impact on the court process, and the process of drawing up a victim statement. The key issue is whether the provisions will make a difference to the victim.

We have been referred to evidence from England and Wales. In the *Criminal Law Review*, Sanders et al state:

"victim impact statements have little effect on either sentence or victim satisfaction".

Is the Executive aware of that research and does it have any comment on that statement?

Mr Wallace: Mr Lyon said that the committee had heard conflicting views from the chief executive of Victim Support Scotland, but he said in his evidence:

"we have supported the proposal to conduct pilot projects."—[*Official Report*, *Justice 2 Committee*, 5 June 2002; c 1473.]

That is a fairly unequivocal statement of support for what we propose to do.

I am aware that there is a range of material on victims. The research that has been done on victims was the subject of one of a series of routine presentations that the criminal research unit gives to ministers. The authors of the statement that George Lyon quoted said that they were critical of victim impact statements, because such statements do not go far enough in involving victims in the criminal justice system and perhaps they raise expectations unrealistically. However, I am advised that those researchers have indicated in other work that they would like victims to have a stronger role. I do not, therefore, think that we are dismissing the idea of victim involvement.

George Lyon: The Executive's memorandum says that it intends to pilot victim statements in three courts initially. Unlike section 44 of the bill, section 14 does not establish a pilot scheme but provides a general statutory foundation for the making of victim statements and their introduction into the court proceedings. Why does that approach differ from the approach that is adopted in section 44? Can you clarify the Executive's intention?

11:00

Mr Wallace: There is no magic or science about it. As section 44, which we might well reach later, obviously involves the role of the Lord Advocate in prosecutions, it was almost a case of putting our toe into the water to test it. However, with victim statements, we took the same view as we took with the restriction of liberty orders and felt that there was considerable consensus about what we were doing. Certainly the response to the consultation showed that.

As a result, the question was not so much whether the measure was a good one; indeed, many believed that it was the right thing to do. Pilots tend to tease out difficulties in implementing a scheme and indicate which areas of the system need to be fine-tuned, where the weak points are and how we should address them. Our general thinking was based not on whether we should continue with the measure in the light of results from pilot schemes, but rather on finding out whether pilots could provide us with experience to ensure that when we rolled out the measure, we would be able to achieve the effectiveness that has enjoyed considerable widespread support.

George Lyon: How long will the pilot schemes run? Will they be evaluated before the measure is implemented?

Mr Wallace: We expect the schemes to run for two years, after which there will be proper evaluation. The Subordinate Legislation Committee suggested that some of the bill's provisions should be subject to the affirmative rather than the negative procedure. We are more than willing to consider that suggestion.

George Lyon: It is intended that victim statements will not only be of therapeutic value to the victim but will have an impact on sentencing when they are presented to the court. Is it proper to experiment with the accused in such a way, especially given the concerns that have been raised about the practical operation of section 14?

Mr Wallace: I do not think that we are experimenting with people.

George Lyon: When victim statements are used in certain areas of the country, they will have an effect on sentencing and on the type of sentence that is handed down. Is it right that an accused in one part of the country will be treated differently from an accused in another area?

Mr Wallace: I think that it is. No one disputes that the system is innovative. As a result, it is important that we gain some experience with it. Certain issues will arise from the pilots, so we will be able to do things better when the scheme itself is rolled out. I acknowledge your point of view, but we would be criticised more if we took a big bang approach and rolled out the scheme across the whole country. People would readily call that a bold step, because we will undoubtedly learn lessons from how the measure is implemented. At the moment, the amount of information on sentencing that is available to sheriffs varies from one court to another, because of particular fiscals or the varying quality of inquiry reports.

I believe that this is an important development in the way that we treat victims in our criminal justice system. Victims have been the missing element of that system for far too long. Although I practised more in the civil court than in the criminal court, it was clear that victims did not always feel that their situation had been given much regard, particularly if the accused pled guilty. Indeed, parliamentary colleagues might well have come across such cases in their constituency work. Constituents have certainly told me that they found out that their case had gone to court and that the accused had pled guilty only by reading about it in the local paper. Their side of the story and how the case had impacted on them had never been heard. I believe that we are doing something worth while, although I acknowledge the fact that any such measures must be introduced carefully. As a result, it is sensible to introduce pilot schemes.

George Lyon: We agree with many of your comments on the general principle that victims should have a bigger role and that they should have more satisfaction from the judicial process. However, written submissions from the Law Society of Scotland and the Faculty of Advocates and oral evidence from the Crown Agent designate have raised genuine concerns about the process and the information that will be presented to the court in the victim statement. On 5 June, the Crown Agent designate told the committee:

> "For the life of me, I do not know how we will be able to divide up the impact on a victim of part of the crime that they feel was committed."—[*Official Report, Justice 2 Committee*, 5 June 2002; c 1504.]

People are concerned that the victim statement might contain information that is irrelevant to a particular charge. The Executive appears to feel that the court will simply disregard such information. Is that right? How do you respond to the concerns that have been raised about the relevance of some of the information in the victim statement?

Mr Wallace: The intention is to have a pro forma statement that asks specific questions about the physical, emotional and financial impact of the crime. Obviously, we will also issue guidance to help people complete the statement. Victims will be able to choose whether they make their own statement or whether they want help from trained individuals. Indeed, social work or Victim Support Scotland might even be able to lend support in individual cases. The use of pro forma statements should substantially address some concerns. We will not simply give a sheet of blank paper and a pen to a victim and ask them to write; there will be some indication of which areas are relevant. However, I would not want the pro forma to stop anyone from saying something that they felt they had to say.

George Lyon: Will we able to prevent a victim from including information that is clearly not relevant to the charge or that could relate to other charges that have been dropped or not brought to court? Will the contents of the victim statement go forward to the court unadulterated? That is the key concern that has been raised.

Mr Wallace: I am aware of that concern. However, courts are faced almost daily with information that is entirely irrelevant either to the proof of the charge or to any points that should be taken into consideration. Our judges are pretty skilled in sifting information and in knowing what is or is not relevant; that is part of their training. I would rather leave the matter to judges and their years of experience than interpose some third party that would take it upon itself to determine what was relevant. Such a step would undermine much of what we are trying to achieve with victims. Anyway, I am not quite sure who would take up such a role, because it would be inappropriate for the police or the prosecutor to do so. As I have said, having to disregard irrelevant information is not a novelty for our courts.

Scott Barrie (Dunfermline West) (Lab): I appreciate that the courts are good at sifting out irrelevant material. However, given that victim statements will be produced on a pro forma basis and be made available to the court, how can we

ensure that victims do not disclose information that might be inappropriate for a semi-public arena? After all, the statement will also be available to the defence, which means that victims could be doubly exposing themselves. Not only would they have to give evidence, but they might have to detail the crime's impact on them. Although it might be cathartic to put down such information on paper, it might not be in a victim's long-term best interests to put that information into such a public arena. How do we mitigate such a situation without a sifting process?

Mr Wallace: There are a number of responses to that question. There is no obligation on a victim to make a statement. It is important that, in the guidance that will be given to victims when they are given the option of making a statement, they are advised that the statement will go to the accused and that the information contained in it could come up in court. It is important that victims know that. Some of the concerns that Scott Barrie raises will be mitigated by the fact that the statement will not be routinely provided to the accused or to the court until there is a finding of guilt or a guilty plea. That provides some sort of safeguard.

I would be very wary of involving a third party. As I understand Scott Barrie's question, he is asking about the circumstances in which parts of a victim statement should not be related in court. I would be wary of an outside party saying which parts should not be—

Scott Barrie: Could I clarify my question?

Mr Wallace: Yes, please.

Scott Barrie: I presume that people will produce a victim statement prior to the trial. The accused may be found guilty of parts of the original indictment or may plead guilty to certain parts of it. Some of the victim statement may relate to those parts of the charge on which there has been no finding of guilt. How can we ensure that the victim statement is relevant?

Mr Wallace: I am with you now.

I accept that difficulties exist, in that information that is not relevant to the charge for which the person has ultimately been convicted could form part of the victim statement. My response to Scott Barrie's question is almost the same as my earlier response to George Lyon, which was to say that such situations are not unusual at present. For example, in the course of a trial, totally uncorroborated information could come out. The accused would not be convicted on the charge to which such evidence related, although he could be convicted of another charge from the same charge sheet. Therefore, at present, it would be wrong for the sheriff to take account of uncorroborated evidence that the jury, or, indeed, the sheriff himself or herself had already clearly decided was insufficient. The court would disregard such evidence.

The victim statement will be structured in a way that is intended to address the impact of the crime on the victim, rather than the details of the crime itself. There is no clean cut between those two approaches, but the pro forma will direct the victim more towards giving information about the physical, emotional and financial impact of the crime than towards giving details about what happened. Obviously, the victim will have already given a police statement and a precognition about what happened. That will minimise the problem that Scott Barrie identified. The courts regularly deal with situations in which statements have been made in open court that the court must subsequently disregard when it passes sentence following conviction.

Let me make a further, important point. I indicated that a victim is not obliged to make a victim statement. It is equally important for me to indicate that nothing should be read into a victim's not making a victim statement.

George Lyon: As a matter of clarification, if the victim in a rape case makes a statement at the beginning of the process but the accused pleads guilty, what protection will exist to prevent the victim statement from being placed before the court and challenged? In those circumstances, as Scottish Women's Aid and Victim Support Scotland suggested, the victim might end up being challenged in court on their victim statement. Will there be a mechanism to prevent the statement from going before the court if the victim so chooses? It is clear that victim statements can be challenged.

11:15

Mr Wallace: If material points in the victim statement are disputed, those points will be open to challenge. That is an important safeguard—the victim cannot just say anything. Although similar opportunities for challenge exist in England, the information that we received from the Home Office is that, in the English experience, such challenges have never arisen.

I would have thought that, if it becomes clear that a challenge is perverse, in that an attempt is being made to humiliate or put pressure on a victim, the judge would have a role to play in safeguarding the victim's interests. If a person has admitted guilt and has therefore been found guilty, it would be difficult for that person to obtain a separate proof in order to unravel their admission of guilt.

George Lyon: May I therefore assume that such a situation could not arise, or would it be a

matter for the judge's discretion? That is what we are trying to establish.

Mr Wallace: A proof could take place only if there were a dispute over material facts. It is difficult to envisage how, if a person has admitted their guilt, there could then be a dispute over material facts, particularly if the victim statement sets out a narrative of the offence in respect of which the accused has just been found guilty. A further important point is that there is also an obligation on counsel and solicitors not to abuse the process.

George Lyon: You referred to the system in England and Wales, where there is no evidence of challenges being made to victim statements. I want to clarify the matter for the committee, because we have not received much detail on how the system in England and Wales operates. From our previous discussions, we understand that a victim statement in that system is made to a police officer and that the statement is then presented to the court through the normal channels—that is, it goes through the procurator fiscal in England and Wales.

Mr Wallace: There is no procurator fiscal.

George Lyon: You will have to forgive my ignorance of the criminal justice system in England and Wales—I meant the Crown Prosecution Service. Perhaps you could explain how the system in England and Wales operates. Is it identical to the sort of system that you want to introduce in Scotland? Your answer will have an impact on the correlation between the two systems, irrespective of whether victim statements have been challenged south of the border.

Mr Wallace: In England and Wales, the victim statement is called a victim personal statement. Mr Lyon is right to say that that statement is taken by the police, who take the evidential statement at the same time. The victim personal statement is submitted with the case papers to the Crown Prosecution Service. I am advised that, where such a statement forms part of the evidence, it is incorporated into what is called, in summary cases, the committal bundle that is served on the defence under the provisions of the Criminal Justice Act 1967. In Crown court cases, where the victim personal statement does not form part of the evidence, it is served separately on the court and the defence. Therefore, circumstances may arise in which the victim personal statement is served on the defence earlier in the process than we anticipate will happen in Scotland, as we are talking about serving the victim statement after guilt has been established or pled.

The Convener: George Lyon opened his line of questioning by pointing out that many witnesses have been more negative than positive about victim statements. There are concerns about what the victim might say on the offences and about the apparent contradictions in the system. When the committee writes up its stage 1 report, it will be crucial that you have clarified exactly how the victim statement is to be dealt with. The system in England and Wales is an example, but how does it deal with those contradictions? That is an important point for the committee.

Mr Wallace: As I said, we have been advised by the Home Office that, in England and Wales, there have been no challenges in court to a victim statement.

The Convener: A situation may arise in which a victim refers to something that has already been the subject of a plea. How is that situation dealt with in England and Wales? If some of the original charges have been the subject of a plea, the sheriff will not consider them, although the victim may refer to them.

Mr Wallace: There must have been cases where extraneous matters have come in or where the finding of guilt may be different from the original charge. However, the fact that in England and Wales there have been no challenges to a victim statement that would have led to the procedure that would follow if there were a proof, as it were, indicates the efficiency of the courts in being able to rule out and disregard such extraneous matters, which, because of what has actually been proved—

The Convener: Yes, but we are trying to understand the process rather than whether there have been any challenges. My opinion is that the Executive has been very bold in including the victim statement provision in the bill. I am disappointed about the lukewarm response that there has been and I have to quote—

Mr Wallace: The response does not square with our consultation findings, either.

The Convener: Let me quote from our oral evidence—I want to ensure that the record is straight on the matter. A representative of Victim Support Scotland said:

> "Victim Support Scotland is not against the introduction of victim statements, but we are not immensely in favour of it."—[*Official Report*, *Justice 2 Committee*, 5 June 2002; c 1468.]

In my opinion, it was only through prodding from the committee that you got the more positive response that you refer to in your evidence. Witnesses have raised problems with the proposal for victim statements more often than they have given it support. It is not the committee that you have a problem with on this issue, minister.

Mr Wallace: The poor response that you suggest does not square with our consultation,

whose findings were supportive of what we are doing.

The Convener: We would like further clarification of the process, although perhaps not today. What would happen in court were there to be a contradiction between the victim statement and what the victim said? We would like to understand the process.

Mr Wallace: There are two elements to that. There are the things that the court must disregard because they have not formed part of the case that has been established. As I indicated, the courts do that day in, day out, without specific rules of court to say how they should do so. That is part of the job description of being a judge or a sheriff. It would be improper to take into account something that contradicted the charge on which someone had been convicted.

The Convener: Let me be clear about that. You are saying that, if a judge or sheriff saw a victim statement that referred to something that was not part of the charge, he would simply disregard it, despite the fact that he may be about to pass sentence and the victim statement can influence the sentence. Is that the process?

Mr Wallace: Yes. Information in the victim statement that is not relevant to the charge on which the accused will have been convicted must be disregarded by the court.

The Convener: What do you think about the Sheriffs Association's suggestion that the issue should really be a matter for the Crown—that the procurator fiscal should take receipt of the victim statement and pass on the relevant information to the court for its consideration?

Mr Wallace: I think that that would be an awful departure from what is done. As I am trying to explain, this is not rocket science that their lordships have to get their minds round. This is something that happens day in, day out.

Let us take an obvious case—one in which we are not relying on a victim statement, because the victim has been in court and has given primary evidence under oath about what happened to him or her. That evidence, possibly because it is not corroborated, may not be sufficient to secure a conviction on a particular charge. Nevertheless, there may be another charge on the charge sheet of which the accused is found guilty. The sheriff will have heard all the evidence on the charges, but—although no rule of court stipulates this—it is simply wrong, against the law and improper for the sheriff to take all that evidence into account when passing sentence. Similarly, the sheriff or judge is obliged to pay no regard to any information that was not relevant to the charge on which the accused person had been convicted or on which they pleaded.

The Convener: It is not difficult to understand what you are saying, but perhaps the problem is that a range of organisations, including the Faculty of Advocates, the Law Society of Scotland and Victim Support Scotland, are putting obstacles in the way. The committee thought that it was important to contact the Sheriffs Association, as we wanted to find out what it thought about the issue—after all, it will have to operate the system. Everyone, particularly the Sheriffs Association, said that they thought that the issue should be for the Crown to decide.

Mr Wallace: Perhaps we thought that there would not be a problem because our proposals would be part and parcel of the sheriff's job. If you are saying that the sheriffs have a problem because of the novelty of the approach—albeit that, in some respects, it is simply a variation on what they have done for years—we must think about how to address that issue. The sheriffs may underestimate their own abilities, but if they have difficulties, I am more than willing to address them. We could discuss how problems might be addressed with the Sheriffs Association.

I left the issue of a potential challenge lying. Off the top of my head, I am not sure whether the bill provides for this, but it ought to and we will ensure that it does. We want to ensure that there is a follow-through from the provisions under the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002—to restrict the ability of an accused person personally to conduct a proof and cross-examine a victim—into any proceedings that might be the subject of a challenge in respect of the victim statement. I hope that that will give some reassurance in relation to the concerns that Women's Aid has expressed.

George Lyon: The aim is to ensure that victims feel part of the process and derive some benefit from it. Your evidence seems to indicate that the system in England and Wales is not dissimilar to the one that is proposed.

Mr Wallace: There are some differences in respect of timing.

George Lyon: Yes, but by and large the proposed system is similar to that system. An article in the *Criminal Law Review* said:

> "However, they were divided whether VIS could or should be used in actual sentencing decisions, and the evidence indicated that they rarely made a difference to outcomes."

The article says that impact statements have little impact on sentencing. Indeed, it considered the therapeutic effects and net benefits to all those who were surveyed and found that around 15 per cent felt a little better as a result of making a victim impact statement. Does not that suggest that there will be benefit to victims only at the margins?

Mr Wallace: I must proceed on the basis of the response that we received to our consultation,

which supported—

George Lyon: You must bear in mind the evidence that the committee has received.

Mr Wallace: Yes, but the totality of evidence must be considered and it shows that the proposals were widely supported. The committee may want to reflect on the fact that the authors of the article in the *Criminal Law Review* have said in other works that they would like victims to have a stronger role than the one that we propose. We are proposing pilots. I am not sure whether anyone on the committee is suggesting that we have not gone far enough, but the authors of the article have suggested that.

It is also important to note that other research states that around half of all victims who have participated in a statement scheme have gained some satisfaction from their participation and have had their satisfaction with the justice system enhanced. Half of all victims is quite a substantial number. I am sure that we can make that research available to the committee, if it has not been made available already. The percentage of victims who have acknowledged that they have benefited from the scheme is significant. We are introducing victim statements in pilot areas so that the issues that the committee has quite properly raised can be teased out in the light of experience.

11:30

The Convener: Thank you. I am looking at the clock. As the minister would expect, we have questions on parts 3, 4, 5 and 6 of the bill. However, for the moment, I propose to jump to questions on part 7, which relates to children. We will see what time remains to us for outstanding questions. Scott Barrie has a question about section 43.

Scott Barrie: The minister will be aware of my views on the subject. To date, the committee has heard evidence of only one possible instance in which a sheriff inappropriately applied the reasonable chastisement rule as it exists at present in the common law. Can you provide us with any further information on that issue?

Mr Wallace: No, but when the Crown Agent designate gave evidence to the committee, he indicated that that was the case. We have also heard that the chief executive of the Scottish Children's Reporter Administration receives 3,000 reports of physical ill-treatment or neglect each year. Not all those reports result from parents hitting their children, but the figure is not insignificant.

Scott Barrie: No. That is indeed the case. The minister indicated that he was finding out from the Crown Office whether cases had not been pursued because of a lack of clarity in the present law. That is an important issue, as a number of policy memoranda state that the Executive's intention is to clarify the existing law and to make things more straightforward and simple. Can the minister give us further information on the subject?

Mr Wallace: The committee heard evidence that the Crown Office and Procurator Fiscal Service was unable to provide information on that subject.

I have a further point to make on the subject. The purpose of the provision is not to prosecute. The technical term for what we are proposing is "normative legislation". Speed restrictions are not put in place so that people can be prosecuted for speeding. They are put in place because public good results from our giving clear indicators of what is and what is not an acceptable speed in an area.

We have laid down clear guidelines in section 43. However, we have done that not because we want to set about prosecuting people, but because we want to make clear to parents, who are overwhelmingly concerned about how to bring up their children, what is considered to be acceptable and what is considered not to be acceptable.

Scott Barrie: When we discuss justice legislation, the question of the European convention on human rights always arises. The committee took oral evidence and received a substantial body of written evidence from people who adhere to the Christian faith. Those people felt that the provisions in section 43 infringe their rights under article 9 of the convention. Are the Executive's proposals robust and can they withstand challenges that may be made under the ECHR?

Mr Wallace: Yes, I believe that our proposals meet the convention requirements. A fundamental tenet of many religions is that the civil powers should be obeyed—I am thinking of Romans, chapter 13, for example. For that reason, religious believers should obey the law, particularly when the purpose of the law is to protect vulnerable members of our society. The committee has also heard evidence from the churches network for non-violence, which took a contrary view of the religious position.

Scott Barrie: Issues have arisen around the age limit in section 43. The age limit seems to be an extra impediment to clarification so, if the intention is to clarify existing law, would it not be easier simply not to mention an age limit?

Mr Wallace: There is no doubt that my life would have been a lot easier without that limit, but perhaps not because of any issue of clarification. Age is a definitive thing and questions will arise about someone being one day over or one day under a limit. Age limits are set in many aspects of life, not only in our criminal law. If someone

happened to be 18 the day after a general election, they would not have the right to vote, whereas someone only a day older would have the right to vote.

In much of the debate on this issue, in much of the research and in many of the poll results, there seems to be consensus that one would not assault or hit a child of 18 months. However, when we consider children of three, views are fairly balanced. Surveys show that people are 56:44—or a similar ratio—in favour of smacking.

Ever since the proposals were published, I have made it clear that, although we believe for a number of reasons that three is an appropriate age in a child's development, we are not endowed with a monopoly of wisdom. However, people seem to think that there is an age under which it is wrong to smack a child. The consensus on that is similar to the consensus that hitting someone with an implement is wrong, although I accept that, on the question of three-year-olds, views are more evenly balanced. I am prepared to consider setting an earlier age if there is greater consensus on that. I have never said that the limit should be three come hell or high water. Some have even suggested that the limit should be higher than three, but I am not sure that that would lead to consensus.

The Convener: There is some consensus that the Executive is right to reduce the scope of the defence by ruling out specifically a "blow to the head", "shaking" or "use of an implement". Some people still feel that things should be left to the parent or family to decide, but I feel that a consensus is emerging.

Mr Wallace: I agree.

The Convener: The big issue arises in consideration of under-threes and moderate smacking. We have heard in evidence that in the general teaching of a child a light smack does not harm the child.

Mr Wallace: Did you say "general teaching"?

The Convener: I mean teaching the child not to do something. As you will imagine, we have discussed the proverbial electric socket; it was the only circumstance that we seemed to be able to come up with. The committee has heard that a light smack in such circumstances does not necessarily harm a child, although the preference might be to teach the child in another way. Do you accept that?

Mr Wallace: Section 43(1) of the bill says:

"Where a person claims that something done to a child was a physical punishment carried out in exercise of a parental right or of a right derived from having charge or care of the child, then in determining any question as to whether what was done was, by virtue of being in such exercise, a justifiable assault a court must have regard to the following factors—"

Therefore, from the outset, the bill refers to "punishment". Examples come to mind, such as a smack for a child who was just about to run into a road, or play near a fire, or put their fingers into an electric socket. I do not believe that a smack in such circumstances amounts to punishment; one could argue that it was quite the opposite. Physically restraining a child from getting himself or herself into danger is not punishment. Nothing in the bill would put a parent in jeopardy of the law for rescuing a child from danger.

Of course, there are circumstances in which action that might otherwise be an assault is not an assault precisely because of the circumstances. An example of that would be if someone submitted himself or herself to surgery. If someone were cut with a knife, that could be an assault, but if it happened during surgery, it would not be considered an assault. Certain acts would constitute punishment, whereas an act that rescued a child from a situation would not constitute assault. Perhaps we have lost sight of that in the argument.

The Convener: That is a fair point, but the Executive's view is that the bill tries to reduce the scope for physical punishment of under-threes. Do you want to ban moderate smacking of under-threes if it constitutes physical punishment?

Mr Wallace: If it is done as punishment, yes. That is what the proposal states.

The Convener: Is not that a judgmental view of the state? If there is no evidence that moderate smacking harms the child—it is merely a preference—then does not that interfere a wee bit with parents' right to decide what kind of physical punishment or deterrent children should have?

Mr Wallace: Putting children aside for a moment, I have never believed that an assault constituted an assault because it did physical harm to a person. If someone were to kiss another person, in most circumstances that would be a natural expression of a loving relationship. There might be circumstances in which planting a kiss on someone could be an assault. However, it would not mean that any physical harm was done to that person. It is a theoretical but important point of view. Evidence from research by Lepper in 1983 is contained in the document "Child Development: Key Points" from the Scottish Executive central research unit. It states:

"Secondly, as the ability to regulate behaviour and emotions is achieved by four years, the use of physical chastisement under that age may inhibit the development of the child in their ability to control their own emotions or behaviour. This may result in behavioural or conduct problems later in life."

There might be no physical bruise, but there is

evidence to indicate that physical chastisement can damage. It perpetuates a cycle of violence at a later age; it is our common cause to break that cycle.

The Convener: Is it fair to say that there is conflicting evidence? We heard from the British Psychological Society that physical chastisement does not necessarily harm a three-year-old. In fact, the society says that children can be more damaged mentally by what a parent says to them.

Mr Wallace: At the end of the evidence on physical chastisement that Helen Stirling of the British Psychological Society gave to the committee, she said the BPS believes that the

"age of three makes sense practically, because it is easier to apply alternatives with children who are under three."—[*Official Report*, *Justice 2 Committee*, 22 May; c 1382.]

The Convener: She also said that the preferable way in which to deal with a child would be to talk to the child rather than to hit him or her. However, she did not say that there was evidence to demonstrate that it is harmful to chastise a child physically. She said—as other people have said—that one can do more damage to a child psychologically. I suppose that my question is—

11:45

Mr Wallace: Let us not forget that the Children and Young Persons (Scotland) Act 1937 also contains provisions on infliction of mental damage on children. It is not as if the law is entirely silent on the matter.

There was some indication that a child who is under the age of three would have language and reasoning difficulties in understanding why punishment was being inflicted. If punishment is inflicted on someone and they do not understand what it is for, does that justify what in other circumstances would be an assault on that person? It is evident that, if one were to inflict punishment on an 18-month-old child, the child would not know what that was about and the majority of people would think that that was an assault that could not be justified.

I have asked whether we can achieve a consensus about whether there is an age between the age of 18 months and the proposed age of three years. We are talking not about saving a child from dangerous situations, but about punishment. There is an age at which kids have no comprehension of why punishment is happening. In effect, the bill is trying to address that kind of punishment, which would otherwise be physical assault.

The Convener: I do not necessarily accept that.

I will move on to asking about the Executive's objectives in relation to the bill's provisions. It has been suggested by many witnesses, including the Faculty of Advocates, that many parents who would not otherwise be in the criminal justice system—good parents—will be prosecuted under the provision in question. Do you accept that?

Mr Wallace: I think that that is unlikely. When I appeared before the committee on another occasion, I said that the objective is not to prosecute or to criminalise people for the trivial smack. The Crown Agent designate indicated in his evidence that procurators fiscal already disregard trivial matters in other areas of the law.

The Convener: By the time the matter reaches the procurator fiscal, a police statement will have been taken from the parent, so the parent will already be in the system.

Mr Wallace: Your question related to the possibility of making criminals of such parents. Some discretion will apply and the police will exercise discretion, too.

The Convener: I want to press you on that. You are not the only person to say that procurators fiscal will use their discretion; of course they will. They exercise their discretion in relation to every crime and that will not change. That does not mean to say that innocent parents will be the subject of that discretion. How can you say that it is unlikely that parents will be caught out by procurators fiscal exercising their discretion? If the bill becomes law, procurators fiscal will have to apply it. The bill means that one will no longer be able to rely on the defence of reasonable chastisement in relation to the physical punishment of under-threes. Procurators fiscal will have to apply the act when exercising their discretion.

Mr Wallace: That is wrong. PFs will not have to apply the act in relation to exercise of their discretion. There are circumstances relating to technical breaches of acts in which procurators fiscal do not prosecute. It is my recollection that the Crown Agent designate's evidence indicated that that was the approach that procurators fiscal adopt on a day-to-day basis in cases involving trivial matters. It is part of the Scottish legal system for procurators fiscal to exercise discretion even in cases in which there might have been technical breaches of legislation. If that breach were trivial, they would not prosecute.

I think that I am right in saying that the Crown Agent designate went so far as to say that exercise of discretion in that way by procurators fiscal could be changed only if the Lord Advocate gave a direction to procurators fiscal not to disregard trivial matters. It would be for the Lord Advocate to give such direction, but there is no indication that he is about to do that. Perhaps there is a divergence of understanding on that.

There will be circumstances in which technical breaches of the law will have taken place, but the procurator fiscal believes that, in the public interest—which is the ultimate test that the Lord Advocate, the Crown Office and procurators fiscal apply—it is not appropriate to press charges.

The charge need not necessarily be trivial for the procurator fiscal to decide against prosecution. Other circumstances, such as the impact that prosecution might have on the child, can also be taken into account. The procurator fiscal might take the view that to bring a prosecution would be inappropriate and would not be in the best interests of the child—another important consideration in such circumstances. The case might be referred to the reporter to the children's hearing.

It has been suggested that procurators fiscal must prosecute whenever they are presented with papers that indicate a technical breach of a subsection of the law, but that is not how the law operates.

The Convener: You have said the reverse of that. You have said that procurators fiscal will not prosecute—

Mr Wallace: Sorry?

The Convener: You suggested that my line of questioning has been to argue that procurators fiscal will not use their discretion. However, your position seems to be that, because they will use their discretion in every case, it is unlikely that trivial smacking would ever be prosecuted. You have said the reverse of what you indicated.

Mr Wallace: We are perhaps at cross-purposes about what I said, so I will quote what the Crown Agent designate told the committee. He stated:

"it is undoubtedly the case that the current law leaves it open to the discretion of the court to deal with cases involving violence towards very small children".

In response to a question from Mr Lyon about whether the current law lacks clarity, the Crown Agent designate talked about cases of a trivial nature and said:

"I expect that, when a complaint is made that a child has been struck, unless it is of a very trivial nature, the police will investigate such a case in any event. The case will not necessarily come to the procurator fiscal, because if the police investigation does not establish a sufficient basis the police will not be required to report it."

At another point during that meeting, the Crown Agent designate also referred to triviality. He said:

"Of course, triviality is one of the factors that procurators fiscal are required to consider in the context of any decision to prosecute".

Note that his words were not "have the option to consider" but "are required to consider". He also said:

"Triviality is a justification for not proceeding. It is open to the Lord Advocate to determine that a triviality opt-out will not be available in particular categories of offence, but no consideration has been given at this stage to taking that step. Unless there is a ruling by the Lord Advocate that procurators fiscal are not to consider triviality, it will be open to procurators fiscal in each case to consider whether the circumstances are too trivial to merit prosecution."—[*Official Report*, *Justice 2 Committee*, 5 June 2002; c 1495-96.]

The Convener: Let me be clear. You are asking Parliament to pass a law on the understanding that the Procurator Fiscal Service will apply its discretion. Do you not see that that is what you are asking us to do?

Mr Wallace: I am asking Parliament to pass a law that will become part of the law of Scotland and which will apply in the way in which the law of Scotland is administered and operates. As we have heard from no less a person than the Crown Agent designate, procurators fiscal are required to exercise their discretion in trivial cases.

The important point is that the procurator fiscal is not obliged to bring a charge every time there is a technical breach of a law. The law of Scotland does not operate only according to what is on the statute book. The practice is that procurators fiscal do not prosecute trivial matters. Indeed, as the Crown Agent designate said, there may be things that seem so trivial that the police do not even report them to the procurator fiscal. It is against that background of the totality of Scots law that we are asking for the provision to be put on the statute book. We should bear it in mind, as I said to Scott Barrie, that the purpose of the provision is not to raise the number of prosecutions but to ensure that parents know what is thought to be acceptable and unacceptable. For example, the purpose of speeding restrictions is to promote public safety, not to catch people out in speed traps.

Mr Alasdair Morrison (Western Isles) (Lab): I apologise for my late arrival. The planes from the Western Isles are not running to schedule.

Mr Wallace: I sympathise fully with you on that one.

Mr Morrison: I am sure that you will certainly be able to empathise.

Again, I apologise if my question has been asked by another member. I will happily withdraw the question if it has been asked. The question is in regard to paragraph 74 of the Executive's memorandum, which refers to Helen Stirling's evidence of some weeks ago. I refer particularly to the second last sentence, which says:

"The Scottish Ministers do not propose to ban moderate smacking—parents should be able to make their own decision, though anything which is severe, excessive or unreasonable will continue to be against the law. What the proposals do is to target protection where it is especially needed."

Can the minister expand on the meaning of the phrases

"target protection"

and

"where it is especially needed"?

Mr Wallace: Bear with me while I read that paragraph to ensure that I have the thing totally in context.

We do not intend to go down the road of introducing a complete ban on smacking, which was recommended or pushed by some people in response to the consultation. We have, rather, focused or targeted protection on a number of specifics. Those are: shaking of all children; use of implements to beat children; blows to a child's head; and smacking or hitting a child who is under three. Again, there are thought to be children who especially need the protection that will proffered by section 43 because of their vulnerability, their ability to understand what punishment is and their development.

Mr Morrison: I refer again to the words

"do not propose to ban moderate smacking".

How do I as a parent and someone who does not have any legal background determine what is and is not moderate?

Mr Wallace: We begin with the starting point that to hit anyone is an assault, but the 1937 act provides the defence of reasonable chastisement to those who have certain relationships to children, in particular parents. Even with the bill as it stands, there is a level of hitting a child beyond which hitting would be unreasonable. We are not suggesting that the bill should suddenly make such actions reasonable. Therefore, to children over the age of three the law continues as it is; reasonable chastisement would not be a defence in a charge of assault.

The Convener: We move on to section 44, which is entitled "Youth crime pilot study".

George Lyon: I could start by asking what the Executive's current policy is on youth crime, but I will leave that to others.

The committee has received little evidence on the offending behaviour once they reach the age of 18 of young persons who have been involved in the children's hearings system. Has a comprehensive study of that subject been carried out in Scotland?

Mr Wallace: A considerable amount of work has been done on offending. I am not sure that a comprehensive study such as that to which the member refers has been produced.

George Lyon: We have asked a number of witnesses to provide us with evidence of how well the children's hearings system and different systems in other countries work. Until now, we have found it difficult to obtain evidence that justifies the claims that are made for various systems. That is the background to my question. Does the justice department possess a comprehensive study of the effectiveness of children's panels?

12:00

Mr Wallace: We do not possess such evidence, although we plan to carry out research as part of the youth crime strategy. The committee has been given a paper on youth crime statistics, which provides factual information on the ages of offenders and says what age groups are principally responsible for crime. There are very strong indications that a disproportionate amount of crime is committed by young people aged between 16 and 24, which includes a number of persistent offenders. The research that the member seeks is not yet in existence, but we aim to undertake it.

George Lyon: Have comparisons been made with the situation in other countries that would enable us to reach conclusions?

Mr Wallace: In England in 2000, 6 per cent of 10 to 17-year-olds—320,600 children—were arrested and 3.5 per cent were convicted or cautioned by the police. In Scotland in 2000-01, about 14,000 children were referred to the children's reporter because they had committed an offence. Of those, 90 per cent were assessed as requiring informal measures to tackle their offending. Survey-based estimates of violent crime in Scotland remained roughly level over the period between 1981 and 1999. In England and Wales, violent crime rose in 1995 to a level that was 75 per cent higher than the 1981 level. It is estimated that by 1999 violent crime in England and Wales had fallen back to a level that was 47 per cent higher than the 1981 level.

Those figures suggest—I put it no more strongly than that—that levels of offending by young people have been lower in Scotland than in England and Wales.

George Lyon: The committee and those giving evidence to it have expressed concern about the types of offences that might be dealt with by children's hearings under the pilot study. It was claimed in the Parliament last week that a range of serious offences—including murder, rape and goodness knows what—might be referred to the children's reporter unit. Exactly how many serious offences are referred to the children's hearings system?

Mr Wallace: The figure is minimal. Statistically, it is almost off the radar screen.

George Lyon: Might the figure be 0.1 per cent?

Mr Wallace: That figure certainly rings a bell.

George Lyon: So, of 26,000 cases that were referred last year, 26 could be categorised as serious.

Mr Wallace: I have a very poor read-out of the figure. Only a very small number of cases involving serious crimes are referred to the children's hearings system. Only one case of assault with intent to ravish was referred. Referrals are a matter for the Lord Advocate, who exercises his discretion independently of ministers. It is a complete red herring to suggest that a procession of rapists, murderers and serious violent offenders aged 16 and 17 will be referred to the children's hearings system.

George Lyon: Section 44 proposes only a pilot study; it does not introduce a system that will be used throughout Scotland. The Deputy Minister for Justice made it clear that once the study has been evaluated, you would have to come back with primary legislation to enable the practice to continue and to become widespread throughout Scotland.

Mr Wallace: That is the case.

George Lyon: The committee has heard that there are difficulties with implementing supervision requirements in certain parts of the country. Clearly, any pilot would have to be conducted in circumstances in which the full range of disposals was available. What assurance can you give that, in the areas in which you decide to go ahead with pilots, resources will be made available? It is clear that the lack of social work reports is a key issue in relation to the performance of the children's hearings system.

Mr Wallace: I am aware that, in some areas, there are problems with recruiting social workers, and those problems lead to difficulties in getting reports. Those areas would be ruled out for the pilot study. Glasgow is an obvious example. The pressures on the system in Glasgow are such that it would not make sense to identify Glasgow as a pilot area.

Perhaps it would be helpful if I were to indicate the criteria that we are looking at. We will consider the amount and nature of offending by 17-year-olds in an area and the capacity of the children's hearings system. We will also consider whether there are joint teams of criminal justice and children and family social workers in an area, as well as recruitment problems in social work and whether social workers are able to handle the work load.

We want to ensure that a multi-agency approach is taken, so evidence of good joint working will be important. A critical criterion is the development and availability of disposal programmes, into which we are putting resources. An extra £1 million has been earmarked to build up programmes in the pilot areas and to fund the evaluation of the pilot study. We will not simply hand over the pilot study and tell people to get on with it. When we select areas, we will take those important criteria into account. In addition, we want to ensure that proper resources are made available so that worthwhile programmes are put in place.

George Lyon: That answers some of the grave concerns that have been expressed about whether the services could support the additional work created by the pilot study, should the study go ahead.

Mr Wallace: Those criteria will be key.

George Lyon: If you are going to spread the pilot study throughout Scotland, the question arises as to whether the results will be reliable or representative. It is clear that you are keen to pick the right areas in which to run the pilots. Will that give you a false picture when you come to evaluating the study?

Mr Wallace: No, not if the evaluation is done properly and is able to take into account and reflect the relevant factors. Let us assume, for the sake of argument, that the pilots are successful. One would expect that a proper detailed evaluation would highlight the factors that have contributed to their success. I hope that the evaluation will provide valuable information for improving the way in which we deal with youth justice throughout Scotland.

If we find that the key to the success of the pilots is availability of programmes that have been worked up and accredited, surely that should be a signpost to enable programmes in other areas to have proper effect. If the evaluation were to find good inter-agency working, that would indicate good practice, which we would want to find in other parts of Scotland, regardless of whether we go ahead with a roll-out of the pilots. A number of lessons can be learned from the pilots. For example, we may be able to identify weaknesses, which we would then wish to address. A number of strands to the evaluation will flow on from the pilots.

George Lyon: How long are the pilots likely to run, when will the evaluations be carried out and what will be the process after that?

Mr Wallace: The pilots will run for two years. Although it is impossible to say how long the evaluation will take, it should be carried out relatively sharply on the back of the pilots if it is to be meaningful. Anyway, it is not a question of waiting two years and then sending researchers in to evaluate the schemes. We will have an

integrated system of evaluation. Without committing those researchers to any time scale, I think that the results should be available a relatively short time after the pilots are completed.

The normal course of events is to publish evaluation studies of pilot schemes, as we have done with others. At that point, ministers will have to decide whether the scheme should be rolled out. If they decide to do so, that will require primary legislation, which means that ministers will have to come back to the Parliament. Members will have ample opportunity for a critical examination of the success or otherwise of the pilots.

George Lyon: The Commission for Racial Equality in Scotland has expressed the view that, for the purpose of section 44, offences with a racial dimension should never be regarded as minor. Do you have a view on that?

Mr Wallace: I have a long record of treating racial crime very seriously indeed. However, in such matters, it will probably be up to the Lord Advocate to determine how to deal with cases that have a racial content. It would be improper of me to pre-empt or second-guess him on a matter that is unquestionably within his discretion. That said, I have never made any attempt to conceal my abhorrence of crimes of a racial nature.

George Lyon: Will you give us further guidance on the types of offending behaviour that will be included in the pilot study? Will the children's panel deal with a wider range of such behaviour—at the moment, it does not deal with all serious offences—or will the situation remain almost the same?

Mr Wallace: It is difficult to see how the range of offences that the children's panel deals with will be any wider than it already is. We have indicated that any offences will be minor. Again, the decision whether to prosecute will be a matter for the procurator fiscal, acting under the Lord Advocate's guidelines.

We do not intend to create a total replication of the children's hearings system; instead, we intend to create a bridge to the adult criminal justice system. It might be appropriate to include some of the aspects of the children's hearings system—which, for example, involves parents—to take account of the vulnerability and immaturity of a young offender. Furthermore, we should remember that a custodial sentence might open up a life of crime for someone instead of closing it down.

Whatever their position on the matter might be, no one here would dispute our objective, which is to break a life of crime before any pattern becomes established. There tends to be a peak at the age of 18. Intervening effectively before a kid reaches that age, perhaps through some of the programmes that we have discussed, would have a direct effect on the level of crime in our community.

George Lyon: I want to clarify this point, because there has been much concern about whether the children's panel will deal with serious offences.

Mr Wallace: It is certainly not intended for serious offences.

George Lyon: So the 0.1 per cent figure that has been quoted will remain the same.

Mr Wallace: It might even be less.

Bill Aitken: As you will accept, our inquiry has been bedevilled by the lack of hard statistics. I am rather intrigued by the statistics on youth crime in annexe A of the Executive's additional memorandum. Where did those come from?

Mr Wallace: They come substantially from the education department, which is primarily responsible for the children's hearings system.

Bill Aitken: The goalposts move a couple of times in these figures. We are told that approximately 0.2 per cent of Scotland's children up to the age of 16 are referred because they have committed offences. We are then told that there are 920,000 young people aged eight to 21 in Scotland and 8 per cent of those have offended. It seems to be unrealistic to expect that too many teeny terrors up to the age of five or six are likely to be reported to the children's panel. The figure of 0.2 per cent does not tie in, does it?

12:15

Mr Wallace: There is a difference. The 0.2 per cent refers to children up to the age of 16. There are 920,000 young people aged between eight and 21. There is therefore a difference in the baseline figure, if I can put it that way.

Bill Aitken: Yes, but one could operate on the reasonable and reasoned presumption that the figure of 0.2 per cent of children up to the age of 16 means that until the age of six or seven, children are not going to be causing too many problems, are they?

Mr Wallace: Up to the age of eight, by definition, children cannot commit a crime.

Bill Aitken: Thank you very much for that. You have underlined how false that figure is. You are therefore saying that it is young people aged between eight and 15 who commit offences. That figure is considerably higher than 0.2 per cent when it is applied to the population figure.

Mr Wallace: I would have to check whether that is the basis for those figures. If an offence cannot

be recorded as such when the child is under the age of eight, then the 0.2 per cent probably does refer to children over the age of eight. Members will be aware that there is legal authority that a child cannot be referred to a children's hearing for an offence if the child is under eight.

Bill Aitken: That was my understanding and you have confirmed it. It proves that the figure of 0.2 per cent is completely false.

Mr Wallace: I am not going to say that you are wrong, but we are obliged to clarify what the baseline is for that 0.2 per cent.

Bill Aitken: I would be grateful for that.

Mr Wallace: The real offending is done by those aged 18 and over. As I said earlier, the peak comes at that age.

Bill Aitken: I accept that. Do you accept that there is considerable unease about the pilot proposals?

Mr Wallace: Yes, I am aware of that.

Bill Aitken: That unease is predicated on the fact that people are not all that satisfied that the children's hearings system, as it is constituted, is working. I ask you to bear in mind evidence such as that given by the Scottish Children's Reporter Administration two weeks ago that in Glasgow, for example, very few cases of offending are being referred to the panels. That is because the panels naturally and understandably require to give priority to cases where children are at risk.

Mr Wallace: I am aware that Alan Miller gave evidence and accepted that there are some problems with the children's hearings. As I indicated in an answer to an earlier question, that is why Glasgow would not be the place to run the pilot study. Glasgow has a number of problems, not only with the hearings but with the recruitment of social workers, and it would not be the appropriate place to conduct the pilot that is being proposed by this part of the bill.

Bill Aitken: I am not seeking to minimise the problems in other parts of Scotland. However, the major problems are in cities such as Glasgow.

Mr Wallace: I am not disputing that there is a problem in Glasgow. Members from Glasgow have made that clear to me very forcibly. Nor do I deny that Alan Miller identified some of those problems. We are trying to get a handle on the extent and nature of those problems. However, as I indicated earlier, Glasgow would not be a suitable place to run a pilot.

Bill Aitken: I accept that, from your position, that is entirely correct. However, when the existing system is creaking at the seams in parts of Scotland, and when it is manifestly not working, is it not risky to extend the system to include 16 and 17-year-olds—and to 18-year-olds in respect of the spillover—without ensuring that the existing powers of the children's hearings system are in place and that the system is working effectively? At the moment, the system is not working effectively.

Mr Wallace: I do not believe that we are in the realms of an either/or situation. I do not believe that proposing a youth crime pilot study should blind us to the difficulties that exist within the children's hearings system in certain parts of Scotland. I can assure the committee that the youth crime working group is considering how that issue can be addressed.

By proposing the pilot study, we are not ignoring the issues that exist in some parts of Scotland—far from it. The youth crime action programme has sought to improve support across Scotland and we have invested £25 million to take forward much of that work. That is in addition to the proposed youth crime pilot study. I would not necessarily disagree with Bill Aitken that we need to address those areas in which the present system is not working as well as it ought but, at the same time, that should not deter us from trying to respond to the current system's potential problems, which were identified when we did the work on youth crime.

Through a limited pilot study, we will do an analysis of whether there are ways of doing things better. The pilot will deal with areas that are different from Glasgow. The study might show how things could be done better and might provide an effective bridge between the children's hearings system and the adult courts system. If there are lessons to be learned from the evaluation of disposal programmes and from the good practice that might be found within the children's hearings system, we should not turn our backs on that. Indeed, the pilot could help promote a better and more effective approach to tackling youth crime in Scotland.

The Convener: I am afraid that we must soon draw to a close. Unfortunately for us, we have many more questions to ask on parts 3, 4 and 5 as well as on some of the amendments that the minister has indicated that he will lodge.

Mr Wallace: If the committee provides written questions, we will give as prompt a turnaround on the answers as is possible.

The Convener: Perhaps the clerks can discuss with your department which questions could be answered by way of correspondence. However, we may need to leave the door open as to whether we call you back to give further evidence as that is a matter for the committee to decide. Perhaps we can liaise over that possibility.

Mr Wallace: We will certainly co-operate as much as we can. I appreciate that, although we

have covered a lot of ground, some areas have not been covered.

The Convener: I assure you that the committee has worked hard on the bill. While everyone else was benefiting from the Parliament's dormant weeks in Aberdeen, we had some full-day meetings here in Edinburgh. I do not want the minister to think that we have been slacking in any way.

Mr Wallace: I hope that I have not said anything to give that impression. I am very conscious of the wide-ranging nature of the bill and of the fact that we have said that we intend to lodge amendments.

The Convener: Stewart Stevenson wants to ask one last question, which is on part 12.

Stewart Stevenson: Some concern has been expressed about the granting to civilians of police powers, such as those of arrest, search and detention. Are there any instances in which such powers have been granted to civilians? If so, how do those operate? How should we view the concerns that have been expressed?

Mr Wallace: The objective is to recognise that in some forces, such as Lothian and Borders police, civilians already operate within the courts and provide security. We want to put that on to a proper statutory basis. Clearly, it is important to recognise that these people will be under the direction of the chief constable; they will not be independent operators.

A number of advantages flow from that. I do not know how many times I have been asked about the amount of police time that is spent sitting around in court. We are addressing the issue by proceeding on a statutory basis and making sure that we have the necessary safeguards. I have made it clear in other contexts that the kind of community support officers with powers of arrest that are proposed for some parts of England and Wales are not on the agenda in Scotland.

Stewart Stevenson: Is it necessary for them to have the power of arrest, or would the power of detention be sufficient? Will you set national standards, or will it be up to individual chief constables to decide how they exercise these powers?

Mr Wallace: It is intended that it will be up to chief constables how the powers are exercised. It may be that some will choose not to use them. I am advised that the Association of Chief Police Officers in Scotland intends to consider and agree with the court authorities a protocol to govern the arrangements. Once it is finalised, it is hoped that the protocol will give further reassurance about the maintenance of security and safety in the courts.

The Convener: I have a couple of questions on section 61. It has been put to the committee by the Scottish Police Federation that many officers are on light duties in court. We have not received the figures for that.

Mr Wallace: They are on light duties?

The Convener: Yes, because of injury or illness. Part of the proposal is to take those officers out of court and put them on the streets. I wonder about the effect of your objectives, minister.

Mr Wallace: As I indicated, individual cases and getting the balance right must be a matter for chief constables. It would be invidious to ask ministers to make detailed decisions. It is also fair to say that the Scottish Police Federation has been among the foremost organisations that have bent my ear about the amount of time that police officers spend sitting around in court.

The Convener: Yes, but they made a fair point. Other duties take up police time, not just serving in court. They are talking about the amount of time they spend in court waiting to be called to give evidence.

Mr Wallace: That is another issue. Intermediate diets have had a considerable impact on that, but I accept that there is more to do, which is why we have Sheriff McInnes and Lord Bonomy examining the issue. At the end of the day, giving evidence is part of what being a policeman is about. There is no point in catching criminals if we cannot convict them, and evidence is an important part of that.

We are examining ways in which to minimise the amount of time that officers spend waiting. The provisions in the bill provide another way to reduce the time that police officers spend in court, by allowing their work to be done effectively by others, subject to the arrangements and consultation with the court authorities that I have described. It is a matter for chief constables to ensure that their people who are not equipped to undertake front-line duties do other things in the service that officers are required to do. That may free up someone else to go into front-line duty. It may not do so directly, but the displacement along the way should lead to more police officers—

The Convener: Should there be a duty on chief constables to demonstrate that removing police officers from court will have a particular effect, such as more police officers on the streets or a saving to the police budget? Should they be under a duty to show why they took a decision? We are looking to pass on heavy-duty powers to civilians. I am not sure that you have demonstrated instances in which that already happens. They are few and far between.

12:30

Mr Wallace: Since 1998, Lothian and Borders police have had eight civilians providing court security. That is believed to have worked well and been successful. I think that we have also been given the examination of what are non-core police roles. That asks whether a police officer must perform particular functions. Whether civilians can fulfil those functions and release police officers for other functions should be considered. In fact, section 61 will give powers to put that on a proper statutory footing.

It will be up to the chief constable to get the balance right and determine when it is appropriate to bring in civilians. There might be cases in which it would be inappropriate to use civilians and appropriate to have police officers. That is not a judgment that we can make; it is properly a judgment for a chief constable. I hope that, in circumstances in which that has been done, it has been done successfully and has freed up police officers for other duties that might be seen as core duties. That is something that I am aware of being asked regularly to respond to. Section 61 is an effort to do so.

Another important aspect will be the chief inspector of constabulary's report, which comes out in the second half of this year, on police visibility. I hope that that report will stimulate discussion on how we should deploy our police. I am strongly of the view that intelligence-led policing is policing that matches the intelligence-led crime with which the police increasingly have to deal.

If we want police officers to be visible and on the beat, intelligence policing can often ensure that they are visible on the right beats. If there has been no crime in a particular village during the past ten years—at least no crime to speak about—then I am not sure that it is a good use of a police officer's time to be regularly on the beat there. The person in the neighbouring village in which there has been—

The Convener: That is what we would like the chance to examine. I give notice that there will be further questions on that matter. We are unable to get answers about how many police officers will be freed up by using civilian employees. Merely saying that it is a matter for the chief constable is difficult to support. We would want to know how many officers could be freed up by using civilians, what the purpose of doing that is and what can be achieved. We have had no figures on the alleged savings.

We need to press a bit harder on issues such as that. As I said earlier, we will be passing on serious powers to civilians. Most people would prefer to be in the hands of well-trained police officers, in a disciplined organisation, who have a record of showing that they know how to use what can sometimes be draconian powers.

Mr Wallace: On the prisoner escort function, the sub-group indicated that the whole-time equivalent of around 570 police officers and 200 prison officers were committed annually to prison escort tasks throughout the country and therefore not available for core duties. It is impossible to tell what the figures would be for court security officers because we do not know yet just what kind of mix chief constables would make. As I said, it might be the general run of the mill for the chief constable to deploy civilians, but there might be a particular case in which he thought it would be more appropriate to deploy police officers. That is why it is impossible to quote a precise figure. However, the powers of section 61 will provide chief police officers with the flexibility to make savings.

A recent assessment by Strathclyde police found that, on any given day, around 180 police officers—mostly constables—were engaged on escort duties at the High Court, sheriff court and district court. Given that annual salary rates for constables are on average £10,000 higher than for force support officers and that the majority of police officers engaged in court duty are fairly senior in service, it was thought that there could be a significant saving in using civilian employees. However, I would treat those figures with caution because it will be a matter of individual judgments being made in individual circumstances by individual chief constables. What section 61 does is put the arrangement on a proper statutory footing and not leave it on the ad hoc basis that has operated until now.

The Convener: Thank you for that. You have been with us, minister, for just over two and a half hours. I can only thank you for your and your officials' time. As I said, there are many questions that we did not get round to asking because of the sheer length of the bill. However, we would like to discuss with you how we could get answers to issues that we feel need to be covered.

Annual Report

The Convener: We move quickly on to item 4, which is the annual report. I refer members to the draft committee annual report for the parliamentary year of 12 May 2001 to 11 May 2002. The format of the report follows the straightforward style agreed by the conveners liaison group. I do not have time to go through the report paragraph by paragraph, but I will take any general comments or corrections.

Bill Aitken: I simply comment that the report seems to detail reasonably briefly what we have been doing in the current year. I am quite relaxed with the report being submitted as the final report.

The Convener: I have a few additions. I felt that the reference to the Protection from Abuse (Scotland) Bill, with which we dealt at stage 2, should refer to the fact that members of the committee were involved in the creation of the bill. I do not know whether that involvement is outwith the time scale of the report, but I felt that if we were mentioning the bill, then we should mention those members.

On petitions, I thought that we should make more of our work on petition PE366, which has been our priority petition. The clerks, Bill Aitken and I have worked hard behind the scenes on the petition, so I thought that we should give a bit of weight to that.

I wonder whether we can also mention women's offending or whether that is outwith the time scale. I am not sure when we started that report.

Gillian Baxendine (Clerk): I cannot remember, but I can check the timing.

The Convener: That is all.

I remind members that the next meeting is scheduled for Tuesday 25 June, when we will do stage 2 of the Land Reform (Scotland) Bill. I know that that day is problematic for some members, but that is the slot that we were given because we thought that Parliament would be meeting on the morning of Wednesday 26 June. Apologies for that, but I do not think that we can do much about it. Members will know that the deadline for amendments is 2 pm this Friday, 21 June. Today's business bulletin indicates that we will not go beyond section 12.

Members agreed that we would take in private item 5, which is a draft report on the inquiry into the Crown Office and Procurator Fiscal Service.

12:37

Meeting suspended until 12:40 and thereafter continued in private until 12:50.

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