JUSTICE 2 COMMITTEE

Wednesday 13 November 2002
(*Morning*)

Session 1

£5.00

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

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JUSTICE 2 COMMITTEE
† 41st 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)
Dr Sylvia Jackson (Stirling) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Glasgow Pollok) (Lab)
Dr Richard Simpson (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

Committee room 3

† 40th Meeting 2002, Session 1—cancelled.

Scottish Parliament

Justice 2 Committee

Wednesday 13 November 2002

(*Morning*)

[THE CONVENER *opened the meeting at 10:42*]

The Convener (Pauline McNeill): I apologise for the cramped conditions this morning—it is our turn to be in a small committee room and we will just have to do our best. I welcome everyone to the 41st meeting of the Justice 2 Committee this year. As usual, I ask members to switch off mobile phones and any other noisy things that could disrupt the meeting.

Mental Health (Scotland) Bill

The Convener: Item 1 relates to the Mental Health (Scotland) Bill. As committee members know, we are a secondary committee for the purposes of the bill. We agreed to limit our consideration to its interaction with part 1 of the Criminal Justice (Scotland) Bill.

We have a note from our adviser, Professor Christopher Gane, which we discussed in private. We have to report on our considerations, and I invite members to raise any points that they wish to include in that report. We have a bit of leeway to discuss with the clerks the tight time scale for submitting our report, which is due this Friday. It is perhaps important to highlight now any issues that members feel ought to be addressed in our report.

Bill Aitken (Glasgow) (Con): We are in a position of some difficulty. The briefing session that we just held was certainly valuable, but, in some respects, it posed more questions than it answered. We are up against an extremely tight deadline. I note that officials will let us have an additional report, hopefully today or tomorrow, but, despite that, it is virtually impossible to give the matter measured consideration before the end of this week. I have some doubt as to whether we will be able to meet the deadline. Is there any way that it could be set back, even if only for one week?

Stewart Stevenson (Banff and Buchan) (SNP): The private briefing session that we just held was valuable, but, like Bill Aitken, I found myself more uncertain at the end of it than I was at the beginning—and I was already uncertain, to a degree, at the beginning. There is a clear interaction between the Criminal Justice (Scotland) Bill and the Mental Health (Scotland) Bill, and I do not think that our understanding of that interaction is complete. At the very least, we should report to the lead committee that uncertainty exists in our minds.

I am unclear as to how we could do the matter justice over the remainder of the week. Given what was said in the past 45 minutes, it might be possible for the clerks to prepare and e-mail some information for us to consider offline, for example, but that would not be a satisfactory way forward. We should ask for more time.

The Convener: Bearing in mind what Stewart Stevenson and Bill Aitken have said, members should remember that the Justice 1 Committee will report on the main part of the Mental Health (Scotland) Bill, whereas our report on that bill will relate to its interaction with an important and complex part of the Criminal Justice (Scotland) Bill.

It is unrealistic to think that we can meet Friday's deadline. We must take the time that we need to present a report, albeit that it will be late. We could flag up to the Health and Community Care Committee that we remain unconvinced that the bill as drafted will achieve the desired effect. At the least, we could give that committee notice that we are trying to test whether the intended effect will be brought about by the wording of the bill, which is why we are taking our time. Do members agree to allow me time to consider with the clerks how to return to the committee with the notes that members want and to arrange any further discussions or briefings that members think may be required?

Members *indicated agreement*.

Criminal Justice (Scotland) Bill

10:45

The Convener: Item 2 is the Criminal Justice (Scotland) Bill. Members will remember that when we put together the stage 1 report, we felt that we might wish to take further evidence on some areas. Members now have an opportunity to indicate whether they think that they require to take further evidence. Members have a briefing note from the clerks on areas on which they may wish to try to programme in time for further evidence. For example, I am interested in the amendment on human trafficking—we might take evidence on that. Donald Gorrie has lodged an amendment on sectarianism; members may want to test that issue in some way. There are other Executive amendments—on wildlife crime, for example. On which areas do members wish to take more evidence?

Bill Aitken: I have a fairly wide knowledge of most of the topics that are mentioned in the note, but I have not personally encountered wildlife crime. Other members of the committee, by virtue of the constituencies and areas that they represent, probably have a wider knowledge of wildlife crime than I do, but I would be grateful for more evidence under that heading. I am relaxed about that evidence being written rather than oral.

The Convener: We have received an offer from RSPB Scotland, which we could consider. I will take all members' bids; then we will agree a final list. If the list is long, we may have to prioritise; however, I have noted Bill Aitken's suggestion.

I would like to take more evidence on custody officers. I was not satisfied that we tested the matter properly in relation to the Executive's savings objectives or the powers that it would want to pass on to that new position. Do members have any other bids?

Mr Duncan Hamilton (Highlands and Islands) (SNP): I support taking more evidence on custody officers. On wildlife crime, it is important that we take evidence from some of the projects that are up and running. There are successful police projects that would give us a valuable insight into which powers exist and which do not and whether we could go further to toughen the law in that respect. There is great frustration among police forces that they cannot do much about such crime.

George Lyon (Argyll and Bute) (LD): I agree with Bill Aitken that it would be useful to take more evidence on wildlife crime. There is a good example in Mull of a system that works, which it would be interesting to get evidence about. However, I do not know whether that will be possible within our time scale.

The Convener: We will consider and report back to members on the range of options that we have for providing members with more information about, or taking oral evidence on, wildlife crime. As I have indicated, RSPB Scotland has offered to give evidence on that issue.

Mr Hamilton: I presume that the provisions on areas that we have covered in great depth, such as victim statements, will be amended in response to our stage 1 report. What is the best way for us to determine whether we need to take further evidence on any amendments that are lodged?

The Convener: Members' papers include a letter from Jim Wallace that sets out the Executive's position on victim statements. Duncan Hamilton should examine that letter in detail. I believe that the minister is happy, more or less, with the existing provisions, although he is proposing some amendments.

Mr Hamilton: Are you saying that if there is no additional movement from the Executive on victim statements, we do not need to take any further evidence on that issue?

The Convener: I think that we have received enough evidence to allow members to decide what the legislative framework should be. I am not sure from whom we might take further evidence, as we have heard from all the main organisations. We may simply want to take a view on the matter.

George Lyon: In our report, we raised concerns about the process of taking victim statements. The minister's letter clarifies that and answers a number of the questions that the committee asked, although there is no intention to change the current proposals.

The Convener: If the committee feels at any time that it needs the Executive to clarify matters, a briefing can be arranged. I want to ensure that issues are clarified as we proceed with stage 2 of the bill.

Do members want to take evidence on Donald Gorrie's amendments, which deal with the issue of sectarianism? Members will know that the ministerial working group on religious hatred has produced a report on the issue, which we could use as a basis for understanding the group's conclusions. We will hear from Donald Gorrie when he appears before the committee to move his amendments.

George Lyon: We must take oral evidence on that important subject and address it properly before we decide what position to take on the amendments.

The Convener: From whom would members like to take evidence?

Scott Barrie (Dunfermline West) (Lab): The issue is wide ranging. Before we make a final decision, we should examine the working group's report. There is no point duplicating the evidence that it took, but we may want to take evidence from other organisations or individuals. That would be better than reinventing the wheel.

The Convener: We will make some suggestions and members can indicate from whom they would prefer to take evidence. We may have time to take evidence from only a short list of witnesses, but we will try to strike a balance so that members can hear from all sides of the argument.

The Executive has lodged an amendment on human trafficking, which I have not had an opportunity to examine. I am interested in testing the effect of the amendment, so we may want to take evidence on that.

I do not think that members have flagged up any other areas on which they would like us to take evidence. They should let me know of any pressing issues as soon as possible and not wait until the committee's next meeting; we can manage matters as we proceed. We will report back to members on the issues that have been raised.

A timetable of meetings has been circulated. Ten days have been set aside to deal with amendments at stage 2 and to take further oral evidence, but members can see that we will have a problem managing the timetable.

Criminal Justice (Scotland) Bill: Stage 2

The Convener: This is our first stage 2 meeting on the Criminal Justice (Scotland) Bill. Members will have their usual papers—the marshalled list, the list of groupings and the bill. I welcome Dr Richard Simpson, the Deputy Minister for Justice, and his team. We have scheduled 10 meetings, which may not be enough, but we will certainly be seeing a lot of one another during the coming weeks.

Section 36—Drugs courts

The Convener: Amendment 54 is in a group on its own.

Stewart Stevenson: It gives me great pleasure to kick off stage 2 with an amendment that seeks to test and bring a little clarity to the Executive's intentions. Amendment 54 would focus the drugs courts system on people who are addicted to, or have a propensity to misuse, drugs that have come from non-authorised sources. The idea in my mind is that people who abuse prescribed drugs that they are continuing to obtain from a medical practitioner or someone else will not be in the system.

I have supported the drugs courts for a long time and I wish them well. I am simply trying to find out whether the amendment would help to retain their absolute focus on those people who misuse drugs that are obtained other than by authorised means. It is a simple amendment and is designed simply to test the Executive's intentions.

I move amendment 54.

The Deputy Minister for Justice (Dr Simpson): Amendment 54 would exclude from the drugs courts persons dependent on or with a propensity to misuse drugs if those drugs were prescribed by a general practitioner or other qualified medical practitioner and obtained from a registered pharmacist or other person legally entitled to supply such drugs. I would resist the amendment on the basis that one of the prerequisites for consideration of suitability for the drugs court is that the offender must have an established pattern of drugs misuse linked to an established pattern of offending. Offenders who are receiving prescribed drugs are unlikely to meet those criteria other than where topping up of the prescribed medication with illicit drugs is taking place.

At present, there is evidence that some prescribers are resisting the necessary tailoring of levels of substitute opiates to the level needed to remove the craving from the patient. The result of

that nervousness is that some addicts will top up. Recognition of that, either through testing or detection of additional crime, should not necessarily immediately lead to removal from the court programme. A judicious mixture of sanctions and progressive treatment is needed. Our proposals provide that balance.

Additionally, the working group that established the model for the drugs courts recommended a robust screening process, including the carrying out of a drug test, to ensure the correct targeting of offenders. Before accepting an offender for the drugs courts, a full social inquiry report, drugs assessment, drugs treatment action plan and drugs test result will be made available. Those reports will be prepared over a four-week period by a multidisciplinary, centralised and dedicated drugs court supervision and treatment team, with the involvement of a criminal justice social worker, addiction specialist worker, doctor and, where necessary, specialist voluntary agency. The final decision on whether someone is suitable rests with the drugs courts, which will be in full possession of the circumstances surrounding the offender.

In the light of our intention and the initial experiences of the drugs courts, I think that we are on the right lines. I ask Stewart Stevenson to withdraw amendment 54.

Stewart Stevenson: I thank the minister for a comprehensive and useful reply. In particular, the link that he made between misuse and offending is valuable. He usefully drew attention to top-up as a potential source of misuse for people who are primarily in the normal system. On that basis, I seek the committee's consent to withdraw the amendment.

Amendment 54, by agreement, withdrawn.

11:00

The Convener: Amendment 55 is also in a group of its own.

Stewart Stevenson: Committee members may know—though the minister may not—that the issue of ministerial and Executive performance arose in some amendments that were proposed to the Land Reform (Scotland) Bill. Amendment 55 continues that theme.

I have considerable enthusiasm for drugs courts. Indeed, it was a personal disappointment that they were not piloted in Aberdeen. However, I am anxious to ensure that the maximum possible progress is made. Amendment 55 would simply allow Parliament to track the progress of the roll-out programme for drugs courts by requiring ministers to report to Parliament every six months until drugs courts have been established across Scotland.

I move amendment 55.

Scott Barrie: I, too, support the establishment of drugs courts. Unlike Stewart Stevenson, I welcome the fact that Fife was one of the areas in which they were chosen to be piloted.

There is a slight problem with amendment 55. I am unsure about the purpose behind requiring ministers to report to Parliament on progress every six months. I would have thought that we would first want to ensure that the pilots had achieved what we hoped for. If they achieve that, I am sure that ministers will introduce a speedy outreach to the different sheriffdoms. However, if the pilots do not achieve that, there would be no necessity for the amendment, as it would require ministers to tell us how they were rolling out drugs courts even though we might not think that the courts had achieved what was intended.

In some respects, therefore, amendment 55 would put the cart before the horse. We need first to see whether the pilots are as successful as we hope that they will be. We can then hope that ministers establish drugs courts in the areas that require them.

Mr Hamilton: Scott Barrie has not given a good reason to oppose amendment 55. Presumably, if the pilots were not universally successful and changes were required, it would still be up to the minister to come to Parliament and say why there was a delay to the programme. If there were a good reason for not rolling out drugs courts more quickly, I am sure that the minister, in his usual reasonable fashion, would be able to convince Parliament that that was the case. All that amendment 55 seeks to do is to ensure that an explanation is given of why drugs courts are not being rolled out, should that be the position. Such an explanation would be useful.

Another reason for the amendment was illustrated by the first two contributions: there is a temptation for turf wars to take place, be they between Fife and Aberdeen or elsewhere. We need drugs courts to be introduced across the country as soon as possible. Amendment 55 would not require Scottish ministers to roll out the programme within six months, but it would require them to explain why they should or should not do that. That seems to me to enshrine the principle of accountability.

Bill Aitken: Amendment 55 has some merit. At the risk of mixing my metaphors, I would say that the jury is still out as to the success or otherwise of drugs courts, but amendment 55 is not relevant to that issue. As I understand it—Stewart Stevenson's explanation seemed reasonably clear—the amendment simply seeks to require a process whereby ministers report back. The Parliament would find that useful, because it would enable us to see what progress was being made and it would enable us to question the figures that

ministers provided. On balance, I think that amendment 55 is worthy of support.

The Convener: I, too, have no particular problem with what amendment 55 seeks to do. Stewart Stevenson is perfectly entitled to represent the interests of his constituency in ensuring that it has a drugs court, because, by all accounts, such courts seem to be successful. The issue is whether the requirement on ministers to report back should be on the face of the bill. Ministers can be pressed by other means—which we all use—to ensure that they properly report to Parliament. I am sure that Stewart Stevenson would not hold back in his questioning of ministers and in holding them to account on whether drugs courts were a success and should be rolled out to the whole of Scotland, including to his constituency. I certainly agree with the sentiment behind amendment 55, but the question is whether that is required to be in the bill.

Mr Alasdair Morrison (Western Isles) (Lab): Duncan Hamilton made a reasonable argument. If I understood him correctly, however, he was talking about reviewing the situation, as opposed to making

"progress towards securing that outcome",

which is the proposal set out in the last words of amendment 55. That is a different process. Duncan Hamilton said that amendment 55 would allow us to review the drugs court facility and its processes, but there is a difference between reviewing them and working towards securing an outcome.

Mr Hamilton: The amendment proposes that Scottish ministers are to "report to the Parliament" on progress that has been made. If it is deemed appropriate that no further progress be made, I assume that that could be reported to the Parliament. Amendment 55 would not require the pilots to be rolled out in quick order; it would require some explanation to be given if that does not happen, which is quite different.

George Lyon: I tend to agree with the sentiments that the convener expressed. There are mechanisms in the Parliament, including written questions, that allow members to establish what progress has been made. The provision does not need to be included in the bill—it is not needed.

Dr Simpson: Amendment 55 seeks to insert a new subsection requiring Scottish ministers to report every six months to the Parliament on the progress that has been made in establishing drugs courts under section 36. That will continue until drugs courts have been established in each sheriffdom or district court area in which there is a stipendiary magistrates court.

Let us suppose that the evaluation, which is an independent evaluation by University of Stirling researchers, comes up with the view that the drugs courts are ineffective and should not be continued—indeed, that they should be disbanded. If the proposed subsection were to be included in the bill, we would have to continue for the rest of time to report on something that did not exist. It would be quite inappropriate to include the provisions of amendment 55 in the bill.

As members know, we have established the pilots. We accept the spirit of what Stewart Stevenson proposes, which is that Scottish ministers will report from time to time on the progress of the courts. We will publish the research as it goes along. That is the procedure that we have established in respect of drug treatment and testing orders and we will do the same for drugs courts.

We also have the power, under section 36(1), to roll out the scheme if it is successful by prescribing courts or classes of court. That will mean that a negative procedure will be laid. The committee will have a formal opportunity to see exactly what is happening. I am sure that members will question the minister closely if they feel that progress is not being made on something that turns out to be successful, as indeed we all hope that it will be. I ask Stewart Stevenson to withdraw amendment 55.

Stewart Stevenson: The minister made reference to occasional or periodic—I am not sure which word he used—reports to the Parliament. Will he indicate how frequent those reports might be? If he indicates that he is prepared to report reasonably frequently and regularly, I will, in turn, be equally prepared to withdraw amendment 55.

Dr Simpson: I would not wish to specify the time period. However, in the past couple of weeks, we have published the first report on the process of the initial court establishment. At the end of the two-year period of the initial court, we will publish the University of Stirling's evaluation. I expect that, at an appropriate moment before the two-year period is up, we will produce a report on the Fife court, where a different set of circumstances apply, as the court is in a rural area.

I would not like my ministerial successors to be tied down to reporting at specific periods. However, as the convener suggested, written or oral questions will be asked in the Parliament if members feel that ministers are not reporting frequently enough.

Stewart Stevenson: Thank you, minister.

Amendment 55, by agreement, withdrawn.

The Convener: Amendment 39 is grouped with amendments 40, 41, 56, 42, 57, 6, 6A and 7.

Bill Aitken: The string of amendments largely

deals with failure to comply with the powers of the drugs courts. As we know, the drugs courts are a fairly new innovation, which we all wish well. However, as I have made fairly well known, a number of aspects of the courts' operation concern me. If drugs courts are to succeed, they must gain the respect not only of those who refer cases to them, but of the offenders who appear before them.

So far, only a limited number of cases have gone before the drugs court in Glasgow. It is not appropriate for any of us to say whether the experiment has succeeded or failed. However, given that seven months can elapse between the committing of an offence and a conviction after trial at Glasgow sheriff court in relation to a summary complaint, there could be a lot of pipeline cases that we do not know about.

Nonetheless, I am enthusiastic for the pilot project to continue. At the end of its trial period, we will carry out a hard-headed and realistic assessment. We hope that that assessment will be positive and it is on that basis that I have lodged amendments 39 to 42.

Those who appear before the drugs court in Glasgow have a large schedule of convictions against them and have served several custodial sentences. Following a screening process that involves the police, the social work services, the Crown and other agencies, they have been given another opportunity. That must be brought home to them. We must ensure that, when those people agree to undertake the course of treatment that is offered, the necessary support is given. At the same time, we must make it clear to them that any failure to comply with the requirements of the drugs court will attract a sanction.

I was surprised to see in the sheriffs guidelines that attendance for drug treatment and testing order appointments is not compulsory to the extent that I expected. If someone misses two out of six appointments, that would not be referred to the drugs court as a breach of the order. There is no requirement on an offender to stay off drugs. In the past, the minister and I have had discussions about that. I appreciate that it is difficult for people who have led largely dysfunctional lives in many respects to turn off the tap and stop taking drugs simply because a sheriff has ordered them to do so. However, bearing in mind the fact that they are being given an opportunity to obtain treatment rather than face a sentence of six months' imprisonment—which would be the normal disposal for someone with such a criminal record who has served previous custodial sentences—I do not think that it is inappropriate to suggest that they should comply with the order to the letter, stay off drugs and attend for treatment when they are ordered to do so.

The effect of my amendments would largely be to tighten up the bill in that respect. If the system is to work and to be as credible as the minister and all committee members wish it to be, we must strike the right balance and ensure that the various sanctions are in place as well as the opportunities for people to benefit from the treatment orders that they have been allowed to follow.

I move amendment 39.

Stewart Stevenson: Bill Aitken has perhaps missed the point of what section 36 is trying to do. He referred to the fact that the offenders who appear have a large schedule of offences against them. It is precisely the repeated appearance of people with large schedules of offences that highlights the inadequacy of the present arrangements for dealing with people who have chaotic lifestyles and cannot respond in a oner to opportunities, however excellent those opportunities may be. That is what underlies my resistance to Bill Aitken's amendments.

11:15

Amendment 39 would prevent a drugs court from dealing with successive breaches of orders, even when the first breach was technical and minor and when it would be inappropriate to take the offender, who was leading a chaotic lifestyle, out of the system. Amendment 40 would remove a drugs court's flexibility to determine detention and to reimpose previous statutory sentences. That runs against the spirit of what we are trying to do. Similarly, amendment 41 would remove flexibility from the court, when the point of drugs courts is to bring flexibility to bear. Amendment 42 would also remove flexibility.

My amendment 56 would increase the range of disposals that are available to drugs courts. It stops short of revocation of a drug treatment and testing order but provides three further disposals, which include an admonishment—that would be appropriate in some circumstances, but will not please Bill Aitken—and requiring caution. That brings to the table the opportunity for friends, family or advisers to stand caution for someone in whom they believe and to be a guide and mentor for a person with a chaotic lifestyle, to help them out of their present chaos and into a more normal lifestyle. I am interested to hear what the minister says about that.

My amendment 57 would remove the Scottish ministers' power to vary the length of sentences that have been imposed under section 36(4). It is inappropriate to allow ministers to change sentences by order. The Criminal Procedure (Scotland) Act 1995 provides no such power to vary sentencing orders and we are not terribly clear about why that should be allowed for drug

treatment and testing orders. Section 36(5) brings politicians to the table to manipulate sentencing policy directly, which raises some difficulties.

My amendment 6A would amend the minister's amendment 6. I am unclear about what the minister's amendment does. It appears simply to be a technical tidying-up of the bill's wording. Inserting the words "beyond reasonable doubt", which represent the general standard of proof that is required in Scottish courts, would be appropriate, if any such amendment were to be made. I am interested to hear from the minister on that.

The minister's amendment 7 is technical. I am minded to support it, unless the minister can persuade me not to.

The Convener: That remains to be seen.

Dr Simpson: Amendment 6 deals with the allegation in a case before the drugs court that an offender has breached a drug treatment and testing order or a probation order. The amendment gives the drugs court discretion to hear evidence of the alleged breach or to refer the case to another court for that purpose. The drugs court has the power to impose interim sanctions when the breach is proved.

Amendment 6A would insert the words "beyond reasonable doubt" as the standard of proof of failure to comply with a DTTO or a probation order. The standard of proof need not be specified. Nothing new is being created with respect to the proof of failure to comply with orders or hearings. Section 36(7) imports the terms of sections 232 and 234G of the 1995 act in respect of DTTOs and probation orders, which are considered on the balance of probabilities. That is the standard of proof that is already applied in certain proofs in criminal matters, such as where it is alleged that the offender has breached a DTTO or a probation order. Therefore, there is no requirement for any reference to the standard of proof, which has been applied by the courts and solicitors for a number of years. The appropriate standard in the circumstances is the balance of probabilities.

Amendment 7 was lodged in the interests of consistency. It removes an anomaly between section 36(8), in relation to DTTOs, and section 36(9), in relation to probation orders. The provision allowing the court to take account of any interim sanctions that have been imposed when revoking a probation order falls short of the provision in relation to the revocation of a DTTO. An interim sanction can be in the form of a short period of detention or imprisonment of up to a total of 28 days, or a community service order of up to a total of 40 hours.

Where the court is considering the appropriate disposal on revocation of a probation order, the effect of section 36(9) is to require the court to take into account interim sanctions that have been imposed if it is considering a detention or imprisonment order. However, in the case of a DTTO, section 36(8) provides that the court can take into account interim sanctions that have been imposed if it is considering the imposition of any sentence. In the interests of consistency, I consider that the court should have the power to take account of interim sanctions in considering the imposition of any sentence following the revocation of either a probation order or a DTTO.

Amendment 39 seeks to remove the power of drugs courts to impose an interim sanction on more than one occasion for failure to comply with the requirements of a DTTO or probation order. The effect of the amendment would be to limit the court's powers to the imposition of a sanction only once during a DTTO or probation order—in a sense, one strike and they are out. Stewart Stevenson put it extremely well when he said that, under amendment 39, the court would be required to act in the manner prescribed if there was only a technical breach, and that would be the end of the matter. The arrangements that we have proposed are subtler and, as Stewart Stevenson said, take into account the chaotic lifestyles of those who are being managed. That is a more appropriate approach.

We resist amendment 39 on the ground that the existing provision takes into account the fact that the nature of offenders who are likely to be subject to drugs courts is such that lapses will not be uncommon. However, for an order to achieve its aim, it is important that the offender should remain subject to the order and the treatment, with the support and supervision that that brings with it. If the court's power were restricted so that it could impose a sanction on only one occasion, an offender's prospects of completing an order would, in our opinion, be greatly diminished.

Amendments 40 and 41 are consequential to amendment 39. By restricting the use of the sanctions of community service and imprisonment to only one occasion, they would limit the court's discretion to deal with an offender's repeated failures to comply with the terms of an order. We resist amendments 40 and 41 on the basis that the courts would not have the powers to impose interim sanctions for any subsequent failure. As drafted, the provisions give the drugs court sentencers a punitive option in cases where the offender has committed minor failures to comply with the order.

Sections 232 and 234G of the Criminal Procedure (Scotland) Act 1995 already provide for the imposition of a fine or a community service

order for breach of a probation order, or a fine in respect of a DTTO, without prejudice to the continuance of the order. Notwithstanding that, the recently published evaluation of the first six months of the Glasgow drugs court records that

"sentencers believed that the range of sanctions currently available to the drugs court was insufficient."

Amendment 56 seeks to amend section 36(4) to provide additional interim sanctions for drugs courts. I resist the amendment on the basis that the steering group that developed the model for drugs courts considered that short custodial sentences and CSOs were the most suitable options. More recently, the evaluation of the first six months of the Glasgow drugs court records:

"Reservations were expressed by Sheriffs about the introduction of restriction of liberty orders and their suitability for offenders in receipt of drug treatment."

It is proposed that the court should have the power to admonish. Admonitions apply on conviction and only where the order is revoked. The court can, however, allow the order to continue despite the breach, so the power to admonish is not required.

I understand that caution is little used. However, sections 232(2) and 234G of the 1995 act already provide for the court to fine an offender for breach of a probation order or a DTTO without prejudice to the continuation of the order. It is unlikely that the drugs courts would want to increase the pressure on the offender by imposing financial sanctions. However, if they did so, the legislative provision for that is already available.

Amendment 42 would introduce a harsher regime for the offender. Where there was evidence of drugs, that would automatically be treated as a breach, which would remove the court's flexibility and discretion. On my visit to a drugs court, I witnessed exactly that situation: after discussion between the offender, the defence agent and the sheriff, the conclusion was reached that, in the circumstances, the court's flexibility and discretion should be applied. I believe that that was successful in the case concerned.

Where an individual is clearly moving in the right direction, as was the case in the example to which I have referred, anything that simply removes that person from the programme will, ultimately, harm not only the offender but, more important, the community and the addict's family. We need a judicious blend of sanctions and flexibility to manage this difficult group of people. We believe that our proposals provide that. The research will of course demonstrate whether we are right or wrong, but the amendments lodged by Bill Aitken and Stewart Stevenson risk wrecking the carefully constructed balance that has been based on initial international research and on initial practical experience.

The drugs court would be unable to impose a DTTO. Section 234C(1) of the 1995 act—as amended in 1998—on which the requirements for DTTOs are based, provides for treatment on the basis of

"the reduction or elimination of the offender's dependency on or propensity to misuse drugs".

The provisions have been framed in consultation with the agencies involved in the operation of the drugs courts and with the benefit of experience of other jurisdictions. Drugs courts do not represent an easy option. However, if we restricted the courts' jurisdiction, the opportunity for offenders who are dependent on drugs to reduce their dependency and to reduce the amount of crime that they commit would be lost.

Amendment 57 would remove section 36(5), which provides for Scottish ministers to amend by subordinate legislation the number of days of imprisonment or detention and the number of hours of community service that may be imposed as an interim sanction order under subsection (4). In its stage 1 report, the committee accepted that ministers should have such a power. I ask committee members to resist amendment 57.

The drugs courts and the availability of interim sanctions are new concepts. If experience shows that the duration of the interim sanctions is too lengthy or too short, there will be a need to amend the powers to meet the revised policy requirements. It is desirable that that process be speedier than would be possible through primary legislation. It is thought that subordinate legislation, through negative resolution, provides the flexibility to achieve such changes and is the appropriate procedure under the circumstances.

I ask Bill Aitken to withdraw amendment 39.

The Convener: I agree with everything that you have said, minister, but I would like to put one thing on record. Just because the committee did not comment on subsection (5) does not mean that we agreed with it. We feel that the timetable was rushed and we ask you to bear that in mind when listening to the debate.

Dr Simpson: It was the Subordinate Legislation Committee, not the Justice 2 Committee, that said that it accepted the provisions.

The Convener: To clarify: we did not accept subsection (5).

Dr Simpson: I apologise if I did not make that clear.

Mr Hamilton: On precisely that point, I thought that the minister was his usual thorough self in all that he said—until his comments on amendment 57. As he now accepts that this committee did not agree that subsection (5) should be retained, he

should be more thorough and substantial and explain why he believes that amendment 57 should not be agreed to. May I ask the minister to have another go at what is an important issue?

The Convener: If no other member wants to speak at this point, I will allow the minister, if he so wishes, to respond to members' comments.

Dr Simpson: The Subordinate Legislation Committee report states:

"85. This is another 'Henry VIII' power that the Committee considered carefully. As the 'drugs courts' are experimental it is obvious that the details of the new scheme will require to be 'fine-tuned' in the light of experience and primary legislation would be a rather heavy-handed way of achieving the desired result.

86. The Committee noted that the power to extend the sentencing powers contained in the Bill is nevertheless very wide. There is no limit on the exercise of the power. It is also obvious that amending the maximum sanctions prescribed in the Bill might raise potential ECHR issues as well as other important policy considerations relating to offender sentencing. In all the circumstances, however, **the Committee accepted the power and the procedure chosen.**"

Given that we have the support of the Subordinate Legislation Committee, we suggest that the power be retained.

11:30

The Convener: I am told that a Henry VIII power is a power to change primary legislation by secondary legislation.

Mr Hamilton: It is interesting that the Subordinate Legislation Committee reached the view that it reached, but that is all. The passage that the minister cited is hardly a ringing endorsement of the provision. The Subordinate Legislation Committee raises a number of fundamental issues—there may even be a breach of the European convention on human rights. From the report, it is clear that the committee is uncomfortable about giving ministers such a substantial power. Can Dr Simpson offer any other arguments that would convince us not to agree to amendment 57? The Subordinate Legislation Committee's support for the power is pretty tepid.

Dr Simpson: In the drugs court, sheriffs have used suspended sentences in a sophisticated way to achieve what we have outlined in the bill. Fine tuning is important. If in six months or a year the sheriffs who are operating the courts in Glasgow and Fife indicate to us that the powers need to be changed, we will have to consider that very seriously. I do not want to do anything that would jeopardise the courts. If the committee required us to produce primary legislation, that would have to await consideration at a future slot in the parliamentary timetable, which would cause problems.

We need to take the power, but changes will be made under the negative procedure. If the Parliament feels that the powers that we are seeking are too broad, it will have the opportunity to object to our proposals.

The Convener: I do not fully understand why some instruments are dealt with under the negative procedure whereas some are dealt with under the affirmative procedure. I do not think that I am alone in that. Why would any instrument not be considered under the affirmative procedure? If it were, we could ask you to appear before us and we could test the instrument. Under the negative procedure, you are not subject to the same constraints. We can lodge a motion to annul the instrument, but we do not have an opportunity to debate with you what you want to do. Can you convince us that it is possible for us to debate instruments with you?

Dr Simpson: We propose to take the powers as set out in the bill. However, the committee may consider how it wants to proceed. If an alternative proposal is made at stage 3, we will debate it then. It is for the committee to decide whether it feels more comfortable with the use of the affirmative procedure in this instance.

Bill Aitken: A number of interesting points have been made. I will deal first with the point that Stewart Stevenson made about the reduction in flexibility that my amendment would bring about. That is the intention behind the amendment, as I will shortly explain. However, if a breach is technical, the sentencing sheriff may take that into account. He does not have to impose a terribly punitive disposal if a breach is entirely technical. Under the bill, an accused person could be sent back to the drugs court if there had been a technical breach. Therefore, I do not think that that argument holds water.

I was surprised that Stewart Stevenson, whose knowledge of the Scots tongue is probably greater than mine, should make the mistake of not pronouncing "caution" to rhyme with "nation". Nevertheless, I do not think that the issue of caution is appropriate because, as the minister identified, having similarly mispronounced the word, the accused person in most cases is unlikely to have sufficient funds for the caution. Therefore, I think that we would probably agree that Stewart Stevenson's argument on that point is spurious.

What I seek to do is not to wreck the proposals, as the minister suggested, but rather to protect them by ensuring that they have some credibility, which I believe that they do not have. The minister is perhaps disappointed that there has not been the anticipated number of referrals to the drugs court in Glasgow. He is correct to be disappointed. However, perhaps he should investigate the reasons for the lack of referrals. Is the bottom line

that the police and others do not think that the drugs courts as presently constituted have the necessary teeth not only to offer the accused person the degree of treatment and support that we would like them to have, but to impose sanctions when someone does not take up that offer?

The minister correctly pointed out that many of the accused are dysfunctional people who have led chaotic lifestyles. However, they are being given a chance through the drugs courts to stop doing the things to the rest of the population that might have resulted in their going to jail time and again. Given that accused people appear in the drugs courts from custody and should be reasonably clear of drugs when they appear, it is surely not too much to ask that they stay off drugs for the future. They have a duty to wider society, just as we have a duty to them.

Sentencing in drugs courts, as in other courts, is a question of balance. We want the drugs courts to succeed, but if accused persons do not have the necessary respect for the courts, the courts will not succeed. I lodged my amendments in a constructive vein in the hope that some respect can be inculcated into the system and into accused persons. The accused are being given a chance, which they should take; if they do not, there should be a sanction.

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)

AGAINST

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 39 disagreed to.

Amendment 40 moved—[Bill Aitken].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)

AGAINST

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 40 disagreed to.

Amendment 41 moved—[Bill Aitken].

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)

AGAINST

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 41 disagreed to.

Amendment 56 not moved.

Amendment 42 moved—[Bill Aitken].

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)

AGAINST

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

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 42 disagreed to.

The Convener: Amendment 57 has been debated with amendment 39. Will Stewart Stevenson move amendment 57?

Stewart Stevenson: May I make some remarks?

The Convener: You are not supposed to make remarks at this point, but I will allow a brief comment.

Stewart Stevenson: Thank you, convener. I intend not to move amendment 57, but I wish to put on the record that the subject is likely to return at stage 3. I have in my mind some queries about the ECHR compliance of section 36(5). In addition, orders generally may only be accepted or rejected in their entirety and cannot be amended. On that basis, although I will not move amendment 57 now, the minister may expect the subject to return.

Amendment 57 not moved.

Amendment 6 moved—[Dr Richard Simpson].

Amendment 6A not moved.

Amendment 6 agreed to.

Amendment 7 moved—[Dr Richard Simpson]—and agreed to.

Section 36, as amended, agreed to.

Section 37—Restriction of liberty orders

The Convener: Amendment 43 is in a group on its own.

Bill Aitken: To some extent, amendment 43 is a probing amendment. Members have before them a paper on the extremely interesting visit that the convener and I paid to the appropriate monitoring station in East Kilbride. I found the procedures that are in place there to be perfectly satisfactory and I think that restriction of liberty orders are a disposal that has a role to play in the sentencing powers that are to be given to Scottish courts.

However, the Executive has not made it clear what sort of cases it intends should be subject to restriction of liberty orders—which are perhaps more generally known as tagging. The effect of amendment 43 would be to restrict tagging orders to cases that are taken under summary procedure. Thus, the amendment would remove the disposal from sheriffs in cases in which the accused is appearing for a more serious matter, which has resulted in the matter being taken on indictment.

It occurred to me that restriction of liberty orders could be ideal in certain circumstances. For example, someone who repeatedly goes out on a Friday and Saturday night, drinks too much and commits breaches of the peace and causes general disorder could well benefit—as could wider society—from such a disposal being imposed. The restriction of liberty order could require such a person to stay in on a Friday and Saturday night. Someone who continually steals cars during the day could be restricted during the day. Someone who breaks into houses at night could be restricted at night. That is fine: such a disposal could be realistic and positive.

I am reluctant to make available to courts the use of restriction of liberty orders where the offence was of a sexual nature or of a violent nature, involving significant violence rather than a simple assault. We need to know what the Executive has in mind and the sort of cases for which such disposals might be available. We cannot possibly give a blank cheque in that respect. Restriction of liberty orders are a fairly serious disposal, but I am reluctant to see their use go too far, such that they are used when someone should simply be subject to a prison sentence.

I move amendment 43.

The Convener: As Bill Aitken said, members have in front of them a report of the visit that Bill Aitken and I made to the Reliance Monitoring Services centre. Overall, I was impressed both by the running of the centre and by the figures, which seem to show that compliance with restriction of liberty orders is strong. The disposal was piloted up until this May. Since then, it has been available in every sheriffdom.

It is useful to have a probing amendment, so that Parliament can be satisfied about the precise reasons for which an RLO can be used. A restriction of liberty order cannot be used in murder cases, because the crime carries a mandatory life sentence, but that means that the order is an available sanction for every other crime. The amendment is useful to test whether Parliament wants that to be the case, because every sheriffdom can now use the orders.

It is also worth noting that we have been able to use RLOs to deal with other offences, in particular domestic abuse. It is possible to have a box put in another house, so that there is electronic monitoring of an offender who is restricted from a particular house or street and we can tell whether the offender is in the vicinity, although that lasts only for the duration of the restriction order. I am keen to hear the Executive's view, now that the sanction is available for every crime other than murder.

11:45

Dr Simpson: We will resist amendment 43, which would remove sentencers' ability to impose a restriction of liberty order for more serious offences. The courts currently use the RLO for serious offences, so the policy is working and it is being used appropriately. That is the experience from the pilot projects. Respondents to the consultation on the future use of electronic monitoring in Scotland also agreed that experience has demonstrated that tagging—RLOs—is being used for offenders whose crimes are serious in nature or whose offending patterns are such that they are at risk of custody.

The member's amendment is not supported by the evidence, which is that courts impose RLOs for the serious offences that he talked about. The amendment would, in effect, reduce the target group for RLOs and limit the options available to the court. It is the courts that should take into account the individual circumstances. Later, we will debate the use of RLO tagging for sexual offenders on release as part of a parole system. I realise that that is somewhat different, but restricting the use of the disposal for sex offenders, when currently more than half of sex offenders are not given a custodial sentence, appears to be an inappropriate limitation of the court's powers. Therefore, I strongly resist the amendment.

Ministers have the power to prescribe the class or classes of offender in respect of which an RLO may be made under section 245A(8) of the Criminal Procedure (Scotland) Act 1995. Therefore, there are powers to limit or define the class or classes. In the light of future experience, we may wish to exercise, or propose to exercise, that power, but at present, I recommend that we resist the restriction of orders.

Mr Hamilton: Will the minister give us examples of the serious offences for which he said the orders are being used effectively?

Dr Simpson: There are some violent offences. Restriction of liberty would be entirely appropriate in cases of domestic abuse where violence is involved, because apart from imposing an order to avoid certain streets or places, we would want to ensure that the individual's liberty to move around was restricted. Such people can be very violent.

Mr Hamilton: So what is the most serious offence that it has been used for?

Dr Simpson: I cannot answer that, but I will get back to you about it.

Mr Hamilton: I asked because it would be useful to know from the practice how far up the chain we have already gone. From that, we could make a more informed judgment. In the absence of that, it is difficult to proceed.

The Convener: Unless there is dissent, I think that the committee is using the probing amendment to have a dialogue. The RLO is a good sanction, but we want to be sure that we are using it in the right way. We always like to ensure that checks and balances exist.

Reliance Monitoring Services figures tell us that 15 per cent of the disposals were for assault and robbery and 38 per cent were for theft and fraud. I realise that those are only broad categories, but we want to be reassured that the Executive will examine the figures in detail to ensure that the orders are not being used inappropriately, notwithstanding what has been said about how useful and important RLOs will be throughout Scotland.

Dr Simpson: I have some further information. We are planning research on the outcomes of the use of RLOs in respect of reconviction rates. We want to consider their appropriateness, feed that back to sentences and find out what works and what does not work. The problem is that the approach is relatively new. Members will appreciate that we are moving cautiously. I am keen to extend RLOs in a number of areas—for example, in respect of bail and early release—but we will not do so at this point. We want to roll things out cautiously, monitor the approach and ensure that it is effective. To some extent, we share the concerns that have been expressed and we need to consider the matter carefully, but we do not want to impose the specific restriction that amendment 43 would impose at the present time.

Bill Aitken: As I said, amendment 43 is a probing amendment, which attempts to get a number of issues out of the undergrowth. To some extent, it has succeeded. Again, we are dealing with an issue against a background of limited experience—the minister would admit that—but nonetheless, there are a number of relevant issues.

We were extremely impressed by Reliance Monitoring. There is no doubt that the disposal in question has a firm role to play. However, I was a little disappointed in the minister's response that there is no thinking at this stage that the kind of cases to which such an order can apply should be limited, although I acknowledge the caveat that he introduced.

The matter is worthy of further consideration. My attempt to restrict tagging orders to summary matters was simply a device to get the amendment on the table and, as I said, to that extent, it has been successful. I seek the committee's consent to withdraw the amendment, although it may be necessary to revisit the matter at stage 3.

Amendment 43, by agreement, withdrawn.

Section 37 agreed to.

Section 38—Interim anti-social behaviour orders

The Convener: Amendment 58 is in a group on its own. I welcome Johann Lamont to the committee and invite her to speak to and move amendment 58.

Johann Lamont (Glasgow Pollok) (Lab): I was relatively relaxed about attending the meeting until I heard Bill Aitken chiding for mispronunciation. If, at any stage, I reveal my huge ignorance of

judicial matters, on which the committee has great expertise, I am sure that that ignorance will be pointed out to me.

Members will be aware that I have lodged a number of amendments, of which amendment 58 is the first that I must deal with. As the Housing (Scotland) Act 2001 went through the Social Justice Committee, it became evident that anti-social behaviour is not confined to council tenants, so a solution to the problem cannot be found only through housing officials. In fact, anti-social behaviour is clearly a judicial matter. Through the amendments, I seek to explore how the judicial process can assist in addressing the problem of anti-social behaviour. For too long, anti-social behaviour has not been regarded as a serious matter within the legal process.

Amendment 58 seeks to put a responsibility on people other than local authorities to support the promotion of anti-social behaviour orders. It was prompted by my experience of a private landlord in my constituency who had an anti-social tenant. Clearly, it is a matter for the local authority to promote an anti-social behaviour order, but I was not convinced that the local authority was as aware as it should have been of its responsibilities in that regard. It became obvious that there were questions about collecting information to support the promotion of the anti-social behaviour order and about how to impose responsibility on the private landlord to engage in the matter and support the local authority in promoting the order. The amendment tries to explore how responsibilities are put on private landlords in that respect and how anti-social behaviour orders are supported. Where they have been promoted at all, they have been promoted against council tenants. I do not think that there is any evidence of their being promoted against private sector tenants, although we know that there is a serious problem in that area.

I am aware that there are concerns about the breadth of the amendment, which may sweep up within it neighbours, who we all know are anxious about providing evidence to anyone in a public way. Sometimes we do not know the extent of anti-social behaviour because of intimidation in our communities. That poses a further question about how we can deal with that.

I seek reassurances from the minister that the Executive will consider the responsibility of private landlords in addressing anti-social behaviour and in supporting the local authority when it finally decides to use an anti-social behaviour order against one of its tenants. I hope that amendment 58 will facilitate discussion of ways in which those matters might be addressed.

I move amendment 58.

Stewart Stevenson: I am very much in sympathy with where Johann Lamont is coming from. A surprising proportion of the constituency cases that come to me involve precisely such difficulties and they are not all related to council tenants. If only that were the case. However, I have difficulty with the drafting of the amendment, because it introduces the word duty. It might be helpful if the minister and his advisers were to inform the committee whether the presence of that word would create difficulties. It appears that it would force people to give evidence, but I am not sure that that is the intention.

As Johann Lamont said, people often have a real fear that, if they go on the record, they will subsequently find themselves singled out and dealt with by the people who have been causing the problem or the relatives or friends of those people. Therefore, I cannot support the amendment on the basis of its drafting, although I whole-heartedly support the underlying intention to address the issue.

Bill Aitken: I have considerable sympathy with amendment 58. The existing law fails manifestly to cope with the problems of anti-social tenants. Whether those tenants are in the public sector or the private sector is immaterial. It does not matter to someone whose life is being made a misery whether the people next door or round about them are public authority tenants, owner-occupiers or private tenants. There is a problem that we should seek to resolve.

When the Social Justice Committee debated the Housing (Scotland) Act 2001, we dealt with anti-social behaviour at length. Johann Lamont will recall that I put forward some fairly robust proposals for dealing with anti-social tenants. Unfortunately, I was unable to secure the support of the committee or the Parliament for the implementation of those measures, although a degree of sympathy was expressed. There is a balance to be struck. There is some merit in amendment 58 and I am disposed to support it.

The Convener: I welcome the amendments that Johann Lamont has lodged in relation to anti-social behaviour. The committee tested the provisions in the bill on ASB orders. We all came away from the session feeling that we needed to seek a more comprehensive approach to anti-social behaviour, as it is an increasing problem in areas where crimes are being committed. We need to deal with it as a specific criminal justice matter.

I am pleased that amendment 58 has been lodged, as it will allow us to test what further work can be done on the bill. I look forward to hearing what the minister has to say about the Executive's overall approach to anti-social behaviour and what the bill might achieve.

George Lyon: Likewise, I have been approached by numerous constituents who have experienced the problem that Johann Lamont has highlighted. I welcome the amendments, which may draw from the minister the Executive's plans to tackle the problem. In my constituency, the local authority has made no attempt at all to use anti-social behaviour orders.

We seem to be incapable of dealing with the fundamental problem, regardless of whether the landlord is public or private. Some constituents who have approached me have been on the edge of a nervous breakdown because of harassment and bullying by their neighbours. We seem to be unable to find a solution to their problems. I am interested in what the minister has to say about this important matter.

12:00

Dr Simpson: I, too, welcome amendment 58 and the subsequent amendments as an opportunity to consider such matters. Amendment 58 would introduce a duty on neighbours of anti-social tenants to provide information to local authorities that are investigating anti-social behaviour. Some local authorities have experienced difficulties in gathering information to support ASBO applications, but a person cannot be forced to give a statement. Placing a person under a duty with no sanctions is likely to have little effect and the duty would be difficult to enforce.

Like others, I have dealt with witnesses who are not keen to appear. Several local authorities are considering ways to improve the situation and increase the effectiveness of their investigations. Some are using professional witnesses, for example. Action to address anti-social behaviour is likely to be more effective if it is taken voluntarily, so it is important to encourage witnesses to appear and to reassure them that, in doing so, they will not be subject to threats or intimidation. We are considering the responses to our "Vital Voices" consultation. That might result in further measures to help vulnerable witnesses to give evidence. The combination of professional witnesses and enhanced support for vulnerable witnesses will progress the situation.

I appreciate the general concern of many committee members and other members that the new measure of interim ASBOs will simply raise expectations even higher than the original ASBOs did. The Executive is determined to make the interim orders work. The overriding need to share best practice is shown by the fact that two contiguous areas in the same sheriffdom can have very different results with the present orders. Fife has had about 40 successful orders and Clackmannanshire, like George Lyon's constituency, has had none—those two areas are not alone.

I am aware that members are keen to ensure that best practice, as seen in Fife and North Lanarkshire, is spread as rapidly as possible. Neighbours who are in dispute should be entitled to early mediation and thereafter to a professional service that is conducted in good time. Too many cases drag on for too long. The combination of early mediation and, if that fails, a professional, trained and dedicated ASBO team, with professional witnesses acting when needed, is vital. The Labour Administration and the Executive committed themselves to improving the quality of life of citizens who experience anti-social behaviour and we are determined to make that work.

I am sure that the committee has read the initial research, which informed our thinking about interim orders. I give the assurance that we will continue to audit ASBO development closely.

Johann Lamont talked about private landlords. The Scottish Retail Consortium raised with us issues about neighbouring retail premises. It is a matter for local authorities to raise anti-social behaviour orders in relation to tenants or owner-occupiers. The system is not restricted to council tenants. I am sure that that was an unintended misrepresentation of the situation. The difficulty to which Johann Lamont referred is that private landlords are not responding to requests for information about their tenants. It is regrettable that, in some cases, they pay little attention to clear anti-social behaviour by their tenants and do not inquire before renting premises into whether the tenants' previous behaviour might have been anti-social.

Engaging private landlords is crucial. The housing improvement task force is examining and discussing the situation. We will continue to examine the matter closely. Further primary legislation or regulations might be required.

I invite Johann Lamont to withdraw amendment 58.

The Convener: Before I ask Johann Lamont to wind up, I ask the minister to clarify his last point about private landlords. He said that the Executive recognises that there is a perception that private landlords are hidden and that the targets have been in local authority housing. We need to match up the sanctions that can be taken so that they will have a similar effect on private landlords.

Dr Simpson: I am not quite saying that; I am saying that there is anecdotal evidence that some private landlords are failing to provide any information on their tenants—they seem almost to be washing their hands of the situation. Good private landlords are not doing that. We need to

encourage private landlords, along with retail groups if they are involved, to become partners in the process.

The major problem is that, in some cases, information resides with the private landlord and also with the police and the local authority. The local authority is the only body that can take out the order, which means that it has to work with those partners—and, indeed, housing associations—to draw the information together to allow them to proceed effectively. Ultimately, it is to the detriment of the community if any partner fails to participate in the process. I believe that private landlords, along with all other landlords, have a responsibility to ensure that they participate in the process in an effective way.

Johann Lamont: The minister touched on mediation. Some of the issues are about mindset. I was almost embarrassed to have to give some of my constituents a leaflet about dealing with noisy neighbours, when the people whom they were dealing with were monsters. It is clear that normal disputes between neighbours happen and, in that case, there is a place for early mediation and all that. However, we have to appreciate that the problems that we are talking about are further up the range of behaviour. In some cases, we are talking about actively criminal behaviour, which is being dressed up as anti-social behaviour or a neighbour dispute. The challenge is to get the legal process to make the jump at hearings or when it has the evidence.

I take on board what members have said about the vulnerability of neighbours. Interim ASBOs are supposed to offer a buffer for neighbours so that they do not have to deal with neighbour disputes, as the interim order allows someone else to take on the dispute for them.

When local authorities are seeking information, I hope that they will show sensitivity to those from whom they seek information. If they are aware of difficulties, I hope that they will not put pressure on individual neighbours who have clearly been intimidated. That point weights heavily with me.

Bill Aitken made the point that, when people are living in such circumstances, it is immaterial whether the person who is causing the problem is a private tenant or someone in public sector housing. The distinction is not immaterial when it is not possible to get a response from the landlord. There is a huge gap in relation to private landlords' sense of responsibility for addressing the problem. In local authority housing—indeed, in the social rented sector in general—there are responsibilities and duties on landlords to address problems and to intervene early. No such responsibilities and duties exist for private landlords.

That was the case in the circumstances that I experienced at first hand. First, I had to establish who the private landlord was, which involved going to the Land Register of Scotland because the information was not in the public domain. Secondly, the landlord expressed a degree of bemusement that private landlords had any responsibility at all for their tenants except to collect the rent. One of the problems is that the private sector market is distorted because of the almost too direct connection between the landlord and the receipt of moneys from their tenants. Landlords do not have to be concerned about giving any kind of service to the tenant. I am not referring to withholding of rent, which is a separate problem.

I am aware that a local authority can move against a private sector tenant, but how can they find out that there is a problem? How do authorities gather evidence if the private sector landlord, who is in receipt of income from the tenant, has no obligation towards the tenant or their neighbours? If we do not know who the private sector tenants are, it makes it difficult to put pressure on them.

A broader issue is involved and I agree that the housing improvement task force has addressed it in part. However, the problem will not be addressed properly unless the legal system matches the scale of the problem. If it is not possible to put a broad duty on neighbours, I hope that something can be done at stage 3 to impose a duty on private sector landlords, to make them play an equivalent role to that of landlords in the social rented sector.

That said, I seek the committee's leave to withdraw amendment 58, on the ground that its provisions could sweep up people who are vulnerable. I do not want to put them in that position.

The Convener: Before I seek the committee's agreement that amendment 58 be withdrawn, I ask the minister to clarify something. I think that the committee agrees with everything that the minister said, but is he suggesting that he will come back with an amendment at stage 3?

Dr Simpson: No. The housing improvement task force will deal with the issue. We do not intend to come forward with measures in that respect in this piece of legislation, unless a report emerges that would allow us to do so. I am simply trying to acknowledge that the Executive is aware of the problems and that we are feeling our way with anti-social behaviour orders and trying to make them work. As I have indicated, some local authorities are proving highly successful in using the orders and, indeed, in dealing with problems before they reach the point at which orders need to be made.

George Lyon: The minister highlighted the terrible disparity between a council such as Fife and a council such as my own, where there has been no attempt to use the existing mechanisms. Will he reassure us that the Executive is taking action to address the problem? If councils are not using what is already on the table, will they even use the new interim anti-social behaviour orders that we are about to pass into law?

Dr Simpson: Convener, do you want me to answer that?

The Convener: It would be helpful if you did so. I know that Johann Lamont has signalled her intention to withdraw amendment 58 and I am about to seek the committee's agreement for that. However, I want committee members to be happy about that decision, as they will not have the chance to vote on the amendment.

Dr Simpson: I am happy to respond to George Lyon's point. Indeed, the debate has been useful. I should say that the interesting question of disparity has been exercising us as well. First, we published research on what was happening to give an idea of why it was happening. The interim orders resulted from that research, because councils who had been successful with ASBOs still reported inordinate delays in some cases and so needed interim orders to protect neighbours.

The role of the sociable neighbourhood national co-ordinator—I am sorry that it is such a mouthful—is to work closely with councils to assimilate and disseminate good practice, identify gaps and act as a facilitator to assist councils in developing successful strategies to tackle anti-social behaviour. In the past year, she has completed an audit of all local authorities and will report shortly. It is hoped that she will identify areas where further resources are required to allow the Executive to target resources effectively. We are examining the matter closely and are determined to take it forward when we identify the problems that individual councils face.

Amendment 58, by agreement, withdrawn.

The Convener: Amendment 59 is grouped with amendment 44. I should point out that, if amendment 59 is agreed to, I cannot call amendment 44.

Johann Lamont: The purpose of amendment 59 is to make the process of laying anti-social behaviour orders as speedy and effective as possible. There are already serious concerns about delays in the system and I suspect that some of the disparity in the promotion of ASBOs by local authorities is precisely because—as someone told me—the effort is not worth the candle. The amount of time that one has to commit to secure an ASBO is not matched by any subsequent improvement in behaviour or success when a case reaches court.

Amendment 59 seeks to lay an order against troublesome behaviour while the matter is being investigated. People are concerned that so-called troublesome behaviour—which is putting the matter very lightly—continues during that process. The amendment would not deny rights to the person whose behaviour is causing concern. I am sure that someone will correct me if I am wrong, but the process could be likened to an interim interdict, under which an order can be made while a matter is being investigated.

We are in serious danger of introducing an interim anti-social behaviour order that is only slightly quicker than the inordinately slow process that we have at the moment. Instead, we should be introducing a system that gives communities comfort that matters are being addressed speedily, rather than leaving them with the frustration, anxiety and distress that are caused by anti-social behaviour, and which are compounded by the feeling that the system is unable to take any quick action against anti-social behaviour. Helplessness and fear also go with that and there is a danger that we might undermine people's confidence in the legal and judicial process, which would have a major consequence in some of our communities. The minister talked earlier about raising expectations unrealistically. One of our problems is that people have no expectations or confidence, and in such circumstances, there are other consequences that our local communities have to bear.

I hope that the amendment will be seen as helpful. It would maximise the effectiveness of interim orders by ensuring that they are made as speedily as possible. My understanding is that that is not in conflict with the rights of those against whom orders are made.

I move amendment 59.

12:15

Stewart Stevenson: I do not have any difficulties per se with what Johann Lamont's amendment 59 wants to achieve. Amendment 44, which is in my name, was drafted by the Chartered Institute of Housing in Scotland, and I was happy to lodge it for the committee's consideration. Amendment 44 differs from amendment 59 to a relatively minor extent in that it leaves in more of the existing drafting. In particular, it leaves in the phrase "pending its determination", which emphasises the interim nature of an interim anti-social behaviour order and that, in the granting of an interim anti-social behaviour order, a determination has not yet been reached. That is the only area in which I suggest amendment 44 has more to offer than amendment 59. I do not feel strongly about the issue and will be happy to hear what the minister and his advisers have to say. Either amendment would suit me.

Mr Hamilton: I have a slight problem with both amendments 59 and 44, and there are two questions in my mind. The drafters of Stewart Stevenson's amendment 44—the Chartered Institute of Housing in Scotland—assert that it has been advised that amendment 44 is not in breach of the ECHR. I assume that that also applies to Johann Lamont's amendment 59. First, does the minister agree that that is the case? If the amendments are in breach of the ECHR, that will knock them out immediately. Secondly, even if they are not in breach of the ECHR, are they fundamentally fair? Having examined the procedure, I believe that it exists for a purpose; it does not exist to cause delay. It strikes me that however angry we get on behalf of constituents who suffer as a result of anti-social behaviour, it is not necessarily fair to remove from the bill the right of intimation to the person who might be subject to the order and that person's opportunity for representation. I will be grateful if the minister will clarify those points.

Bill Aitken: I have considerable sympathy with both amendments 59 and 44. A degree of cynicism is attached to ASBOs, and people think that they take too long and do not work. When such cynicism kicks in, there are frequently other difficulties. People who have been driven to distraction by their neighbours' conduct, for example, take the law into their own hands, so it is clear that we want to do something about the matter.

I can see where Duncan Hamilton is coming from with his caveat, but I point out that in any civil action for interdict it is competent to apply for interim interdict. That will be granted against cause shown when it is likely that a full interdict hearing would grant permanent interdict as opposed to interim interdict. Therefore, I do not think that we are talking about anything that is much different. They are competent terms of law, and the amendments would be fair because those against whom an interdict was granted would have the opportunity, when the matter came to full debate in court, to put their side of the argument. The bottom line is that if such a device was in force, it might expedite matters towards final determination and ensure that a full hearing into whether an ASBO should be granted would take place much more quickly.

Scott Barrie: I agree broadly with Bill Aitken about the law of interdict: my understanding of the matter is as he explained it. I think that Johann Lamont referred, in speaking to her amendment, to following a similar process. I understand that a higher number of ASBOs have been granted in Fife than anywhere else not because Fife is plagued much more by anti-social behaviour, but because of the hard work of the courts and the local authority in ensuring that the process is much smoother.

The bill was welcomed, but it has become difficult to understand and there is always a danger that the law will fall into disrepute if people do not think that legislation achieves what it is supposed to achieve. The main thrust of Johann Lamont's amendment 59 is to improve the process. I have a lot of sympathy with, and might support, amendment 59 because it is an attempt to improve the process. I do not think that amendment 59 strikes against the ECHR, because there is a similar procedure in other instances. I presume that such procedures do not strike against the ECHR or we would have had to do something about them before now.

The Convener: I agree. Everything that members have said about the effect of amendment 59 makes sense. The minister is under pressure to tell us why he does not support it. Perhaps he can come up with an amendment at stage 3 that would have the same effect.

Dr Simpson: Thank you for that warning, convener. I think that the view of members is that we all have a desire to ensure that the problems with the current ASBOs are identified and addressed. A difficulty that has been shown by the research is the speed with which ASBOs are implemented. We believe that the interim orders will deal with that matter.

Amendment 59 would remove from the bill the requirement for intimation of the application for the interim ASBO to be given to the person named in the application and it would remove the obligation on sheriffs to consider any representations that were

"made by or on behalf of"

the individual to whom the interim ASBO would apply.

Breach of an interim ASBO carries a penalty of up to five years' imprisonment. We wish to ensure that, before an interim order is granted, the person concerned is made aware of the application for the interim order and has the opportunity to make representations. If that opportunity is not taken up, the sheriff can proceed to grant the order. Representations should not and must not delay a decision on an interim order, even when a legal aid application is involved. Urgent legal aid is available for opposing interim orders of any kind. Solicitors can grant such aid without reference to the Scottish Legal Aid Board. Therefore, we do not think that interim orders should be held up by protecting the right of the person to be informed that an order has been taken out and to make representations. We think that there is appropriate protection.

There is some dubiety about the ECHR issue. The interim interdicts have not been challenged on ECHR grounds so far, but we are still in the early days of ECHR compliance—which was introduced only three years ago. A challenge might be launched in the future, but we do not propose to oppose the amendment on ECHR grounds at the present time, albeit that we have doubts. The main ground is that, because the ASBO carries such a heavy penalty, it is inappropriate for it to be implemented without the application being notified and there being at least the opportunity for representations to be heard, although they can be dispensed with.

The Convener: Before Johann Lamont winds up, members have points of clarification.

Scott Barrie: I am interested that the minister is not seeking to oppose amendment 59 on ECHR grounds, which scupper many worthwhile amendments. Like Duncan Hamilton earlier, I need to press the minister further about why he opposes the amendment. I take his point that a breach of an interim order would carry a maximum sentence of five years' imprisonment—we must certainly take that into account. However, it seems that his explanation that an interim order should not necessarily hold up the process is honourable, although I am not sure that it would not do so in practice, given what we know about what happens in civil actions in some of our courts. As far as we can ascertain, amendment 59 does not conflict with the ECHR, so what would be the difficulty in accepting it or the intent behind it?

Mr Hamilton: I am slightly confused by the minister's stand on the ECHR point, which is not just a case of his best guess. Does not the Executive have to be positive that if the bill were amended as per amendment 59, it would be ECHR compliant? It is not a case of "Let's wait and see." I presume that the Executive has to sign off the bill as compliant. Is not that the effect of legislation that we have passed?

The Convener: I will let the minister think about that.

Stewart Stevenson: The minister did not dwell much on the difference between the two amendments and he dismissed amendment 44 by stressing the importance of representations. However, if we are talking about the ECHR, amendment 44 has the advantage that it would leave in intimation.

I would like to hear more from the minister about my concern that those who might be subject to an interim ASBO could use the phrase

"and after considering any representations made by or on behalf of that person"

to introduce delay by intimating a desire to make representations but finding means and ways whereby it is inconvenient to make that representation at the point at which the court might make an interim order.

As I understand the situation as a non-lawyer, the balance of advantage determines whether the court grants other interim orders. Anything in the bill that allows the person who might be subject to an order to delay, obfuscate and prevent immediate action in what might be a serious situation should be resisted. On that basis, unless the minister is very convincing, I am likely to press amendment 44.

Dr Simpson: If amendment 59 is disagreed to, section 38 will be compatible with the ECHR. We are not certain whether the section will remain compatible if the amendment is agreed to. We oppose amendment 59 to ensure fairness to the individual on whom a five-year sentence might be imposed, so that their representation is allowed and is required to be taken into account.

Stewart Stevenson's amendment 44 is slightly different, as it allows intimation, but not representation, to continue to be required. As I have said—the guidance that we will issue will say it too—the need for representation can be dispensed with. If I have understood the committee's concerns, they are that proceedings might be delayed by the failure of individuals to present themselves. We intend to issue guidance to say that, if people choose not to present themselves, representations do not require to be made. At the first court hearing, the sheriff will have the opportunity to make an order without having heard the person's representations.

That is my understanding of amendment 59, but I will study the debate carefully, because I can see that the amendment represents the committee's intentions. I understand that it would remove the statutory obligation on the sheriff to consider any representations, even if they were made, so the amendment is incorrectly written.

I will undertake to review the debate and the discussion that we have had. I recognise the clear intentions of the committee. I will write to the convener before stage 3 to indicate how we propose to give greater clarity on the ECHR issue and to address the issue of whether guidance will allow dispensation of an absolute requirement on the sheriff to have representations made, which we believe will be the case.

Scott Barrie: The minister said that the guidance that would be issued at the first hearing if a person did not present themselves will set out that someone "could" make the order. Should the guidance say "should make" or "consider" making the order? Surely someone could not delay an order until such time as they presented themselves.

12:30

Dr Simpson: Our intention—it is obviously also the committee's intention—is clear. The whole point about the interim orders is that they should be acted upon as rapidly as possible. It is our intention that, unless there arise circumstances such as I cannot at the moment foresee, an order would be issued at the first court hearing. I would like to consult further with officials on the matter and come back to the committee. There might be circumstances in which a delay would be appropriate. As I said earlier, I will write to the convener.

Johann Lamont: We must be clear that the purpose of the interim anti-social behaviour order is to tackle anti-social behaviour while the process continues; it is not about denying anybody their rights. No one is going to go to jail because an interim order has been granted, but they will go to jail if it is established that their anti-social behaviour is sufficient to describe it as a breach of the order. Action would be taken in such a case. The measure is not, perhaps, as draconian as it has been characterised.

It weights heavily on me that people feel that the impact of the anti-social behaviour orders is not immediate enough. Issues arise even in the process of giving notice. I know from experience that there are consequences of that in trying to protect the person who is seen to have urged the order to be promoted in the first place. We must be aware of the fact that sometimes the most vulnerable person is the one who has asked for the anti-social behaviour order to be pursued.

The minister said that if someone chooses not to appear, sheriffs would see that as a green light to continue. The capacity to build in a delay exists if someone chooses not to appear and says that they cannot come because they have something else to do, that they have difficulties with their family or any other reason why people choose not to appear. I know that members are anxious about that situation.

We have always argued that a balance of rights has to be struck in respect of the ECHR. We have to be clear that we need to balance one right against the other. The right of individuals to peace of mind in their own homes and communities is as significant a right as any other. I am aware that the minister has said that he will examine the issue seriously and that he will consider it further in terms of compatibility with the ECHR.

I do not want to put the committee in an awkward position. I will allow committee members to decide whether they wish to press amendment 59, so I seek the committee's leave to withdraw amendment 59. I am clear that if the problem is not sorted at this stage, it needs to be sorted at stage 3.

The Convener: I believe that the committee might wish to press amendment 59. Do members agree to allow Johann Lamont to withdraw her amendment or would members prefer that she press it?

Bill Aitken: Obviously, we want to see the matter resolved. If it is not resolved satisfactorily by correspondence, someone will wish to pursue it at stage 3.

Amendment 59, by agreement, withdrawn.

Amendment 44 not moved.

The Convener: Amendment 60 is in a group on its own.

Johann Lamont: People will be aware of the significant concerns not only about the anti-social behaviour of adults in our communities, but about the behaviour of people under 16. Some contend that that behaviour is the most significant aspect of the anti-social behaviour that impacts on the lives of people in communities—tenants and other residents alike.

Frustration is compounded by the police's inability to address the difficulties that are caused by young people's anti-social behaviour, which perhaps partly relates to a perception of the process into which young people are put if they cause difficulties. That matter is dealt with elsewhere in the bill in relation to the children's hearings system.

I want to explore how we can address such behaviour among young people. I emphasise that we are not talking about all young people; in fact, young people are often the first target of such behaviour in a community. In lodging amendment 60, I wanted to consider how we can encourage families to take responsibility for the behaviour of the young people in their homes. I want to consider how we can reward adults' involvement and how we should recognise that where adults wrestle with such behaviour, we should work with them. We must also recognise that there might be consequences, not of parents being unsuccessful, but of their not being involved. I make a clear distinction in that respect. We must be sensitive about consequences. If parents recognise that they have a responsibility and work with agencies to address problems, that may be as much as we can expect from them.

Amendment 60 recognises that there is a specific problem with young people under 16. There is a lack of confidence about how that problem is currently addressed. I am aware that the committee has taken evidence about anti-social behaviour contracts, for example, which try to establish a way of marking down where a family has been willing to co-operate, even if that family has been unsuccessful.

On that basis, I hope that the committee, through amendment 60, will explore with the minister what can be done about this serious problem.

I move amendment 60.

Bill Aitken: I sympathise with the sentiments behind amendment 60, although I have doubts as to whether the proposals are ECHR compliant. From previous debates, I recollect that it is not possible to impose a penalty on a person as a result of the acts or failures of another person. Johann Lamont is properly seeking to make parents responsible for the activities of their children and I fully approve of the sentiment behind that.

However, in proposed new section 19A(3) in Johann Lamont's amendment 60, a sanction will kick in at a certain stage. If children continue to behave in the manner that is complained against, the parent or guardian will clearly have failed to carry out the terms of the order prescribed earlier in the proposed section. If that is the situation, a sanction would be liable to be imposed on the parent or guardian. I recall that the same problem has arisen in the past when proposals were found not to be ECHR compliant. I did not agree with what was proposed, but the decision may have been correct on a question of law.

Johann Lamont related the problem to the powers of the children's hearings system. Members will be aware and will not be surprised that I have lodged amendments that will be discussed later in our deliberations that will pick up on various matters relating to increased powers for the children's hearings system. That approach might not be a better way of going about things and what Johann Lamont suggests is infinitely sensible; however, I am concerned that, yet again, we would be frustrated in our aims as a result of the importation of ECHR requirements into Scots law.

Mr Hamilton: It is great to hear Bill Aitken defending the ECHR—that restores one's faith in human activity.

Bill Aitken: I did not defend it. I merely pointed out difficulties.

Mr Hamilton: I, too, have a problem with proposed section 19A(3). I sympathise with the purpose of amendment 60. However, the proposed subsection states:

"On an application under subsection (1) above, the sheriff may, if he is satisfied that the conditions mentioned in that subsection are fulfilled, make an order under this section."

I would be interested to hear from the minister whether we are in exactly the same position that we were in with section 38(1), which we have just discussed. If it is right that the proposed section 19(2A) that section 38(1) would insert into the Crime and Disorder Act 1998 should say

"On an application made under subsection (1) above … the sheriff may, pending its determination and after considering any representations made … make such interim order as the sheriff considers appropriate",

is not it also right that that should be in proposed section 19A(3)? I would think that it should be in both or neither.

Dr Simpson: The Executive does not accept Johann Lamont's amendment 60, which seeks to introduce anti-social young person orders, although I understand the intention behind it. Such orders, as the amendment describes, would seek to influence the behaviour of young people through their parents or guardians, who would themselves become the subjects of the orders, rather than those who committed the anti-social acts.

It is difficult to see how such orders could be enforced through the criminal justice system or what other sanctions could be imposed in respect of a breach. Bill Aitken's point about the ECHR implications for any legislation that involves a third-party responsibility is valid.

On parental responsibility, the Executive is considering ways of supporting and engaging parents in the context of the 10-point action plan. Parents have a responsibility to work with the young person and relevant agencies to tackle the young person's anti-social or offending behaviour. It is also important that young people take personal responsibility for their actions and the consequences of those actions.

The ministerial group on youth crime recommended that the extension of anti-social behaviour orders to under-16s should be considered alongside the option of voluntary anti-social behaviour contracts. Such contracts are being piloted in England, where they are called acceptable behaviour contracts. There is some evidence that that approach is working, so we might be able to learn from experience south of the border. I am also conscious of the fact that England has anti-social behaviour order provisions for people down to the age of 10. There is a difference between the English situation and ours.

Work on the recommendations is still in progress. We intend to outline our forward thinking early in the new year. Our consideration of whether to extend ASBOs to under-16s will be completed before stage 3. Anti-social behaviour contracts involve a partnership between the young person, parents, police and others. We will follow carefully their introduction in England.

To commit at this stage to the statutory measures that Johann Lamont proposes would be

premature. I ask Johann Lamont to seek to withdraw amendment 60.

The Convener: I would like clarification. I hear what you say about the involvement of parents in cases involving under-16s being of great importance. Are you saying that, following the report that outlines your thinking, you will amend the bill at stage 3 or are you simply pointing out that that report coincides with stage 3?

Dr Simpson: The action plan that the ministerial working group has produced indicates that the extension of anti-social behaviour orders to children should be considered and we are studying that. If the results of that work indicate that such an extension would be appropriate and effective—that is the important judgment that we must make—we will consider introducing such provisions at stage 3, partly in response to amendment 60.

Johann Lamont: That is helpful. I emphasise that, with amendment 60, I do not seek to demand that the parents stop the anti-social behaviour, but that they take responsibility to participate in dealing with it. The point is not that parents would necessarily be effective in dealing with the behaviour—sometimes that would be beyond their means—but that they would have a responsibility to engage in the process. Many parents who are wrestling with difficult young people are engaged in the process, but others do not think that that is part of their responsibility and walk away from the process. The point is not that the parents could be penalised for their youngsters' behaviour, but that some attempt would be made to say that they had some responsibility to be part of the solution.

My understanding of acceptable behaviour contracts is that, if the difficult behaviour does not stop, the contract and its lack of success is used as evidence to move the process on at a later stage. It is a means of getting a body of evidence that measures have been tried, that the parents or others have tried and that the problem needs to move into a different arena.

It is argued that we cannot expect parents to be responsible for their children's actions but, sadly, parents are often the cause of their children's problems. The children's hearings system addresses that by bringing the parents into the process, considering what has caused the difficulty in the first place, examining what is happening in the family and asking what the parents' responsibilities are and what the hearing expects them to do. The children's hearings system is exactly the opposite of the argument against parents' responsibility. It sees children in the context of their families and broader communities, rather than as separate from them and accountable only on their own. The distinction is not as clear as the minister tries to make it.

However, I am conscious that it could be argued that a danger exists that parents could be unnecessarily penalised when they are trying their level best and that an anti-social young person order would add to the pressures that are on the family. I seek the committee's agreement to withdraw amendment 60, but I am keen that the matter be addressed at stage 3; it has been acknowledged that a serious problem exists and must be addressed.

Amendment 60, by agreement, withdrawn.

Section 38 agreed to.

Sections 39 to 41 agreed to.

The Convener: I propose to stop at that. We are a wee bit behind time, but I think that we can catch up next week.

The committee has a timetable for stage 2, which I hope members have had a chance to examine. I remind members that our next meeting will be in the morning of Tuesday 19 November, when we will consider part 1 of the Criminal Justice (Scotland) Bill and the remainder of part 6, with which we were dealing today.

Meeting closed at 12:46.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178