JUSTICE 2 COMMITTEE

Wednesday 20 November 2002
(*Morning*)

Session 1

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CONTENTS

Wednesday 20 November 2002

JUSTICE 2 COMMITTEE
43rd 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:

Dr Richard Simpson (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Wednesday 20 November 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:54*]

The Convener (Pauline McNeill): I apologise for beginning the meeting a few minutes late. I welcome everyone to the Justice 2 Committee's 43rd meeting of 2002. It would help if members did the usual and switched off mobile phones and other items.

Crown Office and Procurator Fiscal Service Inquiry

The Convener: I remind members that we appointed Duncan Hamilton as a reporter to consider the Crown Office consultation document on the appointment and the role of advocate deputes. It was agreed that he would report to the committee by 20 November, but that was a short time scale and he has requested that we extend the deadline to 4 December. Is that agreed?

Members *indicated agreement*.

The Convener: Would Duncan Hamilton like to say a few words about his progress on the report?

Mr Duncan Hamilton (Highlands and Islands) (SNP): Yes. I assure the committee that the cause of the delay is not the usual heady cocktail of Hamilton laziness and inefficiency. The cause is that we are still trying to obtain written evidence from one of the key players, so that I can talk to them face to face. Yesterday, I spoke to the clerk to the Faculty of Advocates, who said that its report had been submitted and that he was happy to discuss elements of that. Rather than make a synopsis of them, I wanted to use the written submissions as a basis for face-to-face interviews, which is why we must obtain the written evidence from the Procurators Fiscal Society, which was a key player in our initial discussions.

Subordinate Legislation

Discontinuance of Legalised Police Cells (Ayr) Rules 2002 (SSI 2002/472)

The Convener: I refer the committee to the clerk's note on the statutory instrument. The Subordinate Legislation Committee made no comment on the rules. If the committee has no comment, does it agree to note the instrument?

Members *indicated agreement*.

Criminal Justice (Scotland) Bill: Stage 2

The Convener: At our meeting last week, the committee agreed to take more evidence on trafficking, wildlife offences and sectarianism. A list of proposed witnesses has been circulated. Before considering stage 2 further, do members wish to make any changes to the list? Do members have preferences for witnesses that might be called? If the committee agrees to take oral evidence, it is proposed that that would be taken on 3 or 4 December, which would allow enough time for arrangements to be made.

Mr Hamilton: On wildlife offences, I ask the committee to consider taking oral evidence from one of the police units that has been involved in the matter. I am thinking of the Tayside police unit, whose operation has been successful in one of the areas with the biggest problem. I know from conversations with officers in that force that they have a range of suggestions about how the bill could and should be toughened. They have practical experience on the ground and up in the air. If we could hear from them directly, I would be keen to do that.

Scott Barrie (Dunfermline West) (Lab): I think that Tayside police gave the old Justice and Home Affairs Committee evidence when we dealt with the Protection of Wild Mammals (Scotland) Bill.

The Convener: You are correct.

Scott Barrie: Those police officers seemed to have detailed knowledge, so that suggestion is good.

On sectarianism, we should start by taking only written evidence and see where that gets us, rather than working out what oral evidence we want. Once we have seen some of the written evidence, that might clarify what we need to discuss Donald Gorrie's amendment 21.

Bill Aitken (Glasgow) (Con): I see the merit in Scott Barrie's suggestion. However, I suggest as an alternative—although I have no strong views on the matter—that potential witnesses should be restricted to the Association of Chief Police Officers in Scotland and a campaigning group such as Nil by Mouth. Criminal offences with a racial aspect are already dealt with as racial aggravation, so we need not spend too much time on that. Donald Gorrie refers to sectarianism. ACPOS and Nil by Mouth, which has been particularly active in the west of Scotland, are probably the only witnesses whom we need to call.

The Convener: I want to return to wildlife offences. If there are no objections to Duncan Hamilton's suggestion that, given its experience in the matter, we ask Tayside police to comment, are there any other groups on the list from which it would be useful to take evidence, so that we achieve some kind of balance?

10:00

Mr Hamilton: One aspect of the issue that we have not covered is the experience in England. One presumes that, to a certain extent, the Executive amendment is catching up with English legislation. I would be interested in receiving an assessment, whether written or oral, of how successful that has been. For example, is the six-month maximum sentence a frustration? Do people feel that it should be longer than that? Have any problems been experienced such that we could improve on the English legislation? Even written evidence on how people would improve things if they were starting again would be helpful.

The Convener: That would be a helpful addition to the list. We could get a briefing on how the legislation in England and Wales has been reviewed.

The list that members have in front of them gives the organisations from which we would want written evidence if we have not already received it. I am interested in hearing from an organisation that is involved in the protection of wildlife, which is a subject that I do not know a great deal about. A lot can be gained from written evidence, but if there were time to squeeze in a session on wildlife offences, the obvious people to ask would be RSPB Scotland.

If members are agreed, we will, if possible, try to set up a small panel from whom we can take evidence on enforcement and hear from those who have experience in the protection of wildlife. We will add to the list Duncan Hamilton's suggestion about English legislation and call for written evidence from all the organisations on the list. That would deal with wildlife crime.

Bill Aitken: We need not spend a great deal of time on wildlife crime, as the committee is probably sympathetic to the Executive's proposals.

The Convener: On sectarianism, Scott Barrie has suggested that we take only written evidence, but Bill Aitken has suggested that we take oral evidence from ACPOS and perhaps Nil by Mouth. Which way is the committee minded? I am quite relaxed about whether we take oral evidence, but I think that we have the time. Having said that, I know that we do not have any time, but there could be one slot for a morning of oral evidence.

That just leaves trafficking in prostitution, which I am interested in. Members may recall receiving some time ago a copy of a letter that was sent by the United Nations International Children's

Emergency Fund to Jim Wallace. The letter raised some issues about the extent of the legislation. We have not found the copy of the letter, but we are trying to find it to remind ourselves of its contents. I am quite keen to hear from UNICEF.

Bill Aitken: The committee will almost certainly be sympathetic towards the Executive's amendment on this subject. Clearly, such trafficking is the sort of practice that we would vigorously seek to discourage. However, the value of hearing evidence from UNICEF might not only be in highlighting the extent to which trafficking for the purposes of prostitution goes on but in letting us know whether other trafficking in human beings goes on for purposes other than sexual exploitation. For example, are people being imported into this country in effect to work as slaves or for very little remuneration? I am interested in learning about that sort of thing. I cannot see any circumstances in which I would not support the Executive amendment.

The Convener: I declare an interest: I have lodged a motion on that very subject. It is unfortunate that such trafficking is going on in Scotland.

The practical difficulty lies with allowing sufficient time in which to call witnesses. That is the proviso. It would be our intention to call the witnesses as we have discussed, but it might not be possible to secure some people. In addition to UNICEF, is there anyone else that members wish to seek out?

Members: No.

The Convener: A number of organisations might be able to help us address the subject of human trafficking. It is a question of time scale.

Bill Aitken: If the time scale permits, and bearing in mind your interest and work on the subject, convener, I would be more than content for you to determine any additional witnesses, aside from those representing UNICEF.

The Convener: We will ascertain whether it is possible to call someone from UNICEF and from any other organisation that could assist us by presenting evidence on the extent of human trafficking. Obviously, that is subject to practical arrangements.

Does that cover all the issues that the committee would like to examine during further evidence sessions?

Members: Yes.

The Convener: That is helpful.

We now come to our third day of stage 2 consideration of the Criminal Justice (Scotland) Bill. As usual, members have their papers in front of them, including the marshalled list of amendments. We will be considering parts 2 and 3 today, and we will pick up where we left off yesterday. I have agreed to accept a manuscript amendment from Duncan Hamilton, to leave out section 14. That will be called at the appropriate time. I welcome the Deputy Minister for Justice and his team.

Section 2—Disposal of case where accused found to be insane

The Convener: Amendment 33 is grouped with amendment 34.

The Deputy Minister for Justice (Dr Richard Simpson): Amendments 33 and 34 do two distinct things. First, they renumber an existing provision in the bill. As introduced, section 2 of the bill inserts a new subsection (3A) into section 57 of the Criminal Procedure (Scotland) Act 1995. Amendment 34 will renumber the new subsection (3A), which, if the amendment is passed, will now be inserted into the 1995 act as section 57(3). The effect of that is to repeal the existing 57(3) and its provisions.

The effect of that repeal is to remove the mandatory requirement for a court, when dealing with an accused person who has been found to be insane, and when the charge is murder, to impose a hospital order and a restriction order. Under the current provision, there is no requirement at the time of disposal to assess the individual's mental state. It is our view that the present position is not compliant with article 5 of the European convention on human rights, the right to liberty and security. We therefore concluded that section 57(3) of the 1995 act had to be removed.

We asked the Millan committee, as part of its review of the Mental Health (Scotland) Act 1984, to test our view that the mandatory disposal had to be removed from statute. The Millan committee consulted on the question of the disposals available for persons accused of murder and found insane at the time of committing the offence. Our position received widespread support from such bodies as the British Medical Association, the Faculty of Advocates and the Mental Welfare Commission for Scotland. They were all in favour of removing the mandatory requirement in section 57(3) of the 1995 act.

In his letter of 29 April, the Deputy First Minister advised the Justice 2 Committee of our intention to amend section 57 of the 1995 act through the Criminal Justice (Scotland) Bill, and he again wrote on 25 October to bring the committee up to date on the final proposals.

That is an explanation of the effect of the two amendments in this group, but, with the committee's permission, I wish to put on record the fundamental issues that we are dealing with by repealing existing section 57(3) of the 1995 act, and to put them in context.

As I hope the purpose-and-effect note that we provided with the amendment makes clear, section 57 of the Criminal Procedure (Scotland) Act 1995 deals with the disposal of cases where the accused is found to be insane. Section 57(1) states that it applies in three circumstances: first, where a person is acquitted on the grounds of insanity at the time of the act or omission but is nonetheless fit to plead; secondly, where a person is not fit to plead and, following an examination of the facts, is acquitted on the grounds of insanity at the time of the act or omission; thirdly, where a person is not fit to plead and, following an examination of the facts, a court is satisfied that the accused did the act or omission constituting the offence and, on the balance of probabilities, there are no grounds for acquittal.

Section 57(2) sets out the disposals available to the court in those three circumstances. They are a hospital order, a hospital order with restrictions, a guardianship order, a supervision and treatment order, or no order. In addition, by virtue of section 2 of the bill, the court will have the option of imposing an interim hospital order.

The consequence of repealing section 57(3) of the 1995 act is that the court will have available to it all the disposals provided by section 57(2) when dealing with a case where the crime is murder. The committee will be rightly concerned to ensure that public safety is maintained even though we are removing a provision that deals with cases of murder. Thankfully, such cases are rare. As the Deputy First Minister explained in his letter to the committee of 25 October, there were only six findings of insanity in murder cases between 1995 and 2000. In all six cases, the criteria for detention under the Mental Health (Scotland) Act 1984 were met. All six cases would still have been subject to compulsory detention under that act if section 57(3) of the 1995 act had been repealed.

The issue, however, is not compulsory detention without cause. The key is that there are adequate measures in place to enable mental disorder to be identified and assessed as early as possible in the court process. The remainder of section 2 of the bill introduces just such measures and implements the recommendations from the MacLean committee.

Section 2 amends section 57(2) of the Criminal Procedure (Scotland) Act 1995 to add the interim hospital order to the list of disposals available to the court where an offender is found to be insane. That will allow for a thorough assessment to be made of the offender's mental disorder and the risk posed by the offender before disposal. Section 2 also provides that the court must make a hospital order and a restriction order if, having made an interim hospital order and having regard to the assessment of risk that is carried out under that interim hospital order, the court concludes that the offender is high risk.

I hope that rather long-winded and detailed explanation helps the committee to appreciate the necessity of accepting amendment 33 and the way in which it fits in with our package of proposals.

I move amendment 33.

Bill Aitken: Such cases are always difficult to deal with and, as the minister said, they are fortunately few in number. I have sympathy with what the minister seeks to achieve. The only question I would raise is whether it could have been dealt with more easily and in a less convoluted manner.

The Mental Health (Scotland) Act 1984 is fairly clear and, even assuming the worst, it would have acted as a fail-safe position if everything else had gone wrong. Obviously, we want to ensure that no one falls between two stools and that is the purpose of amendment 33. After having listened to the minister at some length, I am left with the view that there might have been a much easier way of achieving his aim.

The Convener: In the Bail, Judicial Appointments etc (Scotland) Act 2000, which the Justice and Home Affairs Committee considered some time ago, a mandatory requirement for detention in murder cases was removed. Is the principle that we cannot automatically detain a person but must justify why we wish to detain them the same? I hear what you say about that principle allowing the court to go on to consider a range of options that might be more appropriate.

10:15

Dr Simpson: On Bill Aitken's point, we looked for other less convoluted options. One would wish to take the easiest option, but we were unable to find any easier options.

On the convener's point, the purposes are the same as in the Bail, Judicial Appointments etc (Scotland) Act 2000. Under that act, if we do not offer the court a choice, it may not comply with the European convention on human rights. That does not mean that the court will alter its choice, but the choice must exist. Otherwise, we have a political imposition of choice, which is inappropriate. In similar circumstances, one would not expect the courts to act differently unless clear grounds for doing so existed.

The Convener: In relation to the Executive's policy of giving victims more information, have you considered ways of ensuring that, in murder cases in which no order is made, the victim's family knows that no disposal has been made? There might be some issues about that.

Dr Simpson: I would expect a strong liaison process to go on between the victim information and advice from the procurator fiscal's office and the High Court-appointed victim liaison service. In addition to that, victim statements, which we will discuss shortly, involve the victim in the process somewhat differently. I would expect that, at every stage, consultation would take place and that, if the Crown perceived that no order was likely to be made, the victim would be informed at an early stage. I would also expect that, once the court makes its disposal, were that disposal to be no order—or indeed, were it to be an interim hospital order and then a hospital order without restriction—the victim would be consulted. However, I take on board your question about the mechanics of that. We can consider it as part of the pilots that we intend to run for victim statements, because that will be important.

Amendment 33 agreed to.

Amendment 34 moved—[Dr Richard Simpson]—and agreed to.

Section 2, as amended, agreed to.

Section 3 agreed to.

Schedule 2 agreed to.

Sections 4 to 8 agreed to.

Section 9—Implementation and review of risk management plans

The Convener: Amendment 64 is in a group on its own.

Bill Aitken: Amendment 64 would ensure that the risk management authority issued directions on the implementation of a risk management plan. Section 9's basic provisions have been welcomed more or less unanimously. The amendment would ensure that the authorities that have functions under a risk management plan implement the plan in accordance with their responsibilities.

If stringent conditions are to be placed on an offender, he or she should, on the basis of fair play, be assisted with measures that are designed to address the underlying causes of the offending behaviour. It is therefore appropriate that the RMA should perform a central role in monitoring delivery of the services, so ensuring that the order for lifelong restriction is framed in such a way as to combine the punitive element of a sentence—which society expects and, indeed, demands—with measures to facilitate rehabilitation and reduce risk.

Section 9(2) provides for the lead authority to report annually to the RMA about the implementation of the plan. If that is to be effective, sanctions must be made available to the RMA and remedies must be made available to the offender. That would ensure that the lead authority carried out its functions under the plan.

Yesterday, I was accused of displaying uncharacteristically liberal tendencies in some of my amendments, but I am a believer in fair play. Someone who is subject to an OLR will be incarcerated for a lengthy period in the punishment part of the sentence. If there is a problem that can be addressed during and after that incarceration, we should be doing everything possible to enable that to be done. The bill as drafted does not provide for that. I am certain that the appropriate agencies would do everything possible, but the amendment would make that mandatory so that no one is likely to slip through the net.

I move amendment 64.

Dr Simpson: Amendment 64 would amend section 9 to enable the RMA to issue directions on the implementation of a risk management plan to the local authority or any other person having functions under the plan.

The RMA is required to specify and publish the form of risk management plans and may also issue guidance on the preparation, implementation or review of any plan or plans generally. The bill specifies who the lead authority will be in each situation and requires a plan to be prepared by that lead authority.

The lead authority and other persons with functions under the plan are under a statutory duty to implement the plan in accordance with their respective functions and report annually to the RMA on its implementation. Thus the bill provides a framework within which the RMA will ensure that all risk management plans meet published standards and guidelines. It is expected that the lead authorities and those with functions under a risk management plan will fully implement the plan in accordance with their statutory responsibilities.

In the unlikely event that the lead authority or others with duties under the plan fail to implement the plan in accordance with those statutory responsibilities, we agree that there may be merit in the RMA having a power of direction to deal with that scenario. Indeed, great minds think alike—I had already raised the issue with my officials. I emphasise that we envisage that power as a last resort. Furthermore, I am concerned that we do not give the RMA an operational role, because we have defined its role carefully.

However, as I have said, we are sympathetic to the principle behind Bill Aitken's amendment 64. We would like some time to consider how the proposal would be best incorporated into the package of responsibilities and accountabilities in the bill. With the committee's permission, I would like to give the matter further consideration and

lodge an amendment at stage 3 that will give effect to the underlying principle within the existing framework that the bill provides for the RMA.

I hope that that illustrates the fact that we are receptive to suggestions that improve the operational framework that we are constructing for the RMA. On that basis, and given my assurances, I ask Bill Aitken to withdraw amendment 64.

The Convener: I think that the minister has made Bill Aitken's day.

Bill Aitken: I have been pleased in the process to see how frequently ministers have been responsive to suggestions. I have found that extremely encouraging and, on the basis and in the spirit of what the minister has just said, I seek the committee's leave to withdraw the amendment.

Amendment 64, by agreement, withdrawn.

Section 9 agreed to.

Sections 10 to 12 agreed to.

Section 13—Accounts and annual reports

The Convener: Amendment 23 is grouped with amendment 95.

Dr Simpson: Section 13 deals with the risk management authority's statutory accounting and annual reporting functions. Amendment 23 is a technical amendment to clarify that the financial year is the 12 months ending 31 March.

Duncan Hamilton's amendment 95 would also amend section 13. It would insert a new subsection to require the RMA in its annual report to detail all its contact with lead authorities when the RMA had rejected a risk management plan under section 8(4)(b) or where it had given a lead authority directions under section 8(6).

The Scottish ministers will clearly wish to be aware of situations in which the RMA has rejected a risk management plan or directed a lead authority on the preparation of a revised plan. The issue of direction, which, as agreed, will be subject to an amendment at stage 3, would be an even more serious matter if the plan were not implemented. However, although those activities are important, they will be just one aspect of the RMA's work.

We expect the RMA's annual report to provide a much wider account of all the authority's activities. For example, the RMA's report will also be expected to say how the authority performed against the targets described in its corporate plan. In its stage 1 report, the committee suggested that the RMA's report should include comment on the extent of co-operation between local authorities and highlight any difficulties that had arisen. The Deputy First Minister explained during the stage 1 debate that that sort of matter could be dealt with in the management statement that will be prepared when the new public body is set put. That statement will be published.

Government guidelines covering the setting up of new public bodies make it clear that a management statement is required for all new public bodies. The statement will be drafted by the Executive, approved by the Scottish ministers and agreed with the new public body. The management statement will be a key document that will define the nature of the relationship between the department and the public body. It will set a clear framework for accountability and explain how the sponsor department is to exercise its supervision of the public body. It will be ideally suited to enabling requirements such as those under section 13 to be prescribed.

I move amendment 23.

Mr Hamilton: I am still unclear whether the minister will support or resist amendment 95. He flirted with it, then backed off.

The reason for my lodging amendment 95 is clear. As the minister said, at stage 1 the committee identified that, given that the cost of implementing the plans in the community would fall to local authorities, it is important that the implementation of the plans is monitored. The question was asked at stage 1 what would happen if an individual were to move between authorities. Amendment 95 is designed to deal with a possible postcode-based difference in the level of provision that is available. The committee was concerned primarily with ensuring that section 13 will provide for effective monitoring in the early years of the legislation and ensure that the information is written into the RMA's annual report.

I think that the minister agrees that that information should be included in the RMA's annual report. The only question to be resolved is whether that duty should be stated in the bill. I am minded to put it in the bill, as the information that amendment 95 would require is perhaps the most important of any for determining whether the legislation is effective. The suggestion that it may be included in a management document does not provide the reassurance that the committee was seeking at stage 1.

I will not press amendment 95 if the minister can give us a firm guarantee that the information that the amendment would require will be part of the RMA's annual report. I am not sure how he can do that, however, given that the nature of the relationship between the Executive and the RMA seems to be evolving. If the minister can give the guarantee that the information will be in the annual

report and that that report will come to Parliament, I will not press the amendment. If he cannot give that guarantee, I will.

Scott Barrie: I am sympathetic to what Duncan Hamilton has said. The point is important. I would not perhaps have used the flowery language that Duncan used when he talked about flirtation, but I think that the minister has acknowledged that the provision of such information will be a key function of the RMA. The issue is whether the duty is stipulated in the bill or contained in regulations. I see no reason why it should not be in the bill, making explicit what we expect.

The Convener: I am of a similar opinion. In view of yesterday's debate, I am keen to hammer things down in the bill in relation to the RMA's duties and its contacts with the authorities.

Dr Simpson: I can give the undertaking that Duncan Hamilton seeks. Our absolute intention is to have the information included in the management plan, which will be published. There will be a duty on the RMA to publish the information and the authority will not be able to be selective about what it includes.

Mr Hamilton: Once ministers have drawn up the management plan, will it be implemented by the RMA without further amendment or discussion?

Dr Simpson: Correct.

10:30

The Convener: You say that there will be a duty on the RMA to do that. Is that duty set out in the bill?

Dr Simpson: Yes. Section 13 states that, among other things,

"The Risk Management Authority is to … keep proper accounts and accounting records".

Moreover, section 13(3) states:

"The Scottish Ministers are to lay a copy of the report before the Parliament and publish the report."

The Parliament will receive a copy of that report.

Mr Hamilton: I am loth to get back into what we discussed yesterday, but for my own peace of mind will the minister explain how the Executive can direct in this area? Is the reason because the management guidelines are under the Executive's exclusive jurisdiction?

Dr Simpson: Correct.

Mr Hamilton: That means that the case is different from the one that we were discussing yesterday. Is that correct?

Dr Simpson: Yes. We are setting up the authority and we will draw up its management statement, which will include the elements that the committee has requested. I give an undertaking that the elements will be covered by the management statement. The statement will result in an annual report and the RMA will be required to include in that report what the committee seeks.

If one circumscribes what should be included, as amendment 95 sets out to do, the question arises what provisions should be included. The result is that one provision tends to be overemphasised against another. The committee will have an opportunity to comment on the management statement once it is published. The annual report will be laid before the Parliament.

The Convener: Therefore, any MSP who wishes to make a challenge on the basis that the guarantee that you have given has not been fulfilled could do so at that stage.

Dr Simpson: Yes. I re-emphasise that the RMA cannot be selective about what it produces. The Executive will draw up the management statement, which determines what the RMA is to produce. Once the statement is drawn up, the RMA has to produce what the Executive has determined. In our view, the committee's concerns, as raised by amendment 95, will be met.

Mr Hamilton: On the basis of the minister's guarantees, I will not move amendment 95.

The Convener: I think that we are all so minded.

Amendment 23 agreed to.

Amendment 95 not moved.

Section 13, as amended, agreed to.

Section 14—Victim statements

The Convener: Amendment 65 is grouped with amendments 75, 76, 67, 77 and 78.

Bill Aitken: This group of amendments relates to section 14 of the bill, which deals with victim statements. I think that it is fair to say that, when the committee first considered victim statements, we found that the issue was a vexed one. On the face of it, the idea seemed good, but the more deeply we considered it, the more complex it became. Practical difficulties have emerged in relation to implementation.

Everyone is extremely sympathetic towards the victims of crime. However, I sometimes feel that consideration of the effects of an offence on a victim are best dealt with in a detached manner. Over the years, the courts have demonstrated that, in most cases, they can take that approach.

I am not as yet entirely satisfied that we should legislate in respect of victim statements. Research on the matter is being carried out in other

jurisdictions. Like Duncan Hamilton, I might seek to withdraw my proposals altogether.

The purpose of amendments 65 and 67 is to ensure that the victim statements system, if it is approved, works reasonably satisfactorily. Amendment 65 seeks to ensure that any person—natural or legal—may make a victim statement. The bill as drafted restricts the victim statement scheme to

"a natural person against whom a prescribed offence has been … perpetrated".

There are questions as to why the bill has been drafted so narrowly. Why should the opportunity to make a victim statement not be given to sole traders with whom the victim has a close business relationship, to family partnerships, which might consist of parents and their children, or to a close company that has been the victim of a crime? The impact of a crime on such people could be as devastating as it is on those who are covered by the bill as drafted.

Amendment 66 would allow victims to make a supplementary statement in advance of sentencing, if they so request. If we are to have victim statements, should not the provision be extended to allow the court to request a supplementary statement when it believes that that would be appropriate? The timing of victim statements is crucial. We all say things in the heat of the moment that we do not really mean—politicians are particularly prone to that. When people have calmed down and have had the opportunity for reflection, their views might be different. Their anger might be more intense than it was or they might consider the matter in a more balanced way—we do not know. The bill should allow changes in opinion to be taken into account.

Amendment 67 relates to children. Once again, the minister and I share a view, although perhaps this is not an example of great minds thinking alike. The minister has realised that common sense is needed and has introduced a similar amendment, so I will not press amendment 67 and I will support amendment 76. It is obvious that there was an omission during the drafting, which both those amendments seek to correct.

The general principle of victim statements remains uncertain and I am not yet clear in my mind about it. Despite the correspondence and the Deputy First Minister's statements on the Executive's intentions, it seems to me that, if the aim of victim statements is not to impact on sentencing, they serve only one purpose, which is to have a therapeutic effect on the victim. Although that is meritorious, I doubt whether it will be useful. The measure has a clear implication for police resources because the police will be responsible for the formulation of statements. I will leave such issues aside for the moment. As I said, the intention of amendments 65 and 67 is to attempt to make victim statements more workable if the system is included in the bill. However, I am far from satisfied that we should include it.

I move amendment 65.

The Convener: Thank you, Bill. I did not want to interrupt you in mid-flow, but for clarification I point out that members are allowed to speak only to amendments in the group, so you should not have referred to amendment 66. I am sure that you will bear that in mind. I ask Dr Simpson to speak to amendment 75 and the other amendments in the group.

Dr Simpson: I will refrain from speaking about Duncan Hamilton's manuscript amendment, as we will come to that later.

Amendment 65 would extend the right to make a victim statement to any person, natural or legal. By giving legal persons the right to make a statement, we would enable a range of bodies, including private companies and other corporate bodies, to make a statement about a crime's effect on them.

It was never intended to provide the right to legal persons such as companies or other corporate bodies. However, sole traders will have the right to make a statement as a natural person. A sole trader has no independent legal personality from their identity as themselves. Moreover, people who are affected in a corporate situation—as victims of assault, for example—would have a right to make a statement as individuals. We are not in favour of Tesco or Marks & Spencer being able to make a statement as a corporate entity.

The purpose of victim statements is to afford individuals who have been the victims of crime the right to make statements about the emotional, physical and financial impact of that crime on them. The proposals set out in the consultation on the procedures for a victim statement scheme stated:

"Businesses or companies are not considered to be a person for the purposes of this scheme".

The response to the consultation did not demonstrate widespread support for opening up the scheme to include businesses.

In situations where the victim is dead, incapable or under the age of 14, there is provision for a relative or next of kin to make a victim statement. The categories of person eligible to make a statement are set out in the list at section 14(10). As drafted, the right to make a victim statement could pass to a person on the list who is incapable or under the age of 14. Amendment 75 excludes any person listed at section 14(10) who is incapable or under the age of 14 from making a statement. In such cases, the right will move to the next person on the list.

Executive amendment 76 will add "son or daughter" to the list at section 14(10). That will ensure that the child of the primary victim will be able to make a statement in cases where the primary victim is dead or incapable. That provision was accidentally left out when the bill was drafted.

When the victim has died, the victim's right to make a statement transfers to that victim's four qualifying nearest relatives, taken in the order of the list at section 14(10). The list is hierarchical and reflects the presumed closeness of the person's relationship with the victim—perhaps the legal closeness. Similarly, when a victim is incapable of giving a statement due to mental or physical incapacity, the right to make a statement transfers to the victim's qualifying nearest relative in accordance with the list at 14(10).

Amendment 67 is similar to the Executive's amendment 76 in that it seeks to include "son or daughter" in the list at section 14(10). However, amendment 67 inserts "son or daughter" fourth on the list, whereas the Executive's amendment 76 will insert "son or daughter" third on the list. We believe that that reflects the closer relationship between parent and child. I therefore consider that amendment 76 is more appropriate.

Amendment 77 is a consequential amendment that prepares for the insertion of amendment 78 at the end of the sentence. Amendment 78 will give ministers the power to amend by order at a future date the list at section 14(10), which contains those family and next of kin who are eligible to make a victim statement if the victim is dead, incapable or under the age of 14. The list as it stands is not exhaustive. We recognise that it may be necessary to include additional categories of person at a later date.

We also intend to amend section 69 of the bill to make any future amendments to the list subject to affirmative resolution, so that the Parliament has an opportunity to debate any such proposed amendments to the list.

I ask Bill Aitken to withdraw amendment 65.

Scott Barrie: I think that we are just coming on to Duncan Hamilton's manuscript amendment, which is probably where most of my comments are most valid, but I will pick up on one point that Bill Aitken made, which I have to refute.

Bill Aitken is right that the committee had difficulty in understanding the purpose of the victim statements. However, the therapeutic value of making a statement should not be underestimated. That could be a useful and worthwhile process for some people to go through. Bill Aitken should not have dismissed the idea as he did—perhaps it was just the language that he used. Even if the therapeutic aspect is the only intention, making a statement could be worth while for some people.

The Convener: I would like to ask about the qualifying list of mothers, fathers, sons, daughters and so on. Was there any feedback in the consultation on whether that is the best way to proceed, given that relationships with family members will vary? Why is there a qualifying list at all, in which the Executive feels that it has to put one person above another? Is it a legal necessity?

10:45

Dr Simpson: You perceived my slight addition to my speaking notes in talking about relationships in real terms, as opposed to legal terms. We had to set the parameters in some way, and the only way in which it was appropriate to do so was the way that is set out in the bill. We had a similar discussion when I sat on the Health and Community Care Committee and we considered who was the next person related to an adult with incapacity. Of course, it may not be the spouse or the daughter or the son; the order may not be as we or the law would like to prescribe it, but we have to start with a set of parameters. It would be impossible to assess each individual relationship, because one person's judgment on closeness would not be the same as another's—hence the parameters that we have laid out. You picked up my inflected doubts. It is my medical background showing through, I am afraid. I should withdraw that.

The Convener: Please do not.

Bill Aitken: I do not think that there is a great deal between us on any of the issues. I was borne towards the view that some cynics might feel that there are instances when close relations are murdered in which some people's reaction might be elation rather than grief, but we will leave that aside for the moment. I am still mindful that amendment 65 would better the situation somewhat, and I am disposed to press that amendment. At the appropriate juncture I will give way to the minister's amendment 76 in respect of the parent-child relationship. He probably got it in first, so I suppose that I will have to concede the point.

The Convener: The question is, that amendment 65 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)
Stevenson, Stewart (Banff and Buchan) (SNP)

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

Amendment 65 disagreed to.

The Convener: Amendment 66 is in a group on its own.

Bill Aitken: I have, of course, spoken to this amendment at some length, when my eye slipped from the list of groupings. I have nothing to add to what I said.

Dr Simpson: Amendment 66 seeks to give the courts a power to request a victim who has already made a victim statement to update that statement at a later date. The victim, of course, already has the opportunity to update their statement of their own accord. I recognise that the proposed power for the court might be useful where there is a significant lapse in time between the victim making their first statement and the case coming to trial, but the courts can and do already ask the Crown Office and Procurator Fiscal Service to obtain up-to-date information from the victim. As the victim statement schemes will be operated by the Crown, it seems sensible to keep to that procedure, and to have all contact with the victim made through one agency. I therefore resist amendment 66. However, I am sympathetic towards the reasoning behind it, and we will consider within the operational procedures how to ensure that where there is a significant time lapse between the submission of the first statement and the case coming to trial, the victim is invited to make an updated statement. I ask Bill Aitken to withdraw amendment 66.

Bill Aitken: Having heard the minister, I—

The Convener: Bill, I know that you are anxious to speak, but I will let Duncan Hamilton in.

Mr Hamilton: I suspect that the next word was going to be "withdraw", but at this stage I hope that it was not. I do not follow the logic of the minister's argument. He says that the point of victim statements is to get information that is not currently getting into the public domain into court proceedings through the channel of the Crown. If that is the rationale for victim statements, I do not understand the argument that any updating should be done through the Crown, which is the institution that has apparently not been doing its job effectively. If there is a case for victim statements, there is surely a case for their being updated by the victim rather than through the body that is apparently not doing it appropriately.

Dr Simpson: The Crown Office will advise victims that they have the right to make a statement. Therefore, it seems appropriate to us that the Crown Office should advise victims of the right to update a statement. If there is a significant gap in time, the Crown Office should advise victims not only that they have a right to update the statement, but that it is appropriate that they do so.

Mr Hamilton: However, the minister will concede that that is entirely different. The intimation from the Crown to the victim that there is a right to update a statement or, indeed, that the court may wish it to be updated, is different from the vehicle by which it is done—that is, the victim or the Crown. If it is right that it is the victim in the first instance, why is it wrong that it is the victim in a second or subsequent instance?

Dr Simpson: We must be careful, because we do not want a situation where a court can command that a statement be updated. It is a matter for the victim. It is a voluntary process in which the victim is invited to participate and not a requirement of any procedure; the court should request further information that it would value in an updated statement, but it should not demand an update. It is a matter for the victim, not for the court. We want to retain the voluntary nature of the update and retain the single point of contact for informing the victim about the situation, which is the Crown Office.

Mr Hamilton: Let me give the minister an example of why it would be good for the court to have that power. For example, a victim statement describes the impact of a crime. Several months later, the victim might see the impact of that crime as different—for example, because of a degree of stress or trauma, or because of absence from work. Presumably, those are all factors that would have been included in the initial statement. If that position was clarified, or if any medical condition or stress had changed, should that not be updated, in all fairness to the accused? Should the court not have the authority to get that updated information, on the accused's behalf? If I were the victim, and I had a particularly malicious desire to inflict the maximum discomfort, I would certainly not update that statement unless I was forced to.

The Convener: We know the difficulties with cases coming to court. Delays can be very long. In order for the process to be worth while, the statement, however it is formed, needs to be live. We need a process that somehow ensures that the statement is relevant.

I understand Duncan Hamilton's point. It could also raise issues for the defence about what aspects they may wish to challenge a year or two on. A statement may be presented to a court a year or two after it was taken. The issue is about being sure. It is not about having a choice of updating. In many cases, there could be a delay of up to a year or even two years before the court considers a case.

Dr Simpson: I understand what the committee is trying to do, which is to ensure that the information that is provided to the court—the victim's voice in that court—is current and not out of date.

Clearly, the victim should be informed that they have the opportunity to make an up-to-date statement at any time. However, we do not believe that we can command a victim to make a statement. The victim might choose not to make a statement at all. In itself, that can be therapeutic because the victim has control over the situation. The fact is that the victim's views on the impact may change at any point in time. They may change again after the conviction, yet the statement will be taken before the conviction. In other words, the situation is changeable. The victim, not the court or the Crown Office, should have control over the statement. There should be a simple administrative method of advising the victim that they may change their statement at any time.

The Convener: We will debate this issue again in relation to concerns that the committee has about other aspects of the process, but I would like to clarify one point.

Perhaps I am wrong, but if a victim says that the impact of the assault is that they have a lasting injury, such as a limp that they claim will last for the rest of their lives, the defence might challenge that claim in some way. In a year's time, it might be in the interests of the defence to show that that claim was borne out. The issue might relate not only to choice for the victim but to the fairness of any such claims.

I might be wrong about the sort of claims that a victim can make in their statement. At the moment, it is all a bit intangible but I am trying to think of an example of a situation in which it might be incumbent on the victim to update their statements.

Dr Simpson: I think that the committee is presupposing that the victims will want to give a misleading view of the situation. It is important that the procedures should allow for the victim to be advised that they can update their statement where a significant period of time has elapsed. That is entirely appropriate. The initial impact of the crime will not alter, of course, and therefore the part of the statement that deals with that will not alter. Clearly, however, as time goes by, the impact of the crime will change as the psychological state of the victim changes. However, that might not be relevant. What is most relevant is what the impact of the crime was at the time when the crime took place. Injury is a different matter as it concerns compensation.

We are dealing with somewhat differing areas. The procedures for the victim statements will have to ensure that the appropriate elements of the impact—the initial impact and response rather than anything that predicts the future—are allowed for in the statement.

Mr Hamilton: I am aware that I am talking a great deal on this subject and I do not want to hog the conversation, but I have to insist that the minister answer my specific questions to some degree. When he says that we are presupposing that victims will act in a way that is malicious and are somehow having a go at the victims, he is speaking nonsense. The point of legislation is that we have to assume that people are not all angels—legislation has to be robust enough to deal with that. I gave him an example of a situation in which the victim might have an in-built incentive not to alter their statement. Why is it not in the interests of justice for the defendant to have a power to bring before the court the updated and truthful situation if the victim did not want to give it? It is entirely unjust to give absolute rights to victims.

The minister still has not told us why the vehicle that is involved in his suggestion should be the Crown rather than the victim. I understand that, as the minister says, the Crown should inform and intimate, but that is entirely different from what we are asking about. Will the minister tell us why defendants would not be given the basic protection of having the power that I have described?

11:00

Dr Simpson: As I understand it, there can be a challenge to the information given in a plea of mitigation. Equally, there could be a challenge to the information given in a statement if it is not up to date and if the circumstances are thought to have changed.

Mr Hamilton: Where is that covered in the bill?

Dr Simpson: The problem is that at no point do we wish to compel the victim. The process for the victim statement has to be voluntary. I hope that members can see the difficulty. Let us say that a victim chooses to make a statement early in the process, and that things take an inordinate length of time—the convener suggested a year, I think. If, at the end of that time, it is suggested that the victim should make an updated statement, but the victim chooses not to, that has to be the victim's choice.

It has to be the victim's choice not to change their statement, because they may feel that they have moved away from the event and do not want to know anything more about the process. They might think that they have made their statement and done their bit. That does not mean to say that

their statement cannot be challenged. The statement does not remain for all time without being open to challenge. No one is compelled to make a plea in mitigation and no one should be compelled to make a victim statement.

The Convener: I think that we will have to leave it at that.

Dr Simpson: Unless I am missing the point here—am I?

Mr Hamilton: With respect, I think that you are. I do not understand how you can describe that as a just situation. Presumably, the Crown is there not just to prosecute but to act in the interests of justice. If the Crown is aware—or if it ought to be aware—that circumstances, and the impact on the victim, have changed, why is it not in the interests of justice that the Crown brings that up? That is the Crown's commission.

Dr Simpson: I think that we are getting confused—I am certainly getting confused—between the victim statement process and the evidential process as a whole. The Crown has a right to seek information from the victim as a witness at any stage up to the conviction. Therefore, the Crown can seek updated information on what is going on with the witness and on what the effects of the crime have been during the course of the evidential process. We are talking about a post-conviction statement—a quite different thing. If the witness's statement in evidence is different from the witness statement, that is a matter that the defence may challenge.

Mr Hamilton: That is not the point that we are discussing. We are all talking about the post-conviction stage; I am asking about what happens when the impact of the offence changes post-conviction. There is no confusion about the course of the trial.

The Convener: If I am picking this up correctly, it is an issue that we debated yesterday. The normal rules of court in relation to the role of the Crown and the rights of the defence are superimposed on the provisions of the bill. There are other ways in which the defence can make a challenge, through the rules of court and not just under the bill. Would that be correct?

Dr Simpson: Yes—and you expressed that much better than I was expressing it. That is exactly the situation. We are confusing two different things.

Mr Hamilton: One of the key problems that I have with section 14 is the ability to challenge and to cross-examine. So that we are clear about the matter, will you tell me at which points in the process the defence could challenge the victim statement? With respect, convener, this is the first time that we have heard that the victim statement is challengeable.

The Convener: I must point out to members that we are wandering beyond the amendment.

Dr Simpson: The victim statement must be made available before conviction. It can be challenged after conviction. That is the process. During the trial, any inconsistencies with which the victim witness comes forward can clearly be challenged in that process.

The Convener: I want to draw the debate to a close. We have gone beyond consideration of the amendment—I thank the minister for indulging us. The process was difficult to understand at stage 1. I had always understood that the victim statement would be challengeable, but it is important to ensure that everybody understands at what stage it is challengeable. We are seeking a balanced process; however, I hear what the minister says.

Bill Aitken: As you say, we have strayed from the subject matter of amendment 66, but perhaps doing so was useful, bearing in mind the debates that will follow. I think that the minister anticipated that the amendment's value is that it would cover the effect of lengthy court delays. Currently, from full committal to the serving of an indictment, sometimes nine or 10 months can elapse—that is what I had in mind when I lodged the amendment. However, I heard what the minister said about his lodging an amendment at stage 3 that is likely largely to meet what I—

Dr Simpson: I discussed statements in general rather than the specific power and did not say that I would lodge an amendment at stage 3. I spoke about the procedures that we would lay down. We believe that what we have discussed is an important element that we need to address in respect of procedures, but not that there would be an amendment at stage 3.

Bill Aitken: That is a fair exposition of what happened. What the minister said was reassuring and at some stage, I would like to see the measures that are proposed. On the basis of the undertaking that has been given, I will withdraw the amendment, with the committee's consent.

Amendment 66, by agreement, withdrawn.

Amendments 75 and 76 moved—[Dr Richard Simpson]—and agreed to.

Amendment 67 not moved.

Amendments 77 and 78 moved—[Dr Richard Simpson]—and agreed to.

The Convener: I propose a five-minute break before we debate the section and the manuscript amendment. That might give everyone time to catch up with where we are.

11:08

Meeting suspended.

11:23

On resuming—

The Convener: Before I call Duncan Hamilton to speak to his manuscript amendment, I want to say that I have allowed quite a bit of flexible debate this morning, which has been useful in sorting out one or two technical issues. I am grateful to the minister for assisting us in that regard. However, I intend to be a bit stricter now, to try to get through the rest of the business.

Mr Hamilton: Thank you, convener. I hear what you say about sticking to the terms of my amendment. It is worth saying that I lodged a manuscript amendment because I had run out of time in which to lodge amendments. We may want to consider that as a committee. I, for one, am happy to admit that I am struggling under the burden of meeting all the deadlines. I know that we have made known to the conveners liaison group our view that we perhaps need more time on the bill, but this is an example of the scrutiny of legislation taking a hit because of the pressure on the committee.

I do not necessarily expect my amendment to be agreed to, because it would remove all of section 14. I have lodged it because I hope that it will open up a discussion to allow us to examine some of the wider issues surrounding victim statements.

At the outset, I should say that, like most people, I was a supporter in principle of victim statements when they were first proposed. I am happy to put my name to giving more rights to victims in the process and I am happy to support the provision of information to victims. The entire committee probably supports that. What I am not happy about is the evidence that we have taken from those at the sharp end and from ministers. That is where I have lost confidence in the proposals for victim statements.

I will highlight four areas of particular confusion, which form the basis of amendments that I will lodge at stage 3, so clarification from the minister today would be useful. The first is the confusion over the purpose of victim statements, which was highlighted at stage 1. There is still confusion about their purpose—or, as the committee report said, there is the perception that there is confusion. The explanatory notes give one definition and the minister gave another in evidence to the committee.

If victim statements have a dual purpose, which is the main purpose—the therapeutic value or the impact on sentencing? If the main purpose is the impact on sentencing, that will mean a profound change in how we currently operate the courts. Many people who are concerned about justice would be very unhappy about that, as the last person who is likely to be objective about sentencing is the victim. The victim's voice should certainly be heard, but it should not have a material impact on the objective process.

It is fair to say that the jury is still very much out on the therapeutic value of witness statements. Research suggests that a third of those involved said that they had a positive experience and felt that making a victim statement was therapeutic. However, a fifth of people said that it made matters worse, because it raised expectations that could not then be fulfilled. That is why the public perception of the measure is all important, and the minister and his team must be absolutely clear about the purpose of victim statements. I do not think that they should impact on sentencing in the way that the minister has suggested, and I am dubious about the therapeutic value.

We received strong evidence from the Sheriffs Association, which said that victim statements had little impact on sentences and made little difference to the degree of victim satisfaction. If that is true, it brings to mind the question why we are proposing victim statements. Presumably we start making legislation by saying, "The system isn't working. Here's the problem. Here's the solution. Here's why it's going to get better." I do not see that the Executive has identified a problem, I do not think that it is clear about what it wants to do and I do not think that it has made the case for why victim statements will improve things.

There are a range of practical difficulties, which are worth putting on record. Most of the groups that gave evidence identified the problem of what would happen if the offence that was being described or referenced in the victim statement was not the offence that formed the basis of the conviction. What happens if there are multiple charges, on which the victim statement is predicated, and only part of the charge moves to conviction? The Crown Agent designate said:

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

That is strong evidence. How do we stop irrelevant material coming into the statement?

The committee is clear that, under article 6 of the European convention on human rights, cross-examination is a requirement. I understand that, under the current court rules, there will be the opportunity for cross-examination, but that raises again the question of the impact on victims. If we are trying to identify the victim as the important person, could it make the situation worse if a victim is to be cross-examined on the statement

that he or she has made? I would welcome clarification on that, because we may be achieving precisely the reverse of what we want to achieve.

What if there is pressure to modify or withdraw a statement? So far there is little evidence of that from other jurisdictions, but Scottish Women's Aid brought the fear to the committee's attention. As a result, we must consider seriously whether any such pressure would constitute an additional burden on the victim instead of giving them a further voice.

11:30

We must also consider the practical difficulties of tutoring and whether any such statement would be legitimate and authentic. We have not heard enough from the Executive about how we can avoid any problems in that respect. I know that some kind of pro forma approach has been suggested. Does that mean that there will be tutoring to ensure that people know how to fill in the form, which boxes to tick and so on? Is that really what is intended by the victim statement?

I acknowledge that the scheme is only a pilot and that there is an argument that we should always try something new. However, if the pilot is to go ahead, it might be better to reflect on the evidence that we received from the Sheriffs Association on the role of the Crown, as it presents a legitimate way of getting round many of the practical difficulties that have been highlighted. If such an approach were taken, the committee might consider supporting the pilot scheme. In the absence of that, I would find it difficult to support it. Although in principle the scheme seems attractive, the practical difficulties of implementing it and its impact on people's perception of the system as being just and fair would be immense.

I move manuscript amendment 115, to leave out section 14.

George Lyon (Argyll and Bute) (LD): I welcome amendment 115. It is important that we get the chance at least to discuss many of the issues that were raised in our stage 1 report and to extract answers from the minister.

I, too, have serious reservations about victim statements. Although I support the principle, I have more of a problem with the objectives and the process itself. As Duncan Hamilton so ably pointed out, the question is whether such statements are meant to have only a therapeutic value or whether they will impact on sentencing. Certainly the minister made it very clear that statements will impact on sentencing, but that raises some serious questions.

As the Sheriffs Association pointed out, research on the English and Welsh system of victim statements shows that the results have been very mixed. I recently met three of my constituents who have been victims of crime, and I fully understand their desperate desire to have their views and evidence about the impact of the crimes on their lives heard in court. However, I am greatly concerned that we will lead such people to expect much more from the presentation of the victim statement than it will deliver. Indeed, constituents have told me that if they had the chance to put their case forcibly and to put in writing the impact that the crime has had on their lives, they would be able to toughen up sentences. There is no doubt that that is how they feel.

As a result, I am concerned that we would establish a process that would lead victims to have great expectations about what it might achieve, which means that they might feel doubly let down by the results. I ask the minister to address that point when he responds to the discussion.

Duncan Hamilton also drew attention to the question of how the system will work. It appears that, south of the border, the police take the statement almost as soon as the crime has been committed. The Sheriffs Association's proposal in that respect has some merit, and would deal with some of the other concerns raised in our stage 1 report. I want to hear the minister's response to that particular issue.

I congratulate Duncan Hamilton on facilitating this debate on section 14. I will certainly listen intently to the minister's comments before I decide whether to support amendment 115.

Stewart Stevenson (Banff and Buchan) (SNP): I break my silence after an hour and a half.

It is important to go back to basics—if I may use that phrase. Victim statements are a process rather than an objective. Our objective is not to introduce victim statements per se; our objective is to give the victim a greater sense that justice has been done according to the crime that has been inflicted on them.

I think that victim statements are valuable as part of a broader reconsideration of the way in which the system works, but in many ways, the pressure for victim statements is a reflection of the general loss of public esteem for figures of authority. Fifty years ago, the local doctor, the local minister and the local fiscal were never questioned in their community. Nowadays—quite properly and reasonably—those figures of authority are examined to see whether they deliver. If, when the prosecutor rose to his or her feet in the court for the first time, instead of being seen to speak in the name of the Crown—I am not trying to change the legal position, but the practical one—they were to open their remarks by saying, "I am here to represent the victim," the

victim would feel from the outset that the prosecutor was their champion. In a sense, that is what is lacking in victims' perception of the process.

From the point at which the police first contact the victim, every stage of the system, in its broadest sense, should put the victim at the heart of what motivates what is happening. I regard victim statements as a Band-aid on a system that has lost the confidence of the general public. They are an attempt after the event to address the impression that victims have gained that the system is not promoting their issues and concerns.

Victim statements have an important cathartic role to play in discharging victims' discomfort and moving them towards a degree of accommodation of their experience. I am confident that my fellow MSPs have many people at their surgeries whose real purpose—if it is analysed objectively—is simply to get someone to listen to them. In reality, there is often nothing that we can do for them. The diversity of needs among victims is difficult to reflect in a single measure such as victim statements. For some, the statements will be a benefit; for others, they will be a disadvantage. For some, the fact that they have the opportunity to make a statement will cause them further guilt because of their inability to make the statement, for whatever reason.

I am reluctant to support Duncan Hamilton's request to delete section 14, if he chooses to press his manuscript amendment. I welcome the fact that, if we keep victim statements in the bill, they will proceed as pilot schemes to help us to understand how and whether they can benefit more victims than they disadvantage. I hope that the pilot schemes will provide us with an understanding of how we can support victims who feel further pressure because of the process—there will be such people—and tell us whether the balance of advantage is to proceed in the terms that are in the bill.

Scott Barrie: I do not want to repeat what has been said, a lot of which was stated in the committee's stage 1 report. We have a problem of perception in relation to victim statements, and there could be a difficulty of increased expectations. However, victim statements offer the opportunity to deliver more than the system offers at the moment and, if that is their outcome, that will be an achievement.

Difficulties were encountered when the committee grappled with how victim statements would be taken and how they would be presented to the court. We all agree with victim statements in principle; the practicalities are what cause difficulties. I counsel against the baby being thrown out with the bath water. The genesis of a good idea remains and is worthy of support.

I was summoned to the Fife domestic abuse forum, which was concerned about some of the reporting of the issue. I took the stage 1 report with me to explain how the committee had arrived at its decision. Given that I am generally supportive of victim statements, I was pleasantly surprised that the vast majority of people from the voluntary and statutory sectors, including those from women's organisations and victims' organisations, said that victim statements were still a good idea, once the issues were teased out. They felt that victim statements were worthy of consideration, although they could think of instances in which people might not want to make them.

Once people realised that the making of victim statements would not be mandatory, they saw the proposal in a slightly different light. Many victims' organisations and women's organisations—especially the latter—had difficulties with people being made to make a victim statement. When people realise that not making a victim statement will not be taken to mean that someone has not been traumatised or was not a real victim, they have a slightly different perception of the issue. The reporting of victim statements has had an effect.

Like Stewart Stevenson, I am most reluctant to support Duncan Hamilton's manuscript amendment, even though there will be difficulties. There is more to be gained from continuing with victim statements than from abandoning them. The fact that there will be a pilot is a key issue. We must see how victim statements work in practice. Like all good ideas, some tweaking and tucking might well be necessary, depending on what experience shows us. Victim statements are the genesis of a good idea. They will give a voice to many people who have been unheard in our court procedure in the past.

Bill Aitken: I have heard nothing with which I disagree profoundly. When Stewart Stevenson emerged from his uncharacteristic purdah, he articulated well the justification for victim statements. Others have highlighted the difficulties that such a system could create.

I want the minister to address several issues. He said correctly that victim statements are voluntary. Although he portrayed that as a strength, I submit that it could be a weakness. What would be the impact on a court of having two identical cases, only one of which involved a statement? That problem must be considered. Duncan Hamilton raised the problem of what would happen when there was a plea to a reduced indictment that was inconsistent with the witness statement. That must be addressed. Another issue that might crop up is the fact that the impact of an identical assault on two different individuals might be quite different.

That could create a difficulty for the court. Furthermore, the question of resources—police resources, for example—cannot be ignored.

As Stewart Stevenson and Scott Barrie said correctly, there is an aspect of therapeutic value. Victim statements will also allow people who might otherwise have been distanced from the legal system to connect with it, which is a good thing. In response to Scott Barrie's comments about the therapeutic effect on witnesses and victims, I think that the same effect could be achieved by other agencies with which he is familiar from his previous occupation.

Another aspect that would have to be taken into consideration is the possibility that some of those who make victim statements might gild the lily, with one eye on a Criminal Injuries Compensation Board payment.

Basically, we need to determine whether victim statements are worth while. We must also bear in mind the clear disadvantages that could arise from the implementation of what is a desirable principle. It is a difficult call to make, but on balance—it is a tight balance—my view is that the value of such a scheme is outweighed by its disadvantages.

The fact that the Executive seeks to introduce a pilot is indicative of its tentative approach. I do not criticise that, but it shows that the Executive is aware of the potential difficulties. So far—I stress, so far—I have heard nothing from the Executive to allay my concerns. For example, I would not like to see a situation develop in which the witness statement is disputed and the victim must go into the witness box. Having had a brief discussion with Duncan Hamilton during the suspension, I think that he now accepts that the court process would deal with that, but he is nevertheless correct to raise that point because the additional impact of such a development on a victim could be considerable.

I shall listen to what the minister has to say with great interest.

11:45

The Convener: I, too, am grateful to Duncan Hamilton for lodging the manuscript amendment so that we can have this important debate.

I differ from Bill Aitken in so far as, having weighed up the difficulties, on balance I support the Executive. In fact, I would go further. When the Parliament was established, we were presented with a legal system that was not victim-centred in any sense. I recognise that the Executive has attempted to put that right and has done so in more than one measure. As I have said on many occasions, the fact that section 15, which we will debate later, will give victims the right to receive information on the release of an offender is a significant step forward for victims' rights in our system.

The Executive has been bold and has pushed against the tide on victim statements. As the minister will be aware, when the committee first came to consider victim statements, we received evidence from a string of organisations that were not exactly dancing in the streets about a provision that I understood they wished the Executive to proceed with. The committee has had a difficult job in trying to support the Executive's intention while ensuring that the process is robust.

I want to mention a few areas that give me cause for concern. I understand that the Crown already has a duty to present all relevant information to the court, which should include the impact on the victim. Perhaps that is not well used, but it is the reality of our current system.

Resources have been mentioned. We need to pay attention to the resources that would be required if victim statements are to operate correctly. There would need to be examination at the beginning, when victims choose whether to use the victim statement procedure. The person who gives that advice would need to be properly trained, to be able to explain to the victim the pros and cons of making a victim statement. For instance, Women's Aid, which gave evidence on why it is opposed to victim statements, said that they would involve too many dangers. Someone who is well trained in explaining the pros and cons of making a statement would need to advise the victim at the outset.

I suppose that, in his reply to the debate, Richard Simpson will say that the purpose of victim statements is to protect victims throughout the process. I want to ensure that, from beginning to end, victims are in no worse a position than they would be if they did not give a victim statement. Examination will be required for that.

As has been mentioned, the Executive intends to embark upon pilots as a result of the broad provisions in the bill. It would be useful to hear any information that is available on how those pilots will be conducted.

I have one point of slight disagreement with Stewart Stevenson. If I picked him up properly, I think that he said that the prosecution is the victim's champion. That is one of the issues in the system. Victims expect the prosecutor to be the champion, but there must be a process of education about the Crown's role in relation to the public interest. I appreciate the point—which I think Stewart Stevenson made—that if the prosecutor is not the victim's champion, someone in the process must at least be seen to represent the victim and ensure that the victim has all their rights.

In our inquiry into the Crown Office and Procurator Fiscal Service, we received evidence from a family who explained their experience of not being told anything in court and relying on the Crown to give them information. They did not know that no one had a duty to explain why particular things happen in court. I know that that issue goes beyond the issue of impact statements, but I think that it is part of the general process of trying to make victims more important in the system.

Everyone has spoken, so I ask the minister to reply.

Dr Simpson: I, too, welcome manuscript amendment 115, which has allowed the committee, individually and collectively, to express its views again. The convener was correct to say that when the Executive came into being, the victim was not a partner in the justice process; indeed, the victim's role and rights were often ignored. The victim's experience, not just of the crime but of the subsequent court procedure, increased the crime's damage rather than relieving it.

The Executive determined to redress that balance in several ways. I do not want to repeat all their elements, but members will know that the prosecution service now has an information service and a service is being rolled out in the High Court. That is about ensuring that the victim is engaged and supported in the justice process. Our "Vital Voices" consultation will take that even further. Many victims are vulnerable or have been made vulnerable by a crime that has invaded their personal envelope of privacy. The damage to their ability to cope must be repaired by the justice system.

The victim statements fit into that context. Section 14 of the bill deals partly with information and the rights of the victim. As the convener said, that is of great importance. The Executive and I believe that the victim statement process, despite all the difficulties that the committee identified, is worth piloting. Most European countries—certainly almost all western European countries—are attempting to introduce a victim statement system.

The current evidence on the system, as many members indicated, is equivocal. There are indications that victim statements help, but there are also indications that the process makes a minority of victims feel worse. Therefore, it is vital that we pilot the system before introducing it and that we give the undertaking to Parliament that the system will be implemented only after Parliament passes an affirmative resolution. Such a parliamentary debate will be able to focus, crucially, on what has happened in the Scottish court system to Scottish victims. The pilots will be steered by the victim statement steering group, which will consider the details and monitor the process. I can assure members that the evaluation will be rigorous. Funding has been set aside for the pilot scheme's processes and evaluation.

It is clear that the Justice 2 Committee's central concern is the purpose of victim statements. Stewart Stevenson expressed that point well when he said that the system's basis is that the victim has a possibility of being engaged in the justice process. I would go a step further and say that the victim has a choice of engagement. Currently, the victim has little control. A crime has already invaded them and the court process is a further invasion. Therefore, the choice of whether to make a statement must lie with the victim. That will give the victim some control. Research evidence indicates that choosing not to make a statement can in itself be therapeutic. The victim feels better for being asked and for exercising some control.

As the convener said, it is important that those who invite the victim to give a statement are properly trained and that the victim is properly advised of precisely what the victim statement is for. The victim is not being asked to say how and in what way the accused should be sentenced in the event of conviction. The purpose of the victim statement is to allow the victim to make the court aware of the crime's impact on them. The court may then take that into account, along with all the other evidence led prior to conviction. That will act as a balance when the plea of mitigation is considered.

There is a subtle difference between an effect on the direction of sentencing and the judge's being able to take into account all the circumstances. The Crown already has a duty, in my view, to indicate to the court the impact of the crime during the course of the evidence being led. However, that does not always happen and the victim statement will allow an opportunity to fill out the information that is available to the judge when they make their final decision.

It will be crucial that the expectations of the victim are dealt with. It must be clear to the victim that they are not being invited to direct the sentencing. If the victim's expectations are raised inappropriately, they are likely to be adversely affected by the process, which is not the intention. The individuals who are involved in engaging the victim will have to be properly trained and the information that we give out in the form of leaflets and so on will have to be extremely clear.

On the technical issues relating to challenges, which we dealt with at some length in the amendments this morning, the Deputy First Minister has given an undertaking that there will not be an opportunity for the accused to cross-examine the victim. Clearly, that would be a situation similar to the ones that we dealt with last

year in the Sexual Offences (Procedure and Evidence) (Scotland) Bill and we do not want to return to a situation in which the offender can confront the victim in that way. However, the rules of court will allow the contents of the victim statement to be challenged. Again, that must be made clear to the victim to prevent them from giving inappropriate information, inadvertently or otherwise.

A series of issues relating to the procedure will have to be tested, so I return to where I began and say that there will be pilot schemes that will test the various elements of the procedure to ensure that it is in the best interests of the victim and justice. However, for us to delete the section from the bill would be to expose us to a situation that would not be appropriate. Even those who were initially not in favour of the initiative, such as those who work in the area of domestic abuse, were not in favour because they understood that the victim statement would be mandatory and that, as such, it might cause serious problems for an abused woman. I accept that. The victim statement will not be mandatory; it will be voluntary and vulnerable witnesses will have to be supported appropriately. Apart from the Sheriffs Association, the overwhelming majority of the consultees were in favour of the principle and of our testing the initiative. That is what the bill seeks to do. I urge the committee to reject the amendment in Duncan Hamilton's name.

Mr Hamilton: This has been a useful debate. I thank the members who have contributed and thank the minister for his comments.

The minister said two things that go to the heart of this debate. On the purpose of the victim statements, the minister said that there was a subtle difference between the statement having an effect on the sentence and having an impact on the sentence. I have to say that that might be a degree of subtlety too far for me.

The policy memorandum states:

"The court will be under a duty to have regard to the statement prior to determining sentence."

That either affects the length and nature of the sentence or it does not. With the greatest respect, to say that the difference between the effect of the statement and its impact is wafer thin would be to overplay the distinction. I remain confused as to precisely what that means.

12:00

The minister said that the Crown currently has an obligation to introduce all the relevant information. We are in this situation, and have the proposal for the pilot scheme, because that is not happening in some cases. One way round that would be to try to improve what is being done by those who represent the Crown. If there is a deficiency in some aspects of the current service and if additional training is required, so be it. That option should be explored in place of the pilot scheme. Although I am not against such a scheme on principle, perhaps we should have investigated that option before assuming that the system was flawed.

Members will not be surprised to hear that I will not press my manuscript amendment 115 to the vote. The purpose of the amendment was to open up debate. Even those members who supported the principle of the pilot scheme have agreed and identified their own problems with the process, some of which have been universally accepted by those who gave evidence to the committee. That is the case particularly in the areas of part convictions, irrelevant material, tutoring and editing and the pressure that might be put on victims to make or withdraw statements. The recommendation that was made at stage 1 by the Sheriffs Association, which—I think—was supported unanimously by the committee, was for victim statements to be made through the Crown. That would be a way of getting round the problem.

I want to register the fact that amendments to address some of those practical problems will be lodged at stage 3. I hope that the minister recognises the constructive nature of today's debate. When the amendments are lodged, I hope that the minister will consider them in that light and that members of the committee will also do so.

Manuscript amendment 115, by agreement, withdrawn.

Section 14, as amended, agreed to.

The Convener: Before we move to the next grouping, I welcome Sylvia Jackson to the committee. In case members wondered why she may raise her hand, she is substituting for Alasdair Morrison, who cannot be with us.

Stewart Stevenson: You can stay, Sylvia.

Dr Sylvia Jackson (Stirling) (Lab): Now that I have come, I am staying.

After section 14

The Convener: Amendment 85 is grouped with amendment 86.

Dr Simpson: Amendment 79 amends the victim notification provisions in section 15. It adds an additional category of offender to the list of offenders whose victim or victim's family are to have the right to receive certain information. It will include in the list at section 15(1) offenders who are detained for life for virtue of—

The Convener: We are dealing with amendment 85.

Dr Simpson: I am sorry. In my excitement, I moved on a section.

Amendment 85 would amend certain provisions that were inserted in the Criminal Procedure (Scotland) Act 1995 by the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002. The bill provides for a copy of the victim statement to be provided to the court after conviction or a guilty plea, at which stage the accused also receives a copy. The offender has the right to challenge the content of the victim statement. If there is a material dispute on the content of the statement, the court may order a hearing at which witnesses, including the victim, may be called to give evidence.

Amendment 85 would extend the provisions in the 1995 act to post-trial proceedings to ensure that, following a finding of guilt, an offender who has been convicted of certain sexual crimes cannot personally cross-examine their victim on the content of their statement. The provision covers the primary victim and any other eligible person who has made a victim statement.

Amendment 86 would put in place provisions to ensure that the relevant agencies make accused persons aware that they cannot personally cross-examine the victim and that they must appoint a solicitor to conduct their defence, during the post-trial proceedings, as well as during the trial.

I move amendment 85.

Bill Aitken: The minister seemed initially to be knocking at the right door, but he was up the wrong close.

Amendment 85 would introduce a degree of consistency. After all, as recently as spring of last year, we introduced appropriate legislation under the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002. I welcome the amendment.

Amendment 85 agreed to.

Section 15—Victim's right to receive information concerning release etc of offender

The Convener: Amendment 79 is grouped with amendments 80, 81 and 82. The minister should now speak to all the amendments and move amendment 79.

Dr Simpson: I apologise again for leaping over the previous group of amendments.

Amendment 79 would amend the victim notification provisions in section 15 by adding an additional category of offender to the list of offenders whose victim or victim's family will have the right to receive certain information. The amendment would include in the list at section 15(1) offenders who are detained for life by virtue of section 205(3) of the Criminal Procedure (Scotland) Act 1995—that is, those were detained when they were 18 or over but under 21.

The amendment would ensure that victims of such a category of offender would be eligible to receive the following information under section 15: the date on which the convicted person is released; if the convicted person dies before that date, the date of death; that the convicted person has been transferred to a place outwith Scotland; and that the convicted person has become eligible for temporary release.

Under section 16, such victims would also be eligible to receive information on whether the Parole Board for Scotland has recommended or directed release. If the Parole Board has so recommended or directed, the victim will be eligible to receive information on any conditions with which the offender is required to comply, including the terms of any conditions that relate to contact with the victim or the victim's family.

The purpose of amendment 80 is to address an anomaly in the sequence that is set out in section 16(1). The intention is that victims will have the right to make representations to the Scottish ministers about the release of their assailant and the licence conditions that are to be imposed upon their assailant on release from custody. However, as section 16(1) is currently drafted, it provides that the victim will receive information about licence conditions to assist them in making representations about release. Amendment 80 would clarify that the victim has the right to make representations concerning both release and licence conditions before the case is considered by the Parole Board.

The purpose of amendments 81 and 82 is to remove from sections 16(2) and 16(11) the requirement for ministers to prescribe through subordinate legislation the method by which victims would inform ministers of their wish to receive information on, and make representations about, their assailant. On reflection, it was thought that a requirement on victims to comply with a procedure prescribed by ministers in subordinate legislation would be unduly restrictive. For example, we would not want to exclude representations from victims simply because they were not submitted on a prescribed pro forma.

I move amendment 79.

Mr Hamilton: I am interested in what the minister said about amendment 80, which would change section 16(1). Is the minister moving from a position of providing information to one of involving victims more proactively in the nature of the conditions that might be attached?

Dr Simpson: Amendment 80 would address the sequencing arrangement. At the moment, the bill is written in such a way that it would appear that

the victim can make representations to the Parole Board only after the board has made conditions for release. That is incorrect and it was not our intention. Our intention is that victims should be able to make available to the Parole Board their views and information prior to those conditions being set. Amendment 80 would correct that sequencing anomaly.

Mr Hamilton: I understand. What form is it imagined that those representations would take? Would the victim simply write to ministers or would representations be made on the victim's behalf?

Dr Simpson: Victims would be able to write to the Parole Board and lay out their views on the matter.

Mr Hamilton: So the representation would be written.

Dr Simpson: To give an example, in the case of sexual or violent abuse, the victim would be able to call for a condition that the convicted person could not live near the victim's family. That might mean a new place of residence, rather than the original place of residence, but the victim would have the right to make that request. The family would not be issuing an instruction, but would be able to say that they would be deeply concerned if the perpetrator of a crime were allowed to move back into the house next door, as happened in a recent case in my constituency.

The Convener: I have dealt with many constituency cases in which it has been too late to comment, as the Parole Board has already applied conditions. In such cases, constituents have had to apply for an interim interdict or have had to apply under the Protection from Harassment Act 1997 to keep the person away from the family home.

The changes that the amendments will make are most welcome. It is important that victims can simply write a letter explaining their view about what conditions should be attached, rather than having to give their views in a particular form, which can be off-putting. Sections 15 and 16 are extremely important in relation to victims and the amendments are useful. I welcome them.

Stewart Stevenson: I, too, very much welcome sections 15 and 16, which I feel will ultimately be more highly valued than the provisions for victim statements. People want to know when the perpetrator of a crime against them is being released and they want to ensure that they are being released in a way that the victim regards as safe and certain.

In reporting on the trials of victim statements, might the minister also consider reporting on the success of the provisions in sections 15 and 16, so that their implementation may be understood, fine-tuned and amended as required? I recognise that that would be a longer-term project. As those provisions concern what happens at the end of a sentence, the minister may not be able to report in the short term.

Bill Aitken: I would like to make one quick point, to which I am sure the minister will respond. I have absolutely no difficulties with the principle behind what is proposed. The practical application of the provisions is slightly problematical in that, bearing in mind that the accused person will have served a substantial prison sentence, the victim may have moved home several times in the years that have elapsed between his crime and his potential release. Some people lead reasonably nomadic lives, perhaps because they change jobs and therefore have to change homes. What measures will the appropriate authorities take to ensure that the victim is contacted?

Dr Simpson: To answer Stewart Stevenson's point about examining the effect of the provisions, we will monitor—as we do with almost everything—what happens in that respect. I cannot give an undertaking that we will have a full, independent evaluation, but we will certainly want to keep an eye on the effect of the provisions.

Bill Aitken raises an important point. The onus is actually on the victim to make communication. The problem is that some victims will want to move on and sever any connection with the situation. That is always an option for victims. Many change their minds and, after an initial period when they want to be informed, they say that they no longer wish to be involved. They have that right to opt out, but the onus is on the victim to contact the authorities. I think that that is the right way round. To do anything else would mean that the very people whom I have just mentioned—those who do not want to know or have anything to do with the case—would have to be contacted every time a parole hearing occurred. That could stir up all the old thoughts about the crime. If someone has managed to move on, close off the past and deal with their experience, that should be protected.

I understand what Bill Aitken says about the practical difficulties. I am keen that the victim should have control over the situation. In monitoring the situation, we will examine that aspect and see whether it creates any difficulties.

Amendment 79 agreed to.

Section 15, as amended, agreed to.

Section 16—Release on licence: right of victim to receive information and make representations

Amendments 80 to 82 moved—[Dr Richard Simpson]—and agreed to.

Section 16, as amended, agreed to.

Sections 17 to 20 agreed to.

The Convener: That takes us to the end of the groupings list and—surprise, surprise—it is only 12.15. I thank Dr Richard Simpson and his officials for the interesting and useful debate that we have had this morning.

I remind members that the next meetings will be on Tuesday 26 and Wednesday 27 November; there will be an announcement in tomorrow's business bulletin about the targets and deadlines.

I also remind members that there will be an evidence session with the minister on section 61, on police custody and security officers. We shall get back to you about this morning's debate and about other witnesses that we wish to call.

Scott Barrie: Is it in the morning or the afternoon?

The Convener: The meetings are on Tuesday morning and Wednesday morning.

Mr Hamilton: Am I right in thinking that the deadlines are Friday for the Tuesday meeting and Monday for the Wednesday meeting?

The Convener: That is right. I thank members for their attendance.

Meeting closed at 12:16.

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