JUSTICE 2 COMMITTEE

Tuesday 26 November 2002
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
44th 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:

David Henderson (Scottish Executive Justice Department)
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

Tuesday 26 November 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:50*]

Criminal Justice (Scotland) Bill

The Convener (Pauline McNeill): Good morning and welcome to the 44th meeting in 2002 of the Justice 2 Committee. As usual, I ask members to switch off their mobile phones and pagers.

Item 1 on the agenda is the Criminal Justice (Scotland) Bill. The committee agreed earlier to take evidence from the Deputy Minister for Justice on section 61, which relates to police custody and security officers—PCSOs. The minister has asked to make a brief opening statement to update the committee on developments, which I will allow him to do. I welcome the minister and his large team.

The Deputy Minister for Justice (Dr Richard Simpson): I have taken careful account of members' contributions during the stage 1 proceedings and of the committee's stage 1 report. Pertinent points were made and we will lodge a series of amendments that will, I believe, take account of them. I will describe those amendments in a moment.

Before I do so, I want to mention the apparent misunderstanding that has arisen over the context and purpose of section 61 and its relationship to separate work that is being done under section 102 of the Criminal Justice and Public Order Act 1994, which gives the Scottish ministers powers to make arrangements for certain functions to be performed by prisoner custody officers. Those powers include entering into contracts with other persons for the provision of such officers.

The functions that prisoner custody officers may perform are:

"(a) the transfer of prisoners from one set of relevant premises to another;

(b) the custody of prisoners held on court premises … and their production before the court;

(c) the custody of prisoners temporarily held in a prison in the course of transfer from one prison to another; and

(d) the custody of prisoners while they are outside a prison for temporary purposes."

The tender process to contract out the escorting of prisoners, which is led by the Scottish Prison Service, is being carried out under the 1994 act and is not related to section 61 of the bill. That distinction was not understood clearly by some members during the stage 1 proceedings.

At stage 2, we will lodge a number of amendments to section 61 to meet members' concerns. I will speak about two of them. One would insert a new duty for PCSOs in new section 9(1E) of the Police (Scotland) Act 1967, which can be found on page 58 of the bill, to act with a view to preserving good order on the premises of any court and on land connected with such premises. PCSOs, who would be employed by police forces under the chief constable's direction, would, backed by appropriate training, deal with public unrest in courts, but those public order powers would not extend beyond court premises. The maintenance of public order in other areas is properly a matter for constables. The second amendment would require police authorities to obtain the approval of the sheriffs or sheriffs principal in their force area—in the case of the High Court, the approval of the Lord Justice General—prior to contracting out court services under section 61.

Those amendments are in addition to the Association of Chief Police Officers in Scotland's commitment, under which chief constables will seek to agree a protocol with the courts on the operation of the new arrangements. We have already consulted the police conveners forum and ACPOS about the new measures. We have also broached the proposals with the Sheriffs Association and the Lord Justice General. The initial response has been positive, but obviously those who are involved want to see the wording of the amendments.

We recognise the concerns that were raised and we have acted to address them. Section 61 is not, as has been suggested, about policing on the cheap; it is a genuine attempt to secure better value for money in the delivery of certain policing services. The proposal would result in a trained group of officers who would have specific duties in courts. The existence of such officers would mean that, where it makes sense to do so, constables would be freed up so that they could be redeployed to other front-line duties.

The Convener: The committee has a number of questions, so let me begin. During the stage 1 debate, I raised a number of concerns about how the Executive's objectives will be met. As the minister said in his opening statement, one objective is to make savings through the creation of the new posts. We have yet to hear any evidence as to what savings could be made.

I also note that among our committee papers today is a letter on behalf of ACPOS from William Rae, who is the chief constable of Strathclyde

police. He says that we cannot see the figures yet but that they will be prepared for the committee to have a look at. I am greatly concerned that savings cannot be identified at this stage, yet those savings are one of the main objectives behind the proposal. If the minister does not have a copy of the letter, I can pass one to him.

Dr Simpson: I have a copy of it.

There are two policy objectives, one of which is certainly that we would like to make savings if at all possible. However, equally important is the fact that police officers undertake a significant number of functions, especially in courts, that are not what might be called police functions but administrative functions. Further, under the existing arrangements, prison officers and police officers are involved in escorting prisoners and others between police stations, courts and prisons, which has led to duplication and overlap.

Let me give an example. Ten prisoners are held in Edinburgh prison and are due to appear in Edinburgh sheriff court on the same day. Eight are on remand and two are convicted prisoners. Two minibuses must attend the prison: one minibus will be staffed by SPS officers to take the two convicted prisoners; the other must be staffed by police officers to take the eight who are on remand. The police minibus will have empty seats. At court, all 10 are kept in the same cells, which are overseen by the police service, but the SPS officers are responsible for their prisoners and must remain with them for as long as they are outside the prison. After all the hearings have taken place, both minibuses must head back to the prison. Depending on the length of proceedings at court, both sets of officers may need to hang about for a considerable time. The police officers may do other things, such as issue lunch vouchers or pursue interpreting or other support services, but the prison officers must simply wait. Among other things, the new arrangements will avoid much of that duplication by ensuring that a single service provider does everything.

The issue is not just about savings. Members may recall that an earlier Executive memorandum said that there might be overall savings of about £12 million, which could result in the redeployment of 500 police officers and 200 prison officers. The memorandum made it clear that those savings were only initial estimates and certainly should not be taken as if they were written on tablets of stone. We have commissioned consultants to examine the issue in greater detail, but we do not have their report yet.

The Convener: I appreciate what the minister has said, but perhaps he could look at the issue from the committee's point of view. The bill that we have been asked to examine would take powers away from the police and give them to a new breed of custody officer. Part of our role is to test what savings could be made, yet we still have no figures. I will leave that issue, as I think we will get no further forward on it.

I note the minister's comment that the number of officers that he claims could be freed up is only an estimate. I have asked for assurances from the Executive that any officers who were freed up would be additional officers for the force concerned. We need a bit of detail on the extra number of officers that a force such as Strathclyde could expect. The bottom line is that, if the savings were relatively small and there were no guarantees about the number of additional officers that would be available to the force, the exercise would be pretty pointless as there would be no marked benefit. I am driving at the fact that the committee has not been given an indication of the benefit of section 61. We are being asked to support the proposal on a wing and a prayer and we are told that the savings and the numbers will become apparent in future. I would be unhappy to let section 61 through as it stands.

10:00

Dr Simpson: I understand the convener's caution on the subject. Two policy objectives are involved. I will give another example. In Fife, risk assessments are being undertaken routinely for sheriff and jury trials. Before risk assessments were undertaken, two officers would have been allocated to the court for the duration of trials. In the Fife constabulary central division area, during the period 1 March to 6 September 2000, a total of 38 days of sittings took place in Kirkcaldy. Under the previous system, 114 officers would have been required to attend, but the risk assessment process reduced that number to 75.

I give that example to show that the situation is already moving forward. We are trying to give chief constables additional powers so that they can be flexible in their management. One of our problems is that police officers have been required to undertake numerous administrative functions rather than concentrate on proper front-line policing duties. Duties remain for court order, which sheriffs want to be satisfied about, but many other functions have nothing to do with order and can be better undertaken by an administrator with more limited powers.

I ask David Henderson to tell the committee a little more about the process. He will also indicate some of the functions that we have discovered are being undertaken by police officers and that we would like to address. I hope that that will be helpful.

David Henderson (Scottish Executive Justice Department): I will start with the activities that police officers undertake not necessarily in all courts, but across courts. I have three pages-worth of activities. They include: managing first aid; notifying court officials of prisoner arrival and availability; serving legal documents; managing the list of witnesses; recording the attendance of witnesses; dealing with inquiries from members of the public; managing telephone inquiries; administering the paperwork that is required by the procurator fiscal and clerk; pursuing solicitors who are required for the court; managing and sorting out the court running order; issuing the accused with notes of future court dates; preparing bail papers; and managing prisoners' property and its safe return. In Glasgow sheriff court only, police also issue lunch vouchers to police witnesses, to which the minister referred.

I will describe the process and the figures. Two separate processes are under way. The first, as the minister described, is a tender process that is being conducted under the 1994 legislation. Tenders are being prepared as we speak. They will not be submitted for another week or so and, once they come in, they will have to be evaluated. It is difficult to quantify the savings until we see the tenders. It would also be improper to speculate on the figures until we have seen them. We will need to check carefully that the tenders represent value for money. There would be purpose in going ahead only if the tenders do so. I repeat that, at this stage, it is difficult to speculate.

Initial sums were done a year or so ago. They are referred to in the Executive's memorandum, but they are very much estimates and were based on partial information. That activity analysis was redone by the police service during September and October. As the minister said, the results are being quality assured by consultants. We will have those results within the next week or two and they will give us estimates that are as good as we can get of current activity. We will be able to compare those estimates with the prices that will be set out in the tenders. We need to check that the proposal offers value for money. We will not go ahead until we are sure of that.

The second process involves the additional benefits that section 61 would bring, which will depend on the protocol that is drawn up between each force and the sheriffs principal in the court service in its area. Each case will be considered on its merits. We need to work on those aspects together.

If we gave you a precise figure—we could estimate—it would probably be misleading until we had firmer figures. We should have those figures, or a better indication of them, before the committee considers the matter formally once the amendments have been lodged.

George Lyon (Argyll and Bute) (LD): I would like the minister to clarify two points. You talked about savings. The convener has alluded to the fact that the committee is seeking a guarantee that the police officers who are released from court duty will be redeployed immediately to front-line services as an addition to existing front-line officers. I also invite you to comment on interesting evidence that we received from the Scottish Police Federation, which seemed to say that police officers who undertake court duties may not be physically fit enough to carry out front-line duties. Can you clarify the position on that? Clearly, there must be a question mark over the ability of those officers to control any outbreak of disorder in the courts if they are not fit enough to carry out front-line police duties.

Dr Simpson: I will address your first point first. This year, police grant-aided expenditure is £822 million. Next year, it will rise to £889 million, and by 2005-06 it will have risen to £998 million—an increase of more than 20 per cent. We can look retrospectively to get a feel for the situation. Police numbers are at record levels—up 540 since June 1999. If we add those who have been, or will be, redeployed to front-line duties as a result of the best-value reviews and modernisations that are taking place, the total will increase by about 1,000. The intent is there. However, it is for the chief constables and their boards to manage those resources, not for the Scottish Executive. I hope that, within that funding arrangement, it would be feasible to achieve increased numbers of front-line staff, which is the Executive's policy.

The Scottish Police Federation's evidence was interesting. It contrasts with the evidence of the sheriffs, who say that they want to be secure and to have fit police officers in courts. That is an important point, and our amendment would require the sheriffs principal to agree to any contracting-out process. We need to look more broadly at the police occupational health system. The police force has relatively high sickness levels, and a major thematic review in England has focused on occupational health. Rather than place unfit police officers in the courts, the police force must prevent ill health and manage people who have health problems, bringing them back to front-line duties whenever possible. It would, of course, be impractical for somebody who was no longer fit for front-line duties to apply for a transfer to become one of the new PCSOs. I presume that such applications would be considered on the basis of whether the officer could provide the service that was required.

The Convener: The more I hear about the proposal, the more concerns I have. I do not disagree with the Executive's stated intentions; I am trying to get at the practicalities. From what David Henderson says, it seems that you are

asking the committee to agree to a power without really knowing what will happen thereafter.

Concerns have been raised by many groups about the lack of police presence in court if police officers were replaced with custody officers who would not have the same powers. Should there be a minimum police presence, in a mix of custody officers and police officers, to satisfy all those who work in the courts—such as sheriffs, procurators fiscal and defence lawyers—that there would still be an adequate police presence in our busy courts?

Dr Simpson: I am being slightly repetitive, but the central objective is to loosen up the system to allow the chief constable to manage it. Clearly, it is important that courts are properly policed, so it is not the intention to direct chief constables that they should take all police out of the courts. That would be wholly inappropriate. It will be a matter for the chief constable, in discussion with sheriffs and the sheriff principal, to ascertain the necessary levels of police or new custody officers. At the end of the day, I expect that there will be a mix of the two.

The important point is that the functions of PCSOs, to which we have referred—and the other two and a half pages of functions that we have not read out—are essentially administrative duties, and are not serious policing duties. I am not saying that they are not serious duties—they are—but they are administrative duties, and therefore can be properly undertaken by somebody who is qualified to do the particular task. That may not be someone who has police qualifications, because it perhaps requires a different set of skills. The process is one of loosening up.

I quote from the 2000-01 annual report from Her Majesty's chief inspector of constabulary, which is probably in the public domain:

> "The movement of persons in custody between police stations, courts and prisons need not be undertaken by police officers and more efficient, but no less effective, means are available."

To achieve that, the combination of the Criminal Justice and Public Order Act 1994 and section 61 of the bill provides an appropriate way to take the issue forward. The chief inspector urged us to take this matter on in his 2000-01 annual report, and this is the earliest opportunity for us to do that.

Bill Aitken (Glasgow) (Con): I am of the view that some of the clerical duties that Mr Henderson read out are a bit of a red herring. I do not think that they are at all onerous. Let us take, for example, a diet court and a first appearance when no one is in custody. The police officer stands at a desk. The accused pleads not guilty through his lawyer. A trial is fixed. The officer simply writes out a card and hands it to the accused as he leaves. That is hardly onerous. The number of bail forms that are required to be processed in the average court is limited.

Moreover, what clerical duties does the officer have in a trial court? Basically, all he does is go out and get the witnesses and come back in again. It is important that police officers are there for the security aspect. In the course of a trial, there may be witnesses who have just given evidence sitting in the court and they may take great exception to the evidence that is given by the next witness. However, it is important that a police officer is present to defuse that situation. I do not see any of the other people who the minister has in mind—bearing in mind the quotations and estimates that the minister has sought—being in a position to have the degree of authority needed to defuse situations that arise.

There is not a lot of clerical work involved. The police officer would be quite able to carry on with that while supervising the court. In a trial court during the course of a day there may be a throughput of about 25 people at most over a four or five-hour period, so I do not see that there is a difficulty.

Dr Simpson: Bill Aitken raised two issues: security and administration. It is important to recognise that PCSOs will be uniformed. They will have a presence. They will be trained. They will carry out the functions that are required of them, including the functions that you mentioned. When those functions are combined with administrative duties, however much the load is—and I bow to his greater experience—the advice that we have received is that the new officer would be an appropriate person to undertake those additional functions.

A straightforward police person could be moved away from the court into other police duties, as indeed happens—I cannot believe that they would be left in courts for ever and a day. Police custody and security officers would be dedicated to the court and therefore would provide continuity, which would be welcome and would increase efficiency.

There has to be a security protocol with the sheriff or sheriff principal or, in the case of the High Court, the Lord Justice General. There must be protocols to ensure that the judiciary is satisfied with the level of security. There will certainly be no changes until that protocol is agreed.

10:15

The Convener: That is helpful, but do you not think that, when it hands over such an onerous power to chief constables, Parliament should be satisfied that it will have some say in the minimum numbers of police officers and in what should be

contained in the protocol? If such a provision were passed, I would be keen for there to be a mix, but we would be handing over that power to chief constables and they could decide to do what they like. There is no guidance from Parliament to reflect the concerns that others may have about the lack of a police presence. Although we have listened carefully to prosecutors and sheriffs who have concerns, we have not had a chance to speak to victims or people who use the court. I do not know what they would say, but we must try to represent them to some extent.

Dr Simpson: That last point is a good one. I would expect police custody and security officers to be well trained in managing witnesses and victims. Police who are involved in that area of work should have a degree of expertise that the average policeman who might just be passing through the court system for a few months might not have.

At the moment, it is the chief constables who determine what goes on within the court, so they already have that power. The only change that we are making, as I understand it, is that we are giving them power to create special officers who will have a special function within the court. They may choose not to do that, and that is a matter for them, but the intention is that that will happen. Part of the review carried out by the inspectorate will be to ensure that they meet best value, so there will be a dynamic tension between the chief constables and the inspectorate, and indeed any guidelines that the Scottish Executive may choose to issue.

Although we have not yet been able to describe in as much detail as we would like the possible savings, I hope that the committee will accept that the administrative and policy objectives of flexibility are equally important. I began with a point about witnesses and victims, and that is important. I expect that the police would get considerable training in ensuring effective support for those groups as we move forward with our "Vital Voices" consultation on vulnerable witnesses.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I apologise to the convener and the minister for being slightly late.

I have a number of questions relating to the initial evidence that we got from the Scottish Police Federation, which also raised the question of training that we have just touched on. If I heard you correctly, minister, you said that you think that the new officers would be in a better position in terms of training, because they would have more expertise. What additional training are you talking about? The Scottish Police Federation was concerned about the amount of additional money that would be put in to cover that cost because, as you know, police budgets are already fairly strapped.

How does that relate to anything that might be covered by Lord Bonomy? Questions were raised about the dignity of the court. That sounds terribly grand, but the bottom line is whether people are more or less likely to tell the truth in an environment where there is a certain imposing nature to the court. Would you concede that that might be adversely affected by the proposed measure?

Will you also reflect on the Scottish Police Federation evidence that the court is the one place where tension and discord are guaranteed? It is also the one place where one will almost certainly find a range of people with a criminal background. On that basis, it strikes me as obvious that it must be the most experienced and most highly trained people who work in such situations, which is why the federation felt that it should be police officers who do that work.

Dr Simpson: The training would be focused on the work that those people would have to do. Police officers have to be trained on the huge breadth of activities that police constables have to undertake. It is the specialist nature of the training and the focus that are important.

Mr Hamilton: How will the training be specialised?

Dr Simpson: It will be specialised because the PCSOs will always work in the court setting and therefore will receive more intensive training to deal with matters that may arise.

Mr Hamilton: That raises the question why the police are not trained to that standard. How will the training received by PCSOs differ from police training?

Dr Simpson: Of course police officers are trained, but they are provided with general training that covers a range of activities. If, therefore, they were asked to concentrate on court work, they would need additional training to ensure that they are up to date with court proceedings. However, court work will be the sole function of custody officers and, therefore, they will already have that additional knowledge. They will be focused on one area, which must be a good thing.

I see that I am not convincing Mr Hamilton.

Mr Hamilton: I do not know what you mean. In plain terms, what does "additional training" mean?

Dr Simpson: It means that the training—

Mr Hamilton: I understand it in principle—police officers receive general training in different fields, and if they are nominated for court work, the training will concentrate on that area. However, what does the additional training mean for those involved? What will they be required to do?

Dr Simpson: There is a misunderstanding about the word "additional". The PCSOs will be trained for court work only. I assume that police officers who have not done court work for some time get additional training, by way of a refresher course, if they are given that job. However, training for PCSOs will focus on court work, of which I have described approximately one third. Am I making sense?

Mr Hamilton: No, you are not. Do you accept my point about the dignity of the court?

Dr Simpson: Yes. The custody officers will be uniformed and will be properly trained. I do not envisage there being a major problem with the dignity of the court.

I understand that a pilot scheme is under way in Lothian and Borders, with which there have been no problems.

Mr Hamilton: According to whom?

Dr Simpson: The on-going evaluations of the pilot scheme have shown no problems thus far.

Mr Hamilton: How long has the pilot been running for?

Dr Simpson: Two to three years.

The Convener: The committee is aware of the Lothian and Borders pilot scheme, but it is not aware of the analysis of the scheme.

Dr Simpson: I assume that the scheme is being evaluated. I will try to provide the committee with further information on how it is working.

Duncan Hamilton's third point was about tension in the court, which links very well to his second point. If the officers cannot deal with issues of conflict and confrontation, there will be considerable trouble. However, they will be trained to deal with such issues.

Stewart Stevenson (Banff and Buchan) (SNP): Will the entry qualifications and calibre of people recruited to be PCSOs be lower than the corresponding requirements for police recruits?

Dr Simpson: Yes. Section 61(2)(b) inserts into the Police (Scotland) Act 1967 a new section 9(1A)(b), which states that in respect of each of those officers there will be

"for the time being a certificate in force, certifying that he has been approved by the chief constable for the purposes of performing functions in relation to custody and security and is accordingly authorised to perform them for the police force".

I realise that that does not directly answer your question and I am not clear that I have an answer. You are really asking whether the approach to the recruitment of PCSOs in terms of the entry level will be different from the approach taken for the standard force. I do not know; we will need to consider that quite carefully.

The important thing is that the individuals who are employed have to be able to meet our requirements. Those requirements are not just administrative but are additional functions of the type that I have been describing.

Stewart Stevenson: I am not sure whether we clarified whether there were additional functions. Leaving that to one side, having established that we are looking at a lower barrier to entry for PCSOs, can you confirm that those officers are likely to be on a lower pay scale than police officers?

Dr Simpson: I do not accept your premise that there is a lower barrier to entry, because I have not established that. The criteria for acceptance might be very similar to those in the police. They might be comparable but different—I do not know. In respect to your question, I would expect the salary scales to be lower.

Stewart Stevenson: With respect, if we are talking about a similar entry qualification and a similar calibre of recruit but less money being paid, it is hard to determine how we would be able to recruit such people, given that we have difficulties recruiting people into the police.

If the entry criteria are not just different but lower, are we not downgrading the ability of the proposed officers to discharge the required duties, by comparison with the ability of the more highly qualified people whom we currently recruit as police officers, who are capable of exercising their initiative?

Dr Simpson: We are each using different words. You are saying "lower" and "similar" when I am saying "comparable". The criteria are appropriate for the task that has to be undertaken. Someone that might be suitable for recruitment to the police might well be suitable for a PCSO post, but someone entering as a PCSO, with limited roles, might not be suitable to enter the generality of policing. That does not put them on a lower level; it just makes them different.

Stewart Stevenson: I accept and will use the word that you are using, which is "comparable".

If we are considering comparable entry criteria—and I think that I am right to say "if" because there are still some questions that are unanswered in my mind and I suspect in the minds of others too—is it reasonable to expect to recruit to an appropriate standard if you expect to pay a lower salary?

Dr Simpson: It will be horses for courses. People who want to become a court custody officer will apply to become a court custody officer. They will not then have to undertake core police work. They will also not have to work under the same rota system as general police officers—night

duty and weekend working. Court work will be limited and therefore it will suit different people. We should understand the differences and, hopefully, you will accept that it is a different job, which the police currently undertake, but which we believe could be undertaken by the proposed new group called police custody and security officers.

Stewart Stevenson: Once again, throughout my questioning and that of others before me, we have uncovered areas of doubt, uncertainty and lack of clarity. The minister must reflect on that after the meeting.

The Convener: We must wind up now. I will take any points of clarification before we finish.

Mr Hamilton: The minister does not know what the entry criteria would be—they might be higher, lower or the same. It is perfectly conceivable and I suspect, given the restricted nature of the duties, likely that the entry level will be lower. If that might be the case, how could he give us an assurance today that the performance of those people will be of a similar or a higher standard? With the best will in the world, I do not think that he has the option of giving us that guarantee today.

10:30

Dr Simpson: All I can do is reiterate the last point that I made. There will be some people who will regard being a police custody and security officer as an appropriate career to pursue, albeit that it is limited within the court function. There will be others for whom police work, with all its variation and the additional core police work, would be an appropriate job. Different people will apply for the different roles.

You are trying to mesh them together and we are trying to separate them to make the system more efficient. I do not follow what you are trying to say. You keep trying to force me into saying that the entry criteria are lower and I will not accept that. I am saying that they are different. The important thing is that when those criteria are established, they must ensure that the individuals who take the job have, or can acquire, the skills that are appropriate for that particular job. Those skills are within the current ambit of total policing but exclude certain police skills.

The Convener: In conclusion, the committee understands exactly what you are saying about the different nature of the job. The committee would appreciate more information on the type of recruitment practices that are used. We are short on information.

The committee rightly expects that there will be robust recruitment practices, albeit on a different entry level, and that police record checks will be made, of which there has been no mention. The powers that the bill will pass to those officers are extraordinary powers of restraint. I would caution against accepting the lack of information about the kind of individuals who would be recruited for these jobs. We need an indication from the Executive that chief constables will be expected to embark on robust recruitment procedures to get the right kind of people.

Dr Simpson: I understand where you are coming from, but I emphasise that there will be robust recruitment criteria because candidates must match the requirements of that particular job. It is an important job, but it is different from the totality of policing and therefore the candidates will be different. Recruitment must be robust to ensure that candidates have the skills and are capable of undertaking the work.

The point about police records is understood—I am sorry if I did not make that clear before. Candidates would be subject to checks.

The Convener: You talked about outsourcing in the early part of your statement. I want to be clear about this: there has been no discussion with the Executive that that duty would be outsourced. What is the position of the ministers? I am reasonably happy if all the issues that are raised by the committee are resolved—I do not know whether they have been at present. I would find it difficult if the Executive were saying that it is up to chief constables to outsource such an important job to a private firm. We have already discussed the robust procedures. Is "outsourcing" just a word that you are using or does it mean something?

Dr Simpson: It would be up to the chief constable but, under our amendment, they would have to get the approval of the sheriff principal, or the Lord Justice General in the case of the High Court, if they wished to go down the route of contracting out those services. It would have to be agreed; otherwise, those recruits would fall into the category of the civilian part of the police force.

The Convener: Therefore, it is possible that, with the agreement of the sheriff principal and the Lord Justice General, a private company could operate police custody and security officers who have powers of restraint. Would it not be a departure to pass those powers from public duties into the private sector? Perhaps you could send us an answer to that if you cannot answer now.

Dr Simpson: As I understand it, the bill would do no more than the 1994 act is doing in relation to the other functions that we talked about. It parallels the act and makes the two complementary.

I give an undertaking that we will examine the debate. It has been useful to understand where the committee is coming from. We will consider the debate carefully and if issues arise that we do

not feel we have clarified adequately, we will write to the convener with clarification. There are already points to consider about the analysis of the Lothian and Borders pilot that are crucial to an understanding of the realities as opposed to what we think the situation might be.

The Convener: Thank you. We will leave it there. I propose a brief break before we return to item 2.

10:35

Meeting suspended.

10:47

On resuming—

Criminal Justice (Scotland) Bill: Stage 2

The Convener: The next item of business is day 4 of stage 2 of the Criminal Justice (Scotland) Bill.

Correspondence relating to part 7 of the bill has been circulated. Any matters may be raised when we deal with the relevant section tomorrow.

After section 20

The Convener: Amendment 83 is grouped with amendments 83A, 83B and 84.

Dr Simpson: Amendments 83 and 84 create a new offence of trafficking for the purposes of sexual exploitation and extend the long title of the bill respectively.

The growth in human trafficking linked to sexual exploitation has caused worldwide concern. I know that the convener and other members have expressed concern in Parliament about trafficking. Scots law already contains a range of provisions, in statute and common law, to protect women, men and children from exploitation and abuse. Part 1 of the Criminal Law (Consolidation) (Scotland) Act 1995, for example, contains offences relating to procuring women to have sexual intercourse, to become a prostitute and to leave the UK to become a prostitute in any part of the world. The Sexual Offences (Scotland) Act 1976 also contains relevant offences.

These amendments are required to close the loophole that currently allows foreign nationals to be brought into the UK and subsequently exploited as prostitutes or otherwise in the sex industry. The amendments also prevent UK nationals and others living here from being exploited in that way. We need to modernise our law to take account of relatively recent undesirable practices and ensure that stiff penalties are available to the courts for those involved in trafficking. The indications are that organised gangs are exploiting current loopholes and limitations in the law. The new offences will penalise people directly involved in, for example, the abduction and carriage of individuals as well as those further up the organisational chain who attempt to benefit from people smuggling even if they have not been directly involved in it.

The amendments will also meet our requirements to implement the European Council framework decision on combating trafficking in human beings as far as it relates to sexual

exploitation. The framework decision requires the harmonisation of member states' laws on trafficking and the introduction of a maximum penalty of not less than eight years in specific circumstances including cases where the victim is a child or is otherwise vulnerable.

The committee will note that we have provided for a maximum penalty of 14 years. The particular circumstances of a case, including whether it involves a child, will be taken into account in sentencing.

The framework decision also covers labour exploitation. We are working with the UK Government to develop effective legislative proposals to prevent trafficking for the purposes of labour exploitation and to meet our requirements under the framework decision. Provisions on that will be included in future legislation.

Amendment 83A, in the name of Duncan Hamilton, seeks to remove the reference to "for purposes of gain" from the definition of exercising control over prostitution. The effect of that would be to remove the need for the prosecution to show that a person trafficking an individual for the purpose of involving that individual in prostitution did so for gain. I am happy to support the amendment, which would remove a barrier to the successful prosecution of those involved in trafficking. Any motive for gain would be taken into account as an aggravation and considered by the court when sentencing.

Amendment 83B, also in the name of Duncan Hamilton, seeks to increase the maximum penalty available on summary conviction from six months to two years. That amendment would not increase the maximum penalty available for trafficking, which would remain 14 years. As I have said, that penalty is substantially in excess of the minimum penalty required under the framework decision. A penalty of two years following a trial without a jury would be wholly novel. The usual maximum in such circumstances is six months. We do not support one-off derogations from the general rules on sentencing.

The Executive amendment already makes provision for serious cases by providing for a maximum sentence on indictment of 14 years. On the general point of sentencing, Sheriff McInnes is carrying out a review of summary justice. We should wait to see what, if anything, the review says about sentencing powers in summary cases before taking one-off decisions.

I move amendment 83.

Mr Hamilton: As the minister said, amendment 83A was an attempt to throw the net wider. There are a number of instances in which people might be able to use a legal loophole in that regard, in particular in relation to the definition of "gain" and the need to prove that the gain would be personal, especially if a relative was involved. The purpose of the amendment was to avoid a number of conceivable complex situations that might allow people to avoid sanction. I am delighted that the Executive will accept the amendment.

On amendment 83B, I understand what the minister says about the move from six months to two years and I appreciate the fact that Sheriff McInnes is carrying out a review of summary justice and that, therefore, perhaps this is not the occasion for the committee to make a one-off decision.

I concede some ignorance about the sentencing process. If a two-year sentence were deemed appropriate, how would that work? If the committee were satisfied that a fairly straightforward procedure for that existed, I would not feel the need to move amendment 83B.

I move amendment 83A.

The Convener: I commend the Executive for lodging amendment 83. I know that it was compelled to do that by the framework decision of 19 July, but I acknowledge the Executive's commitment to creating an offence of human trafficking on the statute book as early as possible. The minister knows about my interest in the matter, on which I have lodged a motion. I hope that that will still be debated, because although we must have criminal justice measures, we must also make people aware that that is the fastest-growing business of organised crime. It needs to be dealt with not only on a Scotland or UK-wide basis; a global response is needed, because human trafficking is generally conducted across borders.

Amendment 83 deals with human trafficking in relation to prostitution. I note what the minister said about possible further legislation to deal with human trafficking in relation to forced labour. Such trafficking of children is of particular interest to the United Nations Children's Fund. UNICEF wrote to the minister and copied its letter to the committee about its concern that we will not legislate now beyond human trafficking in relation to prostitution. It would help if the minister gave us an idea of the time scale for introducing legislation or said whether such provisions might be appropriate for stage 3.

I welcome amendment 83 and I am pleased that the Executive has accepted amendment 83A because amendment 83 could have created a loophole in the law.

Stewart Stevenson: I, too, welcome amendments 83 and 84. I also welcome Pauline McNeill's motion, which I signed. In particular, I welcome the opportunity that the Parliament has to debate and review the way in which the

European Council's framework decision is being incorporated into our law. I record my continuing disappointment that we are not always given the opportunity that such framework decisions present us with. We debated extradition last week. I acknowledge that the subject is more complex, but I hope that the minister will take every opportunity to allow the Parliament and the justice committees to review similar matters.

Bill Aitken: I, too, welcome amendment 83. To some extent, the minister anticipated my comments—I had planned to ask about non-sexual exploitation, which the minister dealt with in his statement and in his answer to a comment by the convener. However, I suggest—in as helpful a vein as possible—that the tidiest way of dealing with what is in effect slave labour is simply to add at stage 3 a provision to the section that amendment 83 will add to the bill, to cover that aspect. Reasons might exist for delaying that and for legislating separately, but I cannot see them. Perhaps the minister will enlighten us.

Dr Simpson: Three points have been made. My response to Duncan Hamilton is that if a sheriff regarded a sentence as inadequate after conviction, that sheriff could remit the case to a higher court to determine a longer sentence. McInnes will review that issue. That is the way to handle the matter.

The convener and Bill Aitken talked about labour exploitation. The time scale for dealing with the framework directive's provisions on that is two years. The only reason for not amending the bill at this juncture is that reserved employment law issues are involved. Having said that, we intend to propose to the Parliament anything that emerges from the discussions that we are having, which will be dealt with under the legislative process.

11:00

Mr Hamilton: There is not a great deal more to be said. We are all broadly agreed. I have heard what the minister has said, so I will not press the amendment on moving from six months to two years. However, I ask the committee to be mindful of that when the review comes back—it may be a perfect example of where a tougher sentencing power is appropriate. I will be long gone by then, so it will be up to the rest of the committee.

Amendment 83A agreed to.

Amendment 83B not moved.

Dr Simpson: Amendment 83 is a very important measure and its acceptance means that Scotland is fulfilling its obligations under the EU directive. I am pleased that the committee has generally welcomed it. I realise that the provision has come as an amendment, rather than being contained in the bill from stage 1, but nevertheless, the fact that the committee has generally welcomed it shows that we are all in accord.

Amendment 83, as amended, agreed to.

Section 21—Remand and committal of children and young persons

The Convener: Amendment 131 is in a group on its own.

Mr Hamilton: This amendment will be familiar to members as it formed part of the stage 1 report. Barnardo's and Save the Children raised concerns about the appropriateness of sending young people who should perhaps go to secure accommodation to a young offenders institution or inappropriate institution.

If the committee is to accept that power, the question is how it can be made most appropriate. The amendment seeks to insert the requirement that adequate and separate accommodation be made available to avoid the situation where, in common parlance, the academy of crime is encouraged. It reflects the idea that people who are younger and at a more impressionable age will be unduly influenced by those who are more advanced and mature and who perhaps have been involved in more serious offences.

Amendment 131 seeks to provide as much protection as possible, but it goes right to the heart of the matter about the absence of an appropriate number of secure accommodation places, a concern that has been raised with the committee before.

The provision was mentioned in the stage 1 report, but I wanted the committee to have the opportunity to insert it in the bill at this stage.

I move amendment 131.

Scott Barrie (Dunfermline West) (Lab): I have a great deal of sympathy with what amendment 131 seeks to do. From my own experience, I remember when under-16s had to be held in Saughton prison because of a lack of alternative accommodation. Although it was explained that the situation was not that bad because they were being held in the hospital wing, that did not seem to be a particularly appropriate response, especially when there are also responsibilities to ensure that under-16s are adequately educated. An adult prison is clearly not the place to do that.

The sentiments of amendment 131 are worthy of consideration given that, if we are serious about diverting young people away from a life of crime, it is important to get it right at the start. Examination of the offending behaviour of adults will too often show that it started during mid-adolescence, and that the actions taken certainly exacerbated, rather than reduced, the propensity for further offending in the future.

The Convener: I agree that amendment 131 is helpful. I support what both justice committees have said about secure accommodation for young people. I presume that the minister will mention in his reply that there is a commitment from the Executive to consider what is appropriate accommodation. I have always felt very strongly that some secure accommodation could be freed up if children were placed in more appropriate accommodation in the first place.

Having said that, I still support what we said when we were considering the budget. At the moment, there does not seem to be enough accommodation for young people, and we feel that that would be better managed by the justice department, so that whatever demand existed could be met by that department's resources. Amendment 131 is certainly a helpful amendment. Without it, we would not have had a chance at stage 2 to discuss that aspect of the bill.

Dr Simpson: As you know, section 21 seeks to change the law to allow young persons under 21 to be remanded in a young offenders institution. At present, they have to be remanded in a prison such as Saughton, as Scott Barrie has said. They may be detained in a hospital wing, but even that is not very suitable.

Amendment 131 seeks to change the law to ensure that young people under the age of 21 may be remanded in a young offenders institution only if the person so remanded can be housed in adequate accommodation separate from convicted young offenders. The prison rules already require all prisoners to be held in adequate accommodation. They also require untried and convicted prisoners to be kept separate, so far as that is reasonably practicable. The prison rules will apply to all young persons remanded to a prison or young offenders institution.

The rules provide for the physical and personal environment of all prisoners and make provision for the standard of accommodation that must be provided, together with the provision of health care, food, education, recreation and facilities for visits by family, friends and legal advisers. In particular, rule 16(2) states:

"Each cell or room used to accommodate prisoners, and any other parts of a prison in which prisoners are otherwise kept, or to which they ordinarily have access, shall be of an adequate size and be lighted, heated, ventilated and furnished as is necessary for the health and safety of prisoners".

The second aspect of amendment 131 is that, in a young offenders institution, the accommodation for untried young persons is to be separate from that for convicted young offenders. Rule 14 of the prison rules states:

"The Governor shall, so far as reasonably practicable, keep civil prisoners, untried prisoners and young prisoners apart from other categories of prisoners."

In view of that rule, untried prisoners will not be accommodated in the same cell as a convicted prisoner. There may have to be some contact between untried and convicted young persons in a YOI—in educational classes, for example. If Mr Hamilton's amendment prohibited such contact, then the untried person would have to be held in a prison, and that would often not be in the best interests of the young person.

I hope that, in light of the current legislative provisions, Mr Hamilton will be persuaded to withdraw his amendment.

I should add that this debate should be seen in the context of sorting out a number of issues. Members will be aware that the Executive is also trying to sort out the plans relating to secure accommodation, both with the provision of additional places and with the separation of young men and young women. As Scott Barrie has described from his own experience, we cannot currently hold those young people in a YOI, but have to hold them in an adult prison, which is really unsatisfactory.

The requirement for a practicable provision is evidenced by the 28 per cent increase in remand over the past year. Planning for that is extremely difficult, but we are trying to take measures to deal with it. If we had a legal requirement that meant that a young person could not be held in a YOI unless the conditions imposed by Mr Hamilton's amendment were met, that young person would have to go to an adult prison, which would be even less satisfactory.

The intentions of the committee are clear, as are the intentions of the Executive. All that we are asking is that there should be some scope for dealing with the sort of circumstances that I have described, which occurred last year.

Mr Hamilton: The minister's answers are interesting but I do not find them wholly convincing. He finished with a justification of the phrase

"so far as reasonably practicable"

in the prison rules. He said that, if amendment 131 were passed, people who could not be held or for whom the right facilities did not exist would be sent back to prison. Presumably that is only because the Executive is not providing appropriate accommodation in other areas. The minister seemed to suggest that amendment 131 would somehow have an impact on the educational aspect of custody. I did not understand that, but perhaps he could repeat what he said on that point.

Dr Simpson: I was saying that if amendment 131 is passed, untried persons might need to be held in a prison. Under the amendment, there

would be an absolute requirement to keep different categories of prisoner separate in the prison at all times. If accepted, the amendment would mean that there would have to be total separation within a YOI establishment, which the SPS could not achieve. Therefore, if the amendment were passed, it would undermine the section and the young people would have to return to prison, which is what we are trying to avoid.

Mr Hamilton: I dealt with that point. I also do not see why the amendment would mean that those prisoners would have to be kept apart at all times. It is about accommodation; the amendment is not saying that people could not be placed together in any format. The prisoners would be supervised. I do not find the minister's argument hugely convincing.

I also did not understand the minister's answer to the question about gradations of crime. He said that people who were untried would, as far as possible, not be kept in the same context as people who have already been convicted. I presume that those guidelines do not apply to different gradations of crime, and that people who have committed a minor offence are not kept apart from those who have committed a much more serious offence.

The bottom line is that we have an obligation to try to help people to avoid reoffending and to move down the chain. We have identified the problem and what we should do about it, so to ignore this measure strikes me as somewhat odd. Could the minister say how many people—this year or next year—will be in the inappropriate setting that we are talking about? That would help us to know whether we are talking about a handful of people or a lot more.

Dr Simpson: I can cite the figures for 2001, which are in table 16 of our published statistical bulletin for that year. In 2001, there were 19 unruly certificate remands, involving 17 males and 2 females. Of those, one was aged 14 and 11 were aged 15. That indicates part of the situation. We will communicate with you on other figures. The number of untried males in YOIs as of Friday 22 November 2002 was 215. There were 5 untried females. It must be remembered that, although we are talking about trying to prevent reoffending, it has not been proven yet that those people have offended.

The Convener: Have you finished, Duncan?

Mr Hamilton: I think that I have, convener. I want to have a wee think about that.

The Convener: Well, you do not have long. I have to ask you whether you intend to press or withdraw amendment 131.

Mr Hamilton: I shall press the amendment.

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

ABSTENTIONS

Barrie, Scott (Dunfermline West) (Lab)

The Convener: The result of the division is: For 2, Against 4, Abstentions 1.

Amendment 131 disagreed to.

Section 21 agreed to.

Sections 22 to 24 agreed to.

After section 24

The Convener: Amendment 73 is grouped on its own.

Bill Aitken: To some extent, amendment 73 is a probing amendment, as we have dealt with the issue in the previous group of amendments. I am seeking clarification of whether, in the review of summary procedure that is being carried out by the committee under Sheriff Principal John McInnes, the question of maximum sentencing in summary matters is being considered. If it is not, it should be.

I would be the last to propose any importation of English law into our much superior Scottish system, but there seems to be an inconsistency. Down south, one can get 12 months' imprisonment from, literally, the butcher, baker and candlestickmaker, while qualified sheriffs in Scotland, some of whom may be Queen's counsel, are restricted to sentencing for three months, or six months in the case of an offender with analogous previous convictions.

Part of the thinking behind the amendment surrounds the fact that the solemn courts are decidedly overworked at present. If some indictment cases at the lower end of the scale could be moved from the jury courts and taken in the summary courts, that might save time and resources. However, it is clear that the matter should be considered. I wait to hear from the minister whether it is part of McInnes's deliberation, because I have been unable to establish that from my own research.

I move amendment 73.

11:15

The Convener: I have sympathy with the amendment, as we should examine what processes exist to shift around the balance of cases within the criminal justice system. However, that should be left to the review by Sheriff McInnes. For the committee's information, if the summary courts were to take more business, that might relate in some way to our inquiry into the Crown Office and Procurator Fiscal Service. We have uncovered what we think is a heavy work load for procurators fiscal in many cases in the summary courts, and we are looking at ways in which that work load can be alleviated. I note that as a matter of interest for future changes.

Dr Simpson: Amendment 73 replicates section 13(2)(b) of the Crime and Punishment (Scotland) Act 1997. That provision has not been commenced because of our concerns about measures that, taken in isolation, could lead to a further increase in prison population. However, as members will know, we have set up a committee, chaired by Sheriff Principal McInnes, which will examine all aspects of summary justice, including the important matter of dividing boundaries for sentencing powers between the different levels of the criminal court. Sentencing powers cannot be taken in isolation, but must be considered in the context of the structure of the criminal justice system and, in particular, the types of cases that should be dealt with at each level of the criminal courts.

We must also bear in mind the need to distribute work sensibly between the summary and solemn courts. That is the context in which the summary justice review committee is considering sentencing powers. If the committee recommends that there should be a change, we will give it serious consideration. However, as the terms of the amendment are already enacted, I invite Bill Aitken to withdraw it.

Bill Aitken: I recall that there are summary powers under the Police (Scotland) Act 1967 that enable judges under summary jurisdiction to impose sentences in excess of the current maximum of six months. That has been the case for some time. Nevertheless, there is a real issue. With respect, I find the minister's argument that the effect of this would be to increase the prison population slightly spurious. In some respects, some of us might think that increasing the prison population might be desirable. Others might take a contrary view, but the fact of the matter is that if someone is due to be sent to prison, they should be sent to prison. Whether the court that imposes that sentence is set up on a solemn or summary basis should not be an inhibiting factor.

We are likely to get a fairly early indication from the review group on what action is likely to be taken. On that basis, and despite the fact that the minister did not confirm that the matter would be part of the review group's consideration, I will, for the moment, seek the committee's consent to withdraw the amendment.

Amendment 73, by agreement, withdrawn.

Sections 25 and 26 agreed to.

Section 27—Release on licence: life prisoners

The Convener: Amendment 98 is in a group on its own.

Dr Simpson: Amendment 98 deals with the timing of parole hearings for life prisoners who are eligible to be considered for release from the life sentence but who are also serving another sentence from which they are not eligible for release or consideration for release. The normal situation for those serving life sentences is that their case will be reviewed by the Parole Board for Scotland once they have served the punishment part and, if their release is not directed, at maximum intervals of two years thereafter.

Amendment 98 seeks to amend section 27 of the bill so as to remove a discretion that is given to the Parole Board. The bill currently provides that in specific circumstances, where what I have just described as the normal situation is not to apply, the Parole Board has the discretion to fix or alter the date on which a parole hearing will take place. Broadly, those circumstances are whenever the person would not, by virtue of another sentence, be eligible for release from custody on the date fixed, or to be fixed, for the next parole hearing. In such situations, the Parole Board may decide to fix another date for the hearing, which will be a date on which the prisoner is eligible for release from custody.

Amendment 98 simply seeks to remove that discretion and to make the fixing of a new date mandatory in those situations. It also specifies when the rearranged hearing is to take place. We consider that that will give greater certainty and predictability than would be the case under the existing provision in the bill.

I move amendment 98.

Amendment 98 agreed to.

Section 27, as amended, agreed to.

After section 27

The Convener: Amendment 99 is in a group on its own.

Dr Simpson: Amendment 99 seeks to introduce a new section into the bill to amend section 3A of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which deals with the re-release of

prisoners who had been released on licence from extended sentences but were then recalled to custody for breach of the licence conditions. Some of the changes are consequential or minor. However, there are two substantial provisions.

The first, in proposed paragraph (b), will mean that those who are recalled following release from an extended sentence, and who then receive a life sentence, will no longer be released under section 3A of the 1993 act, but under section 2, which deals with lifers. One effect of that is that lifers will not be eligible to be considered for release until they have served the punishment part of the life sentence, whereas at present the Parole Board may be required annually to consider their case for release from the extended sentence, despite the subsequent imposition of the life sentence.

Secondly, proposed paragraph (d) provides for cases where a recalled extended-sentence prisoner receives another determinate sentence in the interval between the Scottish ministers referring his or her case to the Parole Board and the Parole Board's consideration of it. That is typically a period of about seven weeks. At present, the Parole Board may consider the case, despite the other sentence. Under the proposed provision, the Parole Board will not consider the case until a further referral is made. That will not be until the person is eligible for release from the other sentence.

I move amendment 99.

Amendment 99 agreed to.

The Convener: Amendment 74 is in a group on its own.

Bill Aitken: Amendment 74 seeks to clarify—indeed remove—the current farce with regard to the early release of short-term and long-term prisoners. At present, the law allows for 50 per cent remission in sentences of up to four years and one third remission for sentences that are longer. I believe that sentencing policies in this country are dishonest. Amendment 74 seeks to make them more honest and transparent, to allow the public to see exactly what is going on.

When someone is the victim of a serious assault, for example, and the sentence intoned by the judge is six years, that person will assume that the perpetrator of the assault will be away for six years. Imagine the concern that is caused to the victim when, three years later, he or she meets their assailant in the street. That is not a particularly pleasant situation. We must be much more honest in seeking to ensure that justice is carried out.

The minister will be aware, given the replies to questions that I have asked, that remission is not the disciplinary tool that it once was in prison administration. For those who have committed offences or have misconducted themselves in prison, the loss of remission in recent times has been negligible, if it has happened at all. I know that there are European convention on human rights complications in respect of the matter, which makes it all the more important that we recognise the realities of the situation. Remission should not be a matter of course, as it is now. It should be earned and restricted to a sixth of a sentence.

I assume that the minister's objection to amendment 74 will be that it would increase the prison population, but that might not be the case. Understandably, the judiciary would reduce sentences to take account of the fact that remission was restricted and I have no objection to that. The effect on the prison population would be minimal, but the effect on wider society would be considerable, because people would know that a sentence passed by a judge would be the sentence that an individual would serve. That is a much more up-front and honest situation, which would commend itself to wider society.

I move amendment 74.

Stewart Stevenson: With amendment 74, Bill Aitken seeks to confuse the wider public. Parole is not the end of a sentence; it the change of disposition from incarceration to other provisions after a prisoner is released on licence. In appropriate cases, supervised parole has a valuable part to play in ensuring that people are not unnecessarily kept in prison and denied the opportunity to reintegrate themselves into and contribute to society.

If I have misunderstood the bill and amendment 74, I am sure that Bill Aitken or the minister will put me right. As I understand it, section 15 of the bill, which gives victims new rights over the notification of release dates and the opportunity to contribute to the parole process, would be affected by amendment 74. There may be times when a victim would support parole being given to a prisoner who had served part of their sentence—I know of some such cases. Therefore, unless I hear compelling arguments and it is explained to me, as a legal layman, that I have misunderstood amendment 74, I am unlikely to support it.

Scott Barrie: Stewart Stevenson may have misunderstood the purpose of amendment 74, but he should not use that as a reason to change his mind about supporting it.

I had two difficulties with Bill Aitken's explanation of amendment 74. He seemed to suggest that the judiciary is unaware of current practice and, therefore, is not taking it into account when sentencing. He then said that he assumed that, if remission rules were changed, the judiciary would decrease sentences. However, that argument

could be turned around to say that the judiciary is not increasing sentences now because it knows that, if people behave in prison, they are likely to get remission of up to half or two thirds of their sentences.

I think that Bill Aitken is slightly wrong in one respect. Early release can be used as a management tool in our prisons. The fact that someone has the opportunity to be freed—and indeed expects to be freed—before the end of the maximum term of their sentence encourages better behaviour in prison. We should bear in mind the fact that, although prison terms in the United States are far longer than prison terms in this country, the record of prison disturbance is far worse there.

I was going to make another point, convener, but I have forgotten what it was. I will stop there.

11:30

The Convener: You made a number of good points.

Although I do not support amendment 74, I have some sympathy with what Bill Aitken is trying to do. Some committee members have been discussing these issues week in and week out for two and a half years. As a result, we are justice anoraks and the management tools of the prison service are known to us.

However, there is a question about the general public's understanding of the sentencing policy of Scottish courts. I am not sure that the ordinary person thinks about matters such as remission or what goes on inside prison. People are surprised to find out that someone sentenced to seven years for a serious crime might serve only half that term. I want to use the debate about amendment 74 to discuss that element of confusion.

I support the Executive's approach to alternatives to custody, because I believe that it is trying to address problems at the lower tariff end of sentencing. Some people are locked up when they do not need to be. However, when it comes to serious crime, I take a more hard-line, Bill Aitken approach to law and order. Although I do not support amendment 74, I feel that elements of the sentencing policy need to be reviewed in light of people's understanding of the system.

Bill Aitken is probably right to claim that, when judges determine sentences, some of them must take the 50 per cent remission into account. As a result, they would probably understand it if we changed the proportion of the sentence to be served before remission from a half to five sixths.

As I have said, I will not support amendment 74. However, it is worth exploring the general issue of whether the public understand sentencing policy in relation to serious crime.

Mr Alasdair Morrison (Western Isles) (Lab): Speaking as someone who is definitely not a justice anorak, I would appreciate it if the minister, when he opposes amendment 74, could explain why there is an uneasiness about sentencing policy, why some people believe that the whole process is flawed and why the perception exists that the sentences that are being handed down are not being fulfilled. As I say, I hope that he can explain those matters to someone who is not a justice anorak.

The Convener: I look forward to that.

Mr Hamilton: I like Mr Morrison's assumption that the minister will definitely reject amendment 74. I think that the minister has been open minded so far.

I disagree with Stewart Stevenson, because I have a degree of sympathy with amendment 74. I agree with the convener's comments and seek an assurance that the pressure for early release is not driven by overcrowding problems in prisons. I see the minister shaking his head. I hope that he will take this opportunity to state clearly that there is no evidence that that is happening.

Communities are concerned that serious offenders are being released earlier than they should be. Indeed, given that there is overcrowding in prisons, that is an easy conclusion to reach. If the minister can prove that that conclusion is erroneous, so be it. The perception must still be addressed.

I am also sympathetic to the proposal that the proportion of the sentence served before remission is granted must be increased, simply because we are now in a guessing game. It is a matter of concern if a judge who passes down a sentence assumes that a large proportion of it will not be served. If we want to win back public confidence in the sentencing process, a higher proportion of a lower sentence might have to be served, but at least there would be transparency and consistency in the process, which I think people would consider to have some merit.

I would like Bill Aitken to clarify one aspect of his proposal. Does he expect that, if amendment 74 were agreed to, a higher proportion of a lower sentence would be served? In other words, the same amount of time might be served, but the expectations of victims and of the public would be managed in a more compassionate way.

Dr Simpson: Amendment 74 seeks to change the law governing the release of short-term and long-term prisoners by partially reintroducing changes in the law that were made in the Crime and Punishment (Scotland) Act 1997 by the Conservative Administration but were never brought into force and were repealed by the Labour Administration in the Crime and Disorder

Act 1998. The measures commanded little support when they were proposed in the bill that led to the 1997 act.

Amendment 74 would create some pretty blatant anomalies. As the committee is aware, long-term prisoners are eligible to be released on parole at the halfway point of sentence only if that is recommended by the Parole Board for Scotland; otherwise they are eligible two thirds of the way through their sentence. That means, for example, that a prisoner sentenced to four years may be released on parole after serving two years. Under amendment 74, a short-term prisoner sentenced to three years and six months would have no prospect of release, other than on compassionate grounds, until he or she had served two years and 11 months. A regime that created that sort of anomaly would probably be regarded as irrational. It would also create severe difficulties for the management of prisoners.

The amendment would also mean that long-term prisoners who are not released on parole would be subject to compulsory supervision in the community for a much shorter period. In the case of someone sentenced to four years, the period involved would be only eight months, as opposed to the present 16 months. The period during which the supervising social worker could assist the person's resettlement in the community and work with them to address their offending behaviour would be much reduced. I believe that that would be detrimental to helping the person to turn their back on crime and lead a law-abiding life.

I could go on. I am a semi-qualified anorak in terms of justice and sentencing policy. I take Bill Aitken's point that the change that has occurred since the Parliament was set up has meant the loss of what were called ADAs—additional days added. When we dealt with ECHR compliance, we introduced measures to deal with any additional days added. We dealt with the issue retrospectively earlier this year, so ADAs are no longer used in the prison service as a management tool.

However, it is also important to recognise that, if someone is sentenced to, say, two years, they are automatically released after one year without a licence condition. However, if they reoffend in the remaining year of their sentence, they will, when a new sentence is passed, serve whatever remains of the existing sentence. In a sense, there is a sort of licence and pressure on the individual because, if they reoffend, the system will be tougher on them the second time around. Removing that pressure is not a wise move.

The Parole Board for Scotland—which makes the decision as to whether to release long-term prisoners halfway through their sentence, as opposed to two thirds of the way through, when they are automatically eligible for release—makes the right decision in four out of five cases. Out of the 1,700 cases that were studied in the assessment report published in May 2002, a total of 897 prisoners were identified as meeting the sample criteria. The Parole Board for Scotland is pretty effective in deciding whether it is appropriate to release prisoners at the halfway point with licence conditions and to test them in the community. Removing that ability by having a compulsory five-sixths rule would be detrimental to the community in the long term.

The amendment would lead to an increase in the prison population. I take the point that Duncan Hamilton makes, but I reassure him that the prisons will take anyone who is sentenced under the law and retain them until the law decides that they are fit to come out. That is not a matter for the prison service to judge. People are sentenced and taken in accordingly and the amendment would lead to worse overcrowding than we have at the moment—mainly, I have to say, because of the 28 per cent increase in the number of remand prisoners in the past year. We want the committee to reject the amendment, but not because of prison population levels. We might have to build more prisons, but that is something that we would do if necessary.

Bill Aitken: There have been some interesting contributions to the debate. With regard to someone offending in the course of an unexpired term, the minister is quite correct to say that the courts would have the power to order the unexpired period of that sentence to be served, but that is discretionary, not, as he seemed to suggest, mandatory. It is also my recollection that there is a minimum period before parole regulations kick in. As I recollect, there is a minimum period of four years in prison. I might be wrong about that and I am sure that someone will correct me if I am. It is important to underline the discretionary factor that attaches to any unexpired period of sentence.

I thought that Stewart Stevenson was going to totally misdirect himself on the question of parole, but he did not. He was partially incorrect, in that the issue is about the length of the sentence. In the vast majority of custodial sentences imposed by the court, parole would not come into the equation at all.

Scott Barrie asked whether remission, or loss of remission, might be a management tool. I have to say that I doubt the value of such a tool because, basically and quite blatantly, remission is automatic. It does not seem to me that the loss of remission is being used as a management tool at all nowadays, as the minister seemed to confirm.

You said, convener, that we are justice anoraks, because we consider these matters week in, week

out. I felt like interrupting you to point out that we actually consider them twice weekly. However, I agree with a number of the points that you made.

Alasdair Morrison asked about public perceptions. The truth of the matter is that we are talking not about perceptions, but about facts. The public are seriously confused by the fact that the sentence pronounced by a judge is not the time that a prisoner spends in jail. That is causing serious public concern and dissatisfaction and it is leading to a loss of confidence in the judicial process, as Duncan Hamilton suggested.

If amendment 74 were agreed to, I expect that judges—particularly those who are used to imposing high-tariff sentences—would take into consideration the fact that remission had been significantly reduced. I think that that would result in the imposition of shorter sentences than are imposed at present. Basic honesty would then apply and—I say this to Alasdair Morrison—the public could be confident that the sentence pronounced would, apart from a sixth of it, be the sentence that the individual served.

Sometimes the public's view is that sentences are not harsh enough, but I am convinced that members of the judiciary can resist such pressures. I feel that the measure that the amendment proposes would be a useful additional tool and should be included in the bill. I intend to press the amendment.

The Convener: The question is, that amendment 74 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)
Lyon, George (Argyll and Bute) (LD)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)

ABSTENTIONS

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

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

Amendment 74 disagreed to.

Section 28—Release etc under 1993 Act of prisoner serving consecutive or concurrent offence and non-offence terms

The Convener: Amendment 100 is in a group on its own.

11:45

Dr Simpson: Section 28 will amend the Prisoners and Criminal Proceedings (Scotland) Act 1993 in relation to the meaning of the terms "wholly concurrent" and "partly concurrent". It will also change the way in which release from offence and non-offence terms will be calculated. A non-offence term is one that is imposed for non-payment of a fine or contempt of court. The amendment is designed to remove doubt about the order in which offence and non-offence terms are to be served.

Section 28 ensures that the early-release provisions will apply separately to each term and that a prisoner will be released from custody only when the early-release requirements of the 1993 act that apply to the offence term and the non-offence term have both been satisfied.

The policy behind section 28 has not changed between stages 1 and 2. However, several ambiguities in the original drafting required clarification. Following further consideration, a simpler way of achieving the policy has been found. The original version of section 28(3) of the bill is therefore being replaced.

I move amendment 100.

Amendment 100 agreed to.

Section 28, as amended, agreed to.

Section 29 agreed to.

Section 30—Suspension of conditions and revocation of licences under 1989 Act

The Convener: Amendment 101 is grouped with amendments 102 to 106.

Dr Simpson: The amendments are minor and technical amendments to sections 30 and 31. Identical amendments are made to each section. Amendments 101, 102, 104 and 105 simply modify the existing provisions to cover more clearly all circumstances in which certain licence conditions will be suspended and the duration of such suspension. The policy remains unchanged.

Amendments 103 and 106 will simply achieve consistency with the terminology currently used in the statutes.

I move amendment 101.

Amendment 101 agreed to.

Amendments 102 and 103 moved—[Dr Richard Simpson]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Suspension of licence conditions under 1993 Act

Amendments 104 to 106 moved—[Dr Richard Simpson]—and agreed to.

The Convener: Amendment 107 is grouped with amendment 113.

Dr Simpson: Section 31 provides that, where a person is subject to a licence under the Prisoners and Criminal Proceedings (Scotland) Act 1993 and is in custody, certain conditions of the licence will be suspended for the period of imprisonment. The conditions of the licence will automatically come back into full force on the person's release, if the licence is still in force at that time. If such a person were in prison because he or she was serving a sentence from which they would otherwise be released on licence, such as a sentence of four years or more or a short-term sentence where release was on compassionate grounds, that would result in the person being subject to two licences simultaneously. The consistent policy behind the 1993 act is that a person is never to be subject to more than one licence at any one time. Amendment 107 provides that that policy continues and that, in a situation such as I have described, the person will be released on a single licence.

Amendment 113 is a minor consequential amendment to apply new section 12B of the 1993 act to children sentenced under solemn proceedings.

I move amendment 107.

Amendment 107 agreed to.

Section 31, as amended, agreed to.

Section 32—Revocation of licences under 1993 Act

The Convener: Amendment 108 is grouped with amendments 109 to 112.

Dr Simpson: Amendment 108 is consequential on the other provisions of section 32. Amendment 109 corrects an omission. Amendment 110 consolidates the provisions relating to short-term prisoners, so that they are covered by a single subsection. Amendments 111 and 112 consolidate the existing provisions without altering their effect.

I move amendment 108.

Amendment 108 agreed to.

Amendments 109 to 112 moved—[Dr Richard Simpson]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

Section 34—Special provision in relation to children

Amendment 113 moved—[Dr Richard Simpson]—and agreed to.

Section 34, as amended, agreed to.

After section 34

The Convener: Amendment 114 is in a group on its own.

Dr Simpson: Amendment 114 is a technical amendment. For all its length and apparent complexity, it seeks to achieve the straightforward purpose of giving effect to Parliament's intentions on how the new arrangements governing the release of prisoners that were introduced by the Convention Rights (Compliance) (Scotland) Act 2001 should apply to certain discretionary life prisoners and under-18 murderers.

Scrutiny of the relevant provisions has revealed that amendments to the 2001 act are needed to ensure that the new arrangements operate in the way that was intended in respect of those discretionary life prisoners and under-18 murderers who it has been found are not clearly covered by the transitional provisions contained in the 2001 act. Amendment 114 also deals with under-18 murderers who are transferred to Scotland and who are covered by the transitional provisions but not in the way that was intended.

Amendment 114 will do no more than regularise a position that it was thought had been achieved by the Convention Rights (Compliance) (Scotland) Act 2001. For that reason, and because the possible gaps that we have identified are technical, I suggest that, if committee members wish a more detailed explanation of the issues that have been identified, I will write to them.

I move amendment 114.

The Convener: I am sure that the committee will consider whether it wants a written explanation.

Bill Aitken: It would be useful to have a written explanation.

Dr Simpson: I can give the committee an explanation now, if members would like that. It is three and a half to four pages long.

Bill Aitken: We will accept what you say today, minister, with the caveat that, if anything is found to be wrong, we might revisit the matter at stage 3.

Dr Simpson: We will write to the committee about the amendment.

The Convener: You have offered and we have accepted.

Amendment 114 agreed to.

Section 35 agreed to.

After section 35

Amendment 30 moved—[Dr Richard Simpson]—and agreed to.

The Convener: We said that we would not go beyond part 4 of the bill today and we have reached the end of part 4. Tomorrow, we shall deal with part 7. I thank the minister and his officials for joining us. We will see you in the same place tomorrow.

Scott Barrie: I know that I ask this at the end of each meeting, but is Tuesday's meeting in the afternoon?

Irene Fleming (Clerk): Yes.

Mr Morrison: Can I have a reminder of the schedule?

Irene Fleming: The week after next, the meeting is on Tuesday morning. The week after that, it is on Wednesday morning. There is only one more Tuesday morning meeting.

Mr Morrison: Tuesday mornings are causing me difficulties. I would be happy to meet on Monday afternoons because I am here on Monday afternoons.

The Convener: We can hold a brief conversation after I close the meeting to discuss practical arrangements. I know that there is a heavy duty on committee members, particularly George Lyon and Alasdair Morrison, given their travel arrangements.

Meeting closed at 11:54.

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