JUSTICE 2 COMMITTEE

Wednesday 4 December 2002
(*Morning*)

Session 1

£5.00

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

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JUSTICE 2 COMMITTEE
47th 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:

Hugh Henry (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 4 December 2002

(*Morning*)

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

The Convener (Pauline McNeill): Good morning, and welcome to the 47th meeting this year of the Justice 2 Committee. As usual, I ask members to switch off their mobile phones and anything else that makes a noise.

I have received apologies from Alasdair Morrison. I welcome Sylvia Jackson, who is here as a substitute. Sylvia, I have to ask you whether you have any interests to declare.

Dr Sylvia Jackson (Stirling) (Lab): I have no more interests than have been declared in the register of members' interests.

The Convener: Thank you.

Criminal Justice (Scotland) Bill: Stage 2

The Convener: I would like to raise one issue with the committee before we move on. I want to give members an opportunity to reflect on yesterday's proceedings in relation to Donald Gorrie's amendment on sectarianism. I detected the feeling that members wanted more information or a further chance to examine the amendment.

I would like to test some of John McLean's assertions with the Procurator Fiscal Service and the Sheriffs Association. Is it true that reference to sectarianism as an act is included in the narrative? When sentencing, do sheriffs and judges have in mind the possibility that there might have been an aggravation? We are supposed to be debating the subject next Tuesday, but we have been put in a difficult position because Donald Gorrie's amendment needs to be tested against good practical law. We have the opportunity to take written evidence, if the committee feels that that is sufficient, but we should decide what to do as a committee.

George Lyon (Argyll and Bute) (LD): I fully concur with your remarks, convener. The evidence from John McLean raised many doubts in my mind about whether the amendment proposed by Donald Gorrie would add to the bill in practice. We need further information and clarification on the technical issues that were raised. I wonder whether we could invite the Procurator Fiscal Service and the Sheriffs Association to give oral evidence. I do not think that written evidence is good enough. I would prefer us to have a short session with those two organisations.

Bill Aitken (Glasgow) (Con): That is my view, too. I do not think that the evidence session need be long. It should hang around only the issue of whether the fiscals would include reference to alleged sectarian behaviour in the terms of the complaints and whether sheriffs would reflect the sectarian aspect of a breach of the peace or assault in their sentencing. That could be ascertained in a reasonably short time.

The Convener: There seems to be a view that we need to take oral evidence. The only way in which that can be done is if we begin our meeting next Tuesday with an evidence session with the Crown Office and Procurator Fiscal Service and the Sheriffs Association, if they are available. We would then proceed to our stage 2 consideration after that.

If the committee is content to leave that with Bill Aitken, as deputy convener, and me, we will let members know as quickly as possible what we have secured. Are we agreed?

Members *indicated agreement*.

The Convener: I welcome the new minister, Hugh Henry, and his officials. I am sure that members will be kind to you this morning, minister—at least for the first 10 minutes. This is our sixth stage 2 meeting on the Criminal Justice (Scotland) Bill. Members should have the marshalled list in front of them.

Sections 45 to 47 agreed to.

After section 47

The Convener: Amendment 24 is in a group on its own.

10:00

The Deputy Minister for Justice (Hugh Henry): Thank you for your welcome, convener.

Unfortunately, many criminals are becoming increasingly sophisticated and willing to operate across borders. Their activities can, of course, be diverse, from narcotics smuggling and people trafficking to laundering the proceeds of their crime. Although the United Kingdom has not opted into the relaxation of border controls provided for by the Schengen agreement, the rest of the European Union did so under the 1997 treaty of Amsterdam. The EU is therefore becoming more than simply an area of free trade. There is much greater freedom of movement. That unfortunately applies to criminals and their activities as well, including those who might be based in the UK or who might be tempted to ply their trade here with a base in another country.

The framework decision on counterfeiting the euro makes a small but important contribution to the fight against financial crime, which is often related to other serious criminal activities. As the committee will be aware, the framework decision requires that, among other things, member states should take into account convictions in courts throughout the EU in relation to counterfeiting the euro and should use that information in domestic procedure. Members may be aware that the Criminal Procedure (Scotland) Act 1995 provides that only previous convictions given out by courts in the UK may be considered by the court in sentencing. Therefore, in order to comply with the international obligations of the framework decision, an amendment to the 1995 act is necessary. That is what amendment 24 will do.

The amendment meets our obligations under the framework decision. It makes sense to amend at the same time the general restriction that prevents the use of foreign previous convictions in Scotland, so that, beyond the framework decision on counterfeiting the euro, our courts can take into account any conviction given by a court in the EU. It seems likely that future developments at EU level will increasingly require that sort of co-operation.

Amendment 24 has been framed to make similar provision to that found in domestic procedure. It alters the definition of previous conviction to include convictions in member states of the EU. It also makes provision similar to section 285 of the 1995 act to enable proof of previous convictions when they are disputed.

Proof of foreign convictions is by means of production of evidence of the conviction and by showing that the fingerprints of the accused and the convicted person are the same. A certificate bearing the official seal of a minister of the foreign state, including certified copies of fingerprints of the convicted person, shall be sufficient evidence of the conviction without having to be sworn by the minister of the foreign state. However, the provisions of section 285(9) of the 1995 act will also apply, so that that method of proof is additional to any other method of proving the conviction.

Members may be aware that previous convictions are usually brought to the attention of the court, where appropriate, post conviction at the sentencing stage. That is when the prosecutor may bring a previous conviction to the attention of the court and the court may take it into account in its decision.

I move amendment 24.

Scott Barrie (Dunfermline West) (Lab): I have a couple of questions for the minister. One is on the proof of previous conviction by production of a court record and fingerprints. What would the exact procedure be? I am not entirely clear, given our procedures, whether we could easily replicate what is proposed. How could a piece of paper and fingerprints be used? What are the practicalities?

My other question extends the issue that the minister addressed about convictions in other member states of the European Union. Scotland is not a small island; we are not totally insular. People have been returned from parts of the world outwith the EU to Scotland. There have been some high-profile cases recently, such as the one involving Canada. We are considering the issue from an EU perspective, but should we not also be putting it in a worldwide perspective?

Hugh Henry: I will answer the second question. Do I have the convener's permission to let the officials answer the first question?

The Convener: The problem is that, because we are engaged in a debate, the officials are not really allowed to speak.

Hugh Henry: In that case, I will answer the second question first.

The Convener: Before you start, minister, I point out that I always allow ministers the opportunity to discuss things with their officials, so do not worry about taking the time to do that.

Hugh Henry: Thank you. I will still start with the second point, as the officials consult their notes. We are concerned that we are already going beyond what we are required to do under our international obligations by extending the provision to cover all previous convictions in the European Union. We are not simply limiting the provision to the counterfeiting of the euro.

Because the procedure is new for Scottish courts, we would be more content to give the measure a chance to bed down and see how it works in practice. We are confident that there will not be too much difficulty with EU partner states. We have established and are developing arrangements for mutual legal assistance and the exchange of information.

Scott Barrie is correct to raise the wider concern about the fact that a number of people with serious convictions have recently returned to Scotland and that some of those convictions might not be taken into account by the courts. There is no reason in principle why the provisions should not extend more widely, although I emphasise that that would need to remain a matter of discretion for the Crown Office.

We think that such an extension of the existing powers would require further consultation with practitioners. We would need to ascertain their views and find out whether they would envisage any difficulties. We are not blind to the prospect of a further extension, which we have been considering. We have a number of options. If our deliberations can be concluded in time, we could return to the committee before stage 3 and indicate where we are. If we are not in a position to do anything at that point, there may be an opportunity to address the matter in the coming year or 18 months with other legislation. I reiterate that Scott Barrie's point is a valid and legitimate concern.

The first point related to proof. According to amendment 24, the certificate that will require to be produced would bear

"the official seal of a Minister of the State in question"

and would

"contain particulars relating to a conviction extracted from the criminal records of that State … including copies of fingerprints".

Stewart Stevenson (Banff and Buchan) (SNP): I have an observation to make and would then like to ask a couple of questions. The minister referred to the non-applicability of the Schengen agreement to us. He should—and I suspect he may—be aware, however, that private journeys within the European Union would not be subject to many of the controls that apply to commercial operators. There is therefore a significant set of opportunities for people operating private aircraft or private vessels to arrive in this country virtually unannounced. There is no requirement for them to contact the immigration authorities for travel from within the EU; there is only the requirement to give one hour's notice to HM Customs and Excise. Some airfields in Scotland are more than one hour's travel from the nearest customs officer—by any appropriate means. Despite the fact that we are not in the Schengen zone, we should be alert to that.

I support what the minister is trying to achieve through amendment 24. My question relates to the direction that the Executive seeks to take with its amendments 15 and 16. Amendment 15 relates to television links from prison and amendment 16 deals with the use of electronic communications in relation to warrants. Those are, of course, different subjects, but they highlight the general question of whether the delivery of evidence of previous convictions by courts in the European Union can be effected by electronic means, for the greater efficiency of all concerned.

Legislation already allows for the sovereign to provide her official seal for acts of Parliament, at least at Westminster, by electronic means. Are arrangements in place in the Scottish Parliament to receive official seals and the related documents by electronic means? If not, would you consider it useful and appropriate to introduce such measures?

Hugh Henry: Whatever we do, the Crown must be satisfied that the security, safeguards and standard of evidence are appropriate. As we live in a technological age in which changes happen rapidly, it would be foolish to discount the opportunities that those changes might bring to improve the operation of justice. Equally, given the critical issues that are at stake, it is right to insist that stringent safeguards be built into the system to avoid mistakes. We will reflect on Stewart Stevenson's comments, but the key issue is the quality of security of evidence. Safeguards must be implicit.

Bill Aitken: The minister said that he would seek to extend the measure beyond the original offence of counterfeiting the euro. I understand that move, but two aspects concern me. The first is that the various legal systems are not consistent, which means that what is not a crime in Scotland might be a crime in certain European countries. For example, more rigorous laws on the theft of intellectual property apply in some European countries than apply in Scotland. A person could have a conviction libelled against

them for an incident that would not have been an offence or a crime had it occurred in Scotland. There is a danger in importing the measure into Scots law. If someone has committed an offence in another jurisdiction that is not an offence in Scotland, should the matter be brought before the court?

Secondly, I have a slight difficulty with the practicalities. What will happen when someone is indicted on a charge in Scotland? Will the Crown circulate the accused person's details to all European states to ascertain whether the person has been convicted in other European jurisdictions? The measure will have to be tightened in that respect. I am generally supportive of what is being attempted, but I am a little worried about the two aspects that I have mentioned.

Hugh Henry: We are advised by the Crown Office, which represents the practitioners, that it is accustomed to translating, for the benefit of the presiding judge, convictions that relate to the remainder of the United Kingdom. For example, a contravention of the Theft Act 1968, which applies in England, is meaningless in our common law system unless the procurator fiscal explains exactly what the contravention is and how it equates to a crime under our common law. Inconsistencies or anomalies exist at present.

With foreign convictions, an extract of the relevant part of the criminal code of the foreign jurisdiction can easily be obtained. We have already discussed how easily information can be exchanged. If it is necessary to prove the terms of the offence, the Crown has access to experts in the criminal law of European Union states. A relevant example is the way in which the Crown satisfies the court in a prosecution under section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 when an accused challenges whether an offence under that section is an offence under the law in the country in which it took place. We already have to deal with anomalies and contradictions.

As for the reliability of information that is being accessed—especially if it is needed quickly—we are advised that in many cases the prosecution possesses valid information from a body such as a reporting agency, but cannot use it because of current restrictions. The National Criminal Intelligence Service and Interpol could also be used if it were known that the accused had recently been resident in a foreign state.

Mutual legal assistance legislation—the Criminal Justice (International Co-operation) Act 1990, which the Crime (International Co-operation) Bill will reform and update—provides for our agencies to ask for assistance in obtaining evidence from other countries in a variety of ways and covers times when information is needed quickly. The number of liaison magistrates is increasing and access is available to the virtual private network that is used by all contact points of the European judicial network, which includes Scotland. We do not propose that the Crown should undertake a general trawl for information. It is right to be specific. The information that is already held might be of use.

10:15

The Convener: I was going to ask about the same two issues as Bill Aitken asked about, but I would not have referred to the theft of intellectual property. My concern is that some indication is needed of the impact on the Procurator Fiscal Service. I can see why the Crown would not do a systematic trawl, but it would be useful to have an idea of the impact on procurators fiscal, because, in general, they compile the list of previous convictions, so they would have an added duty to trawl.

I feel strongly about another issue. In European Union matters, the principle of mutual recognition of our legal systems operates. I hope that the Scottish ministers will argue for that. It would be for Scottish judges to determine what would be regarded as a serious crime under our law, as Bill Aitken said, because other member states' legal systems might have different views. In other words, another member state's view of the law should not be imposed on Scots law. The principle is that Scots law should deem whether a matter is a serious crime, regardless of whether it is a serious matter in another member state.

Hugh Henry: We are talking about consideration post conviction. We do not seek to import other countries' legislation and apply it to individuals. If someone commits a serious crime such as a serious sexual assault in another European country, that is not taken into account if they are charged and convicted of such a crime in this country. A crime that was committed in England would be taken into account, but not one that was committed in France.

We are extending the law to deal with the counterfeiting of the euro. That is sensible. It is also right that if someone committed a serious crime outwith the United Kingdom and they were convicted of a similar crime here, the previous conviction should be taken into consideration, if the Crown deemed that appropriate. Otherwise, anomalies could develop.

We are a member of the European Union. Co-operation is increasing. Although the point that Scott Barrie made is not under consideration, it probably drives home the issue. If some of the people who have been deported from Australia and Canada for serious sexual offences returned

here and committed a similar crime, no previous convictions would be taken into account on their conviction, because the convictions took place elsewhere.

The Convener: We do not disagree with the general principle. As you say, we are talking about the situation post conviction. However, the list of previous convictions is compiled before a case reaches court. I presume that the Crown must determine the previous convictions in another member state before conviction here. A judgment would have to be made at that point, although the previous convictions could not be declared until the jury had convicted the accused.

Hugh Henry: Yes. That is right. I pointed out earlier that the Crown Office is accustomed to translating differences of emphasis in approach for the benefit of judges and I gave the example of how a contravention of the Theft Act 1968 in England was meaningless in the Scottish context. I am sure that there are other crimes that people might have committed elsewhere that would be similarly meaningless if an attempt was made to apply them in Scotland. The Crown Office has responsibility for addressing those issues.

Amendment 24 agreed to.

Section 48—Transfer of sheriff court proceedings

The Convener: Amendment 11 is grouped with amendments 12 and 13.

Hugh Henry: The amendments in the group are technical amendments to section 48. They introduce an additional level of judicial consideration in the event of the transfer of sheriff and jury trial cases between courts. The bill as it currently stands allows inter alia for the transfer of such cases to courts both within and outwith the sheriffdom with the consent of the respective sheriffs principal.

The amendments will require a sheriff to consider and consent in advance to the transfer of sheriff and jury trial cases, having due regard to convenience to witnesses, jurors and other parties to the proceedings and above all having regard to fairness to the accused.

I move amendment 11.

Bill Aitken: My understanding of the situation is that the existing law offers a facility to transfer cases. I am thinking of cases such as those that are indicted and called in small, rural courts in which everybody and his uncle knows the accused or the witnesses. I understand that the facility exists in such cases, as a jury would almost certainly have knowledge of the witnesses and the accused. I am not sure that there is an urgent need to change the present situation.

Hugh Henry: I am advised that there is no existing provision to enable business to transfer across sheriffdom boundaries or for the general transfer of criminal business between courts in the same sheriffdom.

Bill Aitken: But it has been done.

Stewart Stevenson: This may show my inability to struggle through the various amendments, but I thought that amendment 12 introduced the phrase "relevant court", which is referred to in amendment 11. Is not the phrase "relevant court" confusing? Surely the court that is being referred to is the irrelevant court, as it is the court that is not proceeding with the case. Surely the terminology and the way in which the minister's intentions are expressed are liable to lead to further confusion. Am I the only one who is confused? I accept that that might be possible.

Hugh Henry: My response to the issue that Stewart Stevenson raised and to Bill Aitken's question is to refer them to the comment that I made earlier. At the moment, we can only transfer within the same sheriffdom. Our proposal would allow a transfer outwith the sheriffdom to another sheriffdom.

Bill Aitken: May I intervene to seek clarification on that point? When the minister says "within the sheriffdom", does he mean that a case could be transferred from Kirkcaldy sheriff court to Dunfermline sheriff court but that it could not be transferred from Kirkcaldy sheriff court to Edinburgh sheriff court?

Hugh Henry: That is my understanding of the situation at the moment. I understand that a case in Glasgow could not be transferred to Hamilton or Paisley.

The Convener: Is the use of the word "transfer" important? I am thinking of a case under the Glasgow jurisdiction that was taken in Inverness.

Bill Aitken: That was a High Court case. It would be impossible to transfer a case out of Glasgow anyway—the sheriffdom is Glasgow and Strathkelvin. If the case is in the sheriffdom of Tayside, Central and Fife, it could certainly be transferred from Kirkcaldy to Dunfermline and vice versa. I am not certain whether a case could be transferred from Kirkcaldy to Edinburgh and the sheriffdom of Lothian and Borders.

Hugh Henry: What we are proposing would allow transfer not only to courts within the sheriffdom, but to courts outwith the sheriffdom. It is important to emphasise that that would happen only in exceptional circumstances. We are not saying that administrative procedures would be simple. However, rather than seeing the operation of justice grind to a halt when the opportunity exists to have a case determined elsewhere, we

think that what we have proposed is right. The sheriff principal would determine—

The Convener: Is it up to the sheriff principal of the original jurisdiction to transfer a case, or would there have to be an agreement between both sheriffs principal?

Hugh Henry: As it stands, the bill will allow for the transfer of cases with the consent of the respective sheriffs principal. The amendments will require a sheriff, in advance, to consider and consent to the transfer of sheriff and jury trial cases, having due regard to the convenience of witnesses, jurors and other parties to the proceedings. We think that a further safeguard will be built in.

The Convener: I think that the confusion has been removed.

Amendment 11 agreed to.

Amendments 12 and 13 moved—[Hugh Henry]—and agreed to.

Section 48, as amended, agreed to.

Sections 49 to 51 agreed to.

After section 51

The Convener: Amendment 87 is in a group on its own.

Hugh Henry: Amendment 87 is the Executive's response to criticism by the High Court of an aspect of criminal appeal procedure. Any person who is convicted of a criminal offence by a court of first instance can appeal to the High Court against the conviction or the sentence or both, subject in every case to the granting of leave to appeal by a single High Court judge. If the judge does not consider that there are arguable grounds for appeal, leave to appeal will be refused. The convicted person may then apply to the High Court for leave to appeal. Crucially, that application must be made within 14 days of intimation of the single judge's decision to refuse leave to appeal. If the appellant misses that deadline for whatever reason, the High Court cannot consider the application because it has no power to extend the 14-day period.

In a case in the High Court in February this year, the High Court commented adversely on the inflexibility of that time limit, especially since other appeal-related time limits could be extended. The High Court suggested that the provision should be reconsidered.

We have reconsidered the matter and agree that the High Court should have the power to extend the period in which such an application may be made. The amendment will therefore give the High Court discretion to extend the 14-day time limit, even when the application for leave to appeal is made outwith the 14-day period and whether or not the 14-day period for lodging an application expires before the new provision comes into force.

I move amendment 87.

Bill Aitken: The application can be made on cause shown. I am trying to work out what a suitable cause might be that would be acceptable to the High Court. We do not want a situation to arise in which people would appeal months after the first sift has been completed—that would cause chaos and mayhem. Did the High Court give any examples?

10:30

Hugh Henry: It was determined in a particular case that an appeal should be pursued, but the defence team failed to act speedily and overlooked the time limit. The High Court thought—rightly—that that was grossly unfair and prejudicial to the interests of the individual.

Amendment 87 agreed to.

Sections 52 and 53 agreed to.

After section 53

The Convener: Amendment 132 is in a group on its own.

Hugh Henry: Amendment 132 has its origins in a consultation document that was issued by the Lord Justice General and the Lord Justice Clerk in May of this year. The High Court of Justiciary is responsible for managing its own work load, which includes the work load of the appeal court, and has been concerned for some time about delays and inefficiencies in criminal appeals, including appeals against conviction and sentence in solemn proceedings.

One concern relates to the excessive and uncontrolled production of transcripts of a trial's evidence. The transcription of notes of evidence is time-consuming and appeals are occasionally seriously delayed as a result. In addition, a transcript may precipitate the amendment of existing grounds of appeal, with consequent further delay. The consultation paper that was issued by the Lord Justice General and the Lord Justice Clerk proposed to amend procedures in criminal appeals to deal with the causes of delays and inefficiencies. One proposal was to return to judicial control the production of transcripts of evidence in criminal appeals. The majority of respondents to the consultation paper supported that proposal.

Accordingly, amendment 132 will give the High Court the power to regulate the transcription of a solemn procedure trial's record where the

transcript is required for appeal purposes. Both the Crown and the defence would be required to apply to the High Court for a transcript and to show cause why an application should be granted. The Crown and the defence would be able to comment on each other's applications and the court would take account of such comments when deciding on an application. We believe that amendment 132 proposes a useful measure that would improve the overall efficiency of the High Court.

I move amendment 132.

The Convener: Just out of interest, what is the background to the lodging of amendment 132? Was a particular case involved?

Hugh Henry: I do not think so. It just became evident that requests for transcripts caused significant and unnecessary delays. Requests for transcripts are often made when the defence team or, indeed, the prosecution has taken down information during a trial and wants to check its notes. It is in the interests of justice that cases should be allowed to proceed quickly and amendment 132 would allow the courts to determine whether a request for trial transcripts is valid and does not necessarily seek to delay proceedings.

The Convener: Would fewer transcripts be requested because the High Court would have to consent?

Hugh Henry: I presume that that would be the case. The High Court would reflect on a request's significance and assess whether there was a discernible reason for the request.

The Convener: I presume that neither the Crown nor the legal profession object to amendment 132's proposals.

Hugh Henry: No, they have no objection that I am aware of. The problem with which amendment 132 would deal was identified in the consultation paper. We received from a range of organisations comments that are broadly in favour of amendment 132's proposals. The Law Society of Scotland expressed some reservations, but the Faculty of Advocates, the Society of Solicitor Advocates, the Scottish Legal Aid Board and the Lord Advocate have all come out in favour of the amendment.

The Convener: You will appreciate our difficulty in seeing the amendment for the first time. I have to put down a marker to find out what the Law Society and the Glasgow Bar Association have to say about it. It would concern me if there were a barrier to justice because of the unnecessary delay that you mentioned. I would not like to think that justified cases might be turned down because the consent of two parties was required for a transcript.

Hugh Henry: We argue that justice is not being served by the present system and that there are excessive delays. In a sense, we are seeking to bring the matter back under judicial control, where it was previously. At the moment, because of uncontrolled access to and uncontrolled production of scripts, there are excessive delays. That can affect appeals against conviction, sentencing and criminal appeals. The whole process is slowed down because someone can ask for a transcript at any point. The situation has moved away from previous practice; it is our intention to move back to previous practice.

The Convener: I am sorry to dwell on the matter. If concerns were expressed because we agreed to amendment 132—arising, for example, out of discussion with the Law Society—would you agree to discuss those concerns with the committee? I do not have any difficulty with what you have said about trying to reduce delays, but I want to be certain that there are no other barriers for groups that might need a transcript of court proceedings.

Hugh Henry: We believe that the consultation document that was issued in May was the right way to progress the matter. The consultation was extensive and amendment 132 arose from that consultation. Concerns were expressed about the inefficiencies that were building up in the courts system and the delays that were being experienced. The amendment has not developed in the abstract; it has come from specific experience and is the result of extensive consultation. The responses to the consultation were generally in favour of bringing this part of the judicial system back under judicial control.

Bill Aitken: I also put down a marker about a concern that I have. Does not this all go back to a specific case in which an appeal dragged on and on because there was hassle in getting a transcript?

Hugh Henry: No. An accumulation of instances and concerns led to the consultation document. Appeals in general are being delayed; it is not about a specific case.

The Convener: Is there anything further that you wish to say in winding up?

Hugh Henry: No, thanks.

Amendment 132 agreed to.

Sections 54 and 55 agreed to.

Section 56—Registration for criminal records purposes

The Convener: Amendment 124 is grouped with amendments 125 to 130.

Hugh Henry: With your permission, I shall preface any remarks on the amendments with general comments on the various amendments to section 56, a large number of which have been lodged, most being minor and technical.

The committee will recall that section 56 of the bill is intended to enhance and strengthen the provisions of part V of the Police Act 1997 and to provide better protection for children and vulnerable adults. As members know, part V of the Police Act 1997 helps employers and others to make safer recruitment decisions when appointing people to positions that give access to children and vulnerable adults. It does so through the issue of criminal record and criminal conviction certificates.

There are three levels of disclosure. Basic disclosure shows only unspent convictions and is available to anyone who makes an application in the prescribed form and pays any fee that is payable under regulations. Standard disclosure shows spent or unspent convictions and cautions from England, Wales or Northern Ireland. Scotland does not have the same system of recording cautions by the police instead of prosecuting that exists in England and Wales. Enhanced disclosure reveals spent or unspent convictions and cautions plus any non-conviction information supplied by a chief constable, which is shown on the certificate. Such information would be information that is available to the police and which the chief constable believes might be relevant to the position in question.

Section 56 introduces a further safeguard in that we would be able to assess the suitability of people who would receive criminal record information about other people. Part V of the Police Act 1997 provides for applications for the standard and enhanced certificates to be countersigned by a registered person who must state, in effect, that the applicant is entitled to the level of certificate that has been applied for. The registered person will receive a copy of the certificate and he or she may pass the information to the person on whose behalf the application was countersigned. The registered person might be a personnel officer of a company or a local authority or an officer of a voluntary organisation—anyone who intends to countersign applications on behalf of others.

Part V of the Police Act 1997 offers no means of checking the suitability of such people. Most people will be entirely suitable, but some people might seek to obtain and use criminal record information for improper purposes—blackmail and vigilante activity spring to mind. We must be able to check the suitability of people through criminal record checks and checks against other information and our amendments would allow that.

The bill also provides discretion for Scottish ministers to make new information available to registered persons. New information is information of which Scottish ministers were not aware when a standard or enhanced certificate was issued. The provision needs a little tidying up and we have lodged an amendment to do that.

With section 56 amended as we propose, the overall effect of the bill will be to provide better protection for children and vulnerable adults.

Amendment 124 is a minor tidying-up amendment to section 56. It would insert at a more appropriate location a provision requiring ministers to pay the prescribed fee for information that is supplied by police forces for the purposes of assessing a person's suitability to receive criminal record information. That is information that police forces may supply to assist ministers in assessing the suitability of persons to be registered, or to continue to be registered, to countersign applications for criminal record certificates and thereby to receive criminal record information about other people. Because the information for which ministers are to pay is mentioned in section 120A of the Police Act 1997, it makes sense that the requirement to pay for the information should be contained in the same section. Amendment 124 would bring about that change.

Amendment 125 is concerned with information that ministers will need for the purposes of assessing a person's suitability to be registered and to receive criminal record information under Part V of the Police Act 1997. At present, access to information from central criminal history systems and police forces may be obtained only for purposes of an application for a criminal record certificate. It is important that it should be possible to tap into such sources of information for the purpose of considering a person's suitability to be registered to receive criminal record information. Amendment 125 would provide for that.

Amendment 126 is linked to amendment 124. As I said, amendment 124 would insert at a more appropriate location in the bill a provision relating to the payment of fees. Amendment 126 would remove that provision from its existing position in the bill.

We propose that for the purposes of assessing a person's suitability to receive criminal record information we should be able to request information from the list of persons who are deemed unsuitable to work with vulnerable adults that is held by the Department of Health. Amendment 127 would make that possible.

10:45

I should add that through the Protection of Children (Scotland) Bill, we are seeking to be able

to gain access to the lists of people deemed unsuitable to work with children. When that is achieved we should have a more robust system for assessing people's suitability to work with children and vulnerable adults.

Section 56(2) of the bill would insert in part V of the Police Act 1997 a new section 120A to provide ministers with a power to refuse to register a person under section 120 of the 1997 act and a power to deregister a registered person.

Section 56(7) of the bill would insert a further new section 124A in part V of the Police Act 1997. It would deal with the arrangements for notifying such persons of the decision to refuse to register or deregister a person. As it stands, the bill would only require ministers to notify a deregistered person if that person were deregistered because he or she failed to comply with the required code of practice. As an aside, I should say that amendment 147 would make non-compliance with the code of practice a ground for deregistration.

Amendment 128 seeks to extend the minister's duty to notify those who have been deregistered because they are considered to be unsuitable to have access to criminal conviction information about others. It would not extend to those who are no longer considered to be likely to countersign applications for criminal record certificates. Those could be people who have moved away or changed jobs and who would be difficult to track down, or they could be people who have died.

The new section 124A of the Police Act 1997 will not provide ministers with any power to make regulations in relation to notification of their reasons for refusing to register or deregister someone. It also does not provide for regulations to deal with arrangements to allow a notified person to challenge the accuracy of the information on which ministers' decisions to refuse to register or deregister were based. We believe that such regulations are desirable and amendment 129 would provide for them.

Amendment 130 is a small amendment concerned with a new section 124B to be inserted in part V of the Police Act 1997 by section 56(7) of the bill. The committee will know that the new section 124B provides for ministers a new discretion to notify registered persons about new information of which ministers were not aware when they issued a criminal record certificate or an enhanced criminal record certificate. As the bill stands, only information about new convictions requires to be notified in the case of criminal record certificates. In the case of enhanced criminal record certificates, any new caution would also be notified in addition to any new conviction. New convictions and new cautions should be notified in respect of both levels of certificate. Amendment 130 would provide for that.

I move amendment 124.

Dr Jackson: Sorry, minister. I am trying to get to grips with this issue, just as you are. If I suggest an example, perhaps you could say what the effect of the amendments might be.

There have been quite a lot of high profile cases of, for example, schools where teachers have been accused of sexual abuse. Sometimes inquiries and court cases have dragged on for a considerable time, during which employees might not have been receiving a salary or not been allowed to continue teaching. What effect would your amendments have on registration? Would those people be placed on a list before the court came to a final decision? If they were on such a list, who would have access to that information? If, at the end of the day, a person was proved to be innocent, they might have spent a long time with no income and they might be looking for another job.

Hugh Henry: I am advised that pending cases can be notified by the police. The people who would have access to that information would be a registered person and the person's employer.

Dr Jackson: I am sorry, but I do not understand. Does that mean that a person would go on a list while inquiries are taking place?

Hugh Henry: No, they will not. However, the local police force would have a note of a pending case and could notify a registered person or an employer that there is a pending case. That provision already exists through the Police Act 1997—it is not something new.

The Convener: This is an important group of amendments. I take a very cautious approach to part V of the Police Act 1997, as many people do. We have yet to see the civil liberties implications of what we are doing, and I would like there to be some monitoring.

The Executive has lodged a very important amendment. It is not something that I had thought about previously, but information that has been compiled, including conviction and non-conviction information, will be in the hands of people whom we have yet to test with regard to the confidentiality and security of that information. Will any penalties be attached to organisations or registered persons who release that information when they should not?

Hugh Henry: I am advised that improper use would be an offence, with the possibility of imprisonment for up to five years on conviction. That is something that we can certainly check and come back to you on.

The Convener: Could you clarify something in relation to the information that is sought by the registered person? Does it include only relevant information or does it include all criminal

convictions regardless of whether they are related to relevant offences?

Hugh Henry: An enhanced certificate would include information on all criminal convictions, spent and unspent. As I explained, we have introduced three separate levels of disclosure.

The Convener: That would mean that a registered person would have access to information about another person. To use a favourite example, they would know whether that person had committed a breach of the peace when they were 17.

Hugh Henry: Not necessarily. It would depend on the position for which a person is being considered. That type of disclosure will not apply to all positions, but there might be certain positions for which it could be appropriate.

The Convener: Does the Executive have any plans to review that information or the approach to legislation in the future? Is that something that you might consider?

Hugh Henry: As with anything that we do, we will review the effectiveness of legislation and seek to improve it if it is not working properly. If it were having an undesired or adverse effect, we would consider changing it. I am sure that the committee is aware of the considerable pressure that has been exerted in recent years to give children and vulnerable adults enhanced and improved protection; the bill attempts to reflect some of that public concern.

We are aware of the point that you make about civil liberties issues, and there is always a balance to be struck. Where children and vulnerable adults are concerned, it is right to take those steps, but we will reflect on the operation of the legislation to ensure that it is having the desired effect.

Amendment 124 agreed to.

The Convener: If we want to have a break, now is a good time. Do members agree that we should break for five minutes for coffee?

Members *indicated agreement*.

10:53

Meeting suspended.

11:10

On resuming—

The Convener: Amendment 135 is grouped with amendments 136 to 147.

Hugh Henry: Before I move the amendments, I wish, with the convener's permission, to make a correction for the record. I said earlier that the maximum sentence for improper use of criminal record information and other information is five years. I have been advised that that is incorrect and that the sentence is, in fact, six months.

Amendment 135 and the subsequent amendments are technical amendments to section 56(3). They renumber the new subsections being inserted into section 115 of the Police Act 1997 by section 56(3) of the bill.

Amendment 145 has the effect of extending the list of persons in respect of whom the highest available level of criminal record certificate—the enhanced criminal record certificate—under part V of the Police Act 1997 may be applied. The additions to the list apply to those appointed or seeking appointment as members of sub-committees of children's panel advisory committees; principal reporter or members of staff of the Scottish Children's Reporter Administration; or procurators fiscal, district court prosecutors or officers to assist such officers or to assist in the work of the Crown Office. People who fall into those categories will occupy positions that will give them access to the most vulnerable children and adults or to very sensitive information about such vulnerable people. We therefore believe that it will be important to ensure that such persons may be checked to the fullest extent possible. That means enhanced criminal record certificates should be available for these persons. An enhanced criminal record certificate will show not only any convictions or cautions but any information supplied by a chief constable that is deemed relevant to the position in question.

The existing provisions in the bill will make the enhanced certificate available in relation to those involved in a number of capacities connected with the children's hearings system. Amendment 145 will allow enhanced criminal record certificates to be available in respect of others involved in sensitive positions.

I inform the committee at this stage that we intend to propose two further additions to the list by way of an amendment at stage 3. The additions are, first, prospective adoptive parents and other adults in the household of the prospective adoptive parents and, secondly, members of Her Majesty's Inspectorate of Education and others directly involved in inspections who will have unsupervised access to children in schools.

Amendment 146 extends the protection afforded to ministers whereby no proceedings shall lie against them by reason of an inaccuracy in the information made available to them for purposes of assessing a person's suitability to be registered and to receive criminal record information under part V of the Police Act 1997. That mirrors the provision already in part V whereby no proceedings lie against ministers by reason of any inaccuracy in the information supplied for a certificate under part V.

In the white paper leading to the bill and in the explanatory notes, we intimated our intention to amend part V of the 1997 act to provide ministers with power to deregister a person who had failed to comply with the code of practice for registered persons. Amendment 147 will insert the necessary provision in the bill and, thereby, in the 1997 act.

The white paper explained that such a provision was necessary so that ministers could apply effective sanctions against those registered persons who had failed to comply with the code. Currently, the only sanction available to ministers is to refuse to issue a certificate where the registered person has failed to comply with the code. That seems an insufficient sanction, as the registered person would be able to continue to countersign applications for disclosures and thereby continue to receive criminal record applications. Amendment 147 will provide a more effective sanction.

I move amendment 135.

11:15

The Convener: The bill will allow enhanced criminal record certificates to be made available to a range of other groups, including general medical practitioners and general dental practitioners, and I can understand why. However, has consideration been given to how secure those records should be? Many dental practitioners are sole practitioners and the information to which they will have access will be highly sensitive. Also, the convictions on the certificate might not be directly relevant—or would they always be deemed to be relevant? If the list is to be extended, consideration must be given to how the information will be held, as it must be secure. I like to assume that information in a large organisation, such as the Crown Office, is held securely and systematically and, therefore, cannot be accessed by default.

Hugh Henry: The issue of security of information is detailed in the code of practice, with which registered persons must comply. It might be helpful if the committee was supplied with a copy of the code of practice.

The Convener: That would be helpful.

Hugh Henry: I will arrange for the committee to receive a copy.

Amendment 135 agreed to.

Amendments 136 to 145, 125 to 127, 146, 147 and 128 to 130 moved—[Hugh Henry]—and agreed to.

Section 56, as amended, agreed to.

Section 57—Advice, guidance and assistance to persons arrested or on whom sentence deferred

The Convener: Amendment 117 is grouped with amendment 118.

Scott Barrie: Amendments 117 and 118 would amend section 57 to extend the functions of the local authority to providing advice, guidance and assistance to persons who are imprisoned in the local authority's area but who wish to return to the area from which they came.

There is no statutory duty to provide services, known as throughcare, to prisoners, other than the general duty that is imposed on local authorities by section 12 of the Social Work (Scotland) Act 1968. Throughcare is a term that describes a range of social work services that are provided from the point of sentencing or remand, during the period of imprisonment and following release into the community. Therefore, it plays an important part in continuity of service provision and allows a greater degree of social inclusion on a prisoner's release. Because throughcare services to serving prisoners are not defined as a statutory function of local authorities, arrangements for the delivery of those services tend to be somewhat fragmented, which is counterproductive to the notion of throughcare and what is contained within the national standards that were laid down in 1990.

The changes in local government structure in the mid-1990s made the provision of services to prisoners much more difficult because, instead of having nine regional authorities and three island authorities, we have 32 unitary authorities. Provision is now much more fragmented than it was. That fragmentation can result in a prisoner from one area getting a reasonably good service from criminal justice social work while a prisoner from another area in the same penal establishment gets no service because of the policy of the local authority area that they come from. My amendments are designed to rectify that and create a degree of uniformity that is missing at the moment by creating a statutory framework that would anchor throughcare in our criminal justice system. If we are serious about realising the rehabilitative potential of prison, which we have often talked about in the committee, we must recognise that my proposal would be an important contribution towards that.

I move amendment 117.

Stewart Stevenson: Members will know that I have 300 non-voting constituents who are held in Peterhead prison and for whom this is an important provision. I strongly support Scott Barrie's proposal. However, in the event that the amendment is accepted, I would like the minister to clarify one point. Paragraph (b) of the proposed

new section 27AB, says that local authorities should provide, directly or indirectly, advice, guidance and assistance to persons who are

"imprisoned in another authority's area but who intend to return to live in their area on release from prison."

How would it be seen that such a determination existed? Would it be based solely on the prisoner's discretion? How can we be certain that people do not drop through the net? I am thinking in particular of the long-term sex offenders who are imprisoned in my constituency. The care that is provided as part of a throughcare programme is a vital part of ensuring continuity from prison into society and it is important in reducing, if not eliminating, the prospects of some of the most dangerous people in our criminal justice system reoffending.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I am sympathetic to the intention of the amendment, but I would like Scott Barrie to clarify two terms in the amendment. It says that local authorities should provide

"directly or indirectly, advice, guidance and assistance".

What does "directly or indirectly" mean? Further, what does "assistance" mean? It could be anything from being told where to sign on to being given a house. Does the amendment have financial consequences for local authorities?

Is there a possibility that paragraphs (a) and (b) of the proposed section 27AB might place the same responsibility on two local authorities? It appears to me that there is a possibility that paragraph (a) might place on the local authority in whose area the person is imprisoned a responsibility that paragraph (b) places on the local authority in whose area the prisoner intends to live on release from prison.

Dr Jackson: I support what Duncan Hamilton has said. Many of the inmates of Cornton Vale are from Glasgow and the west of Scotland. It is therefore important that Scott Barrie answers that question.

The Convener: Scott will get a chance to answer that question in winding up.

I support the general principles of amendment 117. This committee and the Justice 1 Committee have been forthright in previous reports about the need for continuity between the Scottish Prison Service and local authorities. For a long time, we have felt that the working is not joined up and that the partnership does not really exist. We would like that idea to be pursued further. The two authorities should see themselves as acting together rather than alone. Amendment 117 partly addresses that, to ensure that the prisoner who has served their time is not caught in the middle when two agencies cannot decide who is responsible.

Having listened to the debate, I see that the amendment may require further clarification. However, I would also like a commitment from the Executive to include in the bill a legal duty somewhere along the line to ensure that, when the prisoner is released, they do not go back into a disorganised and chaotic cycle. That is especially important in relation to women offenders who require advice or housing. We know, from past experience, that there have been difficulties in such circumstances and that no one has accepted the responsibility. I am sure that Scott Barrie intends his amendment to address that situation. He will get an opportunity to respond in a minute, after I have called the minister to speak.

Hugh Henry: We are entirely sympathetic to the concerns that Scott Barrie has articulated, which led to his lodging amendment 117. However, we do not believe that the amendment is the best way in which to address those concerns. Other members of the committee have already raised specific issues that would be hard to address if the amendment were to be agreed to.

Amendment 117 is intended to extend the functions of local authorities by giving them a statutory duty to provide a service to all prisoners from the point of sentence, rather than on release. We understand that the intention of the amendment is to support the recommendations that were made in the tripartite group report on throughcare. Amendment 118 is consequential.

The tripartite group was set up by Iain Gray and comprised members of the Executive, the Scottish Prison Service and local authorities. Its aim was to improve partnership working, and the group was asked to consider ways of strengthening throughcare arrangements for prisoners. The group recognised that, although much has been done to promote community disposals, much less attention has been given to throughcare. I know that Scott Barrie has a particular concern about that. The tripartite group also recognised the need to develop a broader agenda for throughcare services in order to manage the transition from prison to community more effectively.

Ministers accepted the recommendations of the report, which falls into two stages. The first stage concerns extending and strengthening the role of throughcare to the point of sentence, rather than the end of the sentence, by appointing supervising officers to all long-term prisoners with the aim of making links with offenders and families during the sentence. That would ensure a smoother transition to, and resettlement in, the community. The arrangement for appointing supervising officers at the start of a sentence is already in place for prisoners who are serving extended sentences.

The second stage of the tripartite group's strategy concerns allowing community-based

social workers to provide advice, guidance and assistance to certain categories of short-term prisoners who request it from the point of sentence rather than after their release. Those prisoners are not normally subject to supervision. The tripartite group has identified specific groups that should be given priority for throughcare: for example, sex offenders, women and young offenders. Local authorities would still have a duty to provide those services to other short-term prisoners at the point of release.

The Association of Directors of Social Work has highlighted a gap in the legislation. However, the amendment goes much wider than the proposals in the tripartite group's report. First, the amendment does not distinguish clearly between services that are provided by prison-based social work services that are funded by the Scottish Prison Service and those that are provided by community-based social work services. That could result in a duplication of services and further confusion about the respective responsibilities of local authorities and the SPS in these matters.

Secondly, the amendment would impose a legal obligation on local authorities to provide advice, guidance and assistance to all prisoners, not just long-term prisoners, from the point of sentence. That would represent a massive new burden on criminal justice social work services and would be detrimental to the provision of throughcare services on release and, indeed, on the capacity of the service more generally. In a sense, the amendment might have the opposite effect of what Scott Barrie seeks to achieve.

11:30

At the meeting of the tripartite group that was held on 26 November 2002, the amendment was discussed. It was agreed that members of the group need to consider further the roles and responsibilities of community-based and prison-based social work. I want to take time to consult further on the legislative provisions to support the policy on throughcare with the Association of Directors of Social Work and the Scottish Prison Service. I want to give consideration to, and reach agreement on, the best way to proceed. If necessary we will make changes at stage 3.

In those circumstances, I ask Scott Barrie to withdraw amendment 117.

The Convener: I have a slight disagreement with the ADSW on its approach to this matter. The ADSW appeared before the committee to discuss the post-prisoner-release programme and suggested that it and not the SPS should be allowed to manage that programme.

I feel very strongly that there should be a partnership approach. If you are telling the committee that the tripartite group should determine the way forward, I would need reassurances that ministers would expect a partnership approach and that neither the Prison Service nor the ADSW would argue for resources for its corner. That has concerned me about the entire process. If I thought that the ministers were signed up to enforcing a partnership approach to it, I would be much happier to let the amendment fall.

Hugh Henry: That is what I was trying to convey. The matter was discussed at the tripartite group on 26 November. Everyone involved agreed that there is a need for further consultation, and I want to take time to consult further on the legislative provision. I will listen to the ADSW, but I will also listen to the SPS. I will see what comes out of that further consultation and whether legislative provision is needed. Once I have reflected on that, I will decide.

The Convener: You are not giving a commitment that you will come back to the committee at stage 3.

Hugh Henry: If it is appropriate, I will come back with an amendment at stage 3, but only if I think that it gives effect to the best development of the service. Notwithstanding any legislative change, however, Scott Barrie has raised issues that need to be considered carefully. He has raised issues about the effectiveness of throughcare and how it operates, and there are some broader issues on which there should be some proper reflection.

The Convener: Some members have some points that need clarification.

Stewart Stevenson: If the minister is not prepared to indicate at this stage that he will respond to the point encapsulated in Scott Barrie's amendment at stage 3, I strongly encourage Scott Barrie to persist with the amendment to put pressure on the Executive to do exactly that.

Scott Barrie: I thank Stewart Stevenson for that gentle encouragement.

I will address the points before I sum up. It is unusual to be asked by other committee members to explain. I will deal with Duncan Hamilton's points. The amendment states that a local authority would provide advice, guidance and assistance "directly or indirectly". The local authority does not directly operate some criminal justice services—they could be operated by voluntary agencies, such as Safeguarding Communities Reducing Offending. That is indirect operation of services, and the phrase was included so that it would not apply just to people directly employed by the local authority.

Mr Hamilton: If what is meant is the indirect operation of services by the voluntary sector, how

can we put a burden on the local authority that requires it to deliver the advice, guidance and assistance?

Scott Barrie: We can do that because the local authority could have a properly costed agreement about how voluntary organisations deliver parts of the local authority's social work service. That is why "indirectly" is in amendment 117. It would be prescriptive to say that only someone who was employed directly by the local authority could provide the advice, guidance and assistance. That is an important point. Amendment 117 is not too prescriptive about how the local authority should implement its statutory functions.

On the meaning of "advice, guidance and assistance", I am sorry if I am using social work jargon, but that phrase is borrowed directly from the Social Work (Scotland) Act 1968. Those of us who have been in social work are used to using that phrase all the time—it trips off the tongue. It is just a catch-all phrase to explain what social work does when it provides advice and guidance services. The phrase is commonly used in social work, although it might not be common parlance outwith the profession.

On the possibility of two local authorities conflicting, that is why paragraph (a) of proposed section 27AB says "or", not "and/or". One authority or the other would be responsible. An offender might have been sentenced in Fife or Glasgow because the offence was committed there, but they might have happened to be living at a temporary address and might intend to return to another area. That area is where the offender is envisaged as coming from.

Not all local authorities have prisons. Therefore, under amendment 117, it would be up to the local authorities to decide who would be ultimately responsible. I will use the analogy of child care. Although a child might be placed in secure accommodation, the area whence they came would be responsible and would remain responsible, even if the child were subsequently fostered in the area of the secure accommodation, because they would be expected to return at some point to another area. It would be up to the local authorities to agree among themselves who was responsible and a mechanism would be set up to determine that.

Dr Jackson: What about finance?

Scott Barrie: I have no detailed knowledge about how much amendment 117 would cost to implement, although I take the minister's comment that the function of providing advice, guidance and assistance to all prisoners is a far-ranging and onerous function to place on local authorities, because we are talking about all prisoners. Given that the large majority of prisoners serve short prison sentences, the responsibility could be onerous.

However, if we are serious about breaking the cycle of offending, in which people go in and out of prison with monotonous regularity, amendment 117 is a key component of addressing that. One of the difficulties that we have with those who serve short prison sentences is that no constructive work is done with them in the community or even in prison to try to get them to break the cycle because they ain't around long enough to do it. What ends up happening is that offenders go into prison, serve their sentences, and come back out with no constructive work having been done with them during their sentences. The next time that they come to criminal justice social work's attention is the next time that they are likely to go to prison and a report is requested. Of course, if an offender is over 21 and has already served a prison sentence, they do not necessarily need a social inquiry report. Amendment 117 is intended to break that cycle and create a much more cohesive system.

The minister indicated that he wants to consider what the tripartite group is saying. I think that I am right in saying that the tripartite group consists of members of the Scottish Executive justice department, the Scottish Prison Service and the local authorities. It is important to listen to what they are saying on the points to which the convener alluded in her final remarks.

I am reluctant for amendment 117 not to be put to the vote. On the other hand, given that work is being done, that the minister says that he will consider it and that we will have the opportunity to return to the matter at stage 3, we may want to reconsider it. In particular, we may want to consider to which category of prisoner the provision should apply and to specify the sort of prison sentence for which it would be mandatory rather than optional.

On that basis, I seek the agreement of the committee to withdraw amendment 117. However, I am keen to return to the issue at stage 3 with a tightly worded amendment.

The Convener: Before I seek the committee's agreement to the withdrawal of amendment 117, I ask the minister whether both the Justice 1 Committee and the Justice 2 Committee may be kept informed of the progress of the tripartite discussions. We have debated this issue for a long time and were interested in it prior to the introduction of the bill.

Hugh Henry: We will do that.

Amendment 117, by agreement, withdrawn.

Amendment 118 not moved.

Section 57 agreed to.

Section 58 agreed to.

After section 58

The Convener: Amendment 68, in the name of Johann Lamont, is in a group on its own. Unfortunately, Johann Lamont cannot be here this morning, as she is convening a meeting of the Social Justice Committee. In her absence, Scott Barrie has agreed to speak to and move the amendment.

Scott Barrie: If members will forgive me, I will be very perfunctory in my remarks. It is important that amendment 68 should be moved so that we can debate it. If Johann Lamont were moving the amendment, I would say that I agreed with the sentiments behind it but regarded its wording as too extensive.

We are all keen to enable the police and other authorities to do as much as possible to prevent crime and disorder. One of the main issues that constituents raise with members is that they want something to be done to prevent crime. The police have a duty to prevent crime as well as to detect it.

Amendment 68 seeks to enable the police to obtain and to be provided with as much information as possible, so that they can prevent crime. I agree with those sentiments, but the amendment as currently worded may be too wide-ranging and may need to be refined. However, the general principle is worth supporting and I would like it to be discussed today.

I move amendment 68.

Stewart Stevenson: I have grave concerns about the phrasing of amendment 68. Given that the amendment would require a local authority

"to do all it reasonably can to prevent crime and disorder in its area",

it could be seen to require a local authority to convey to the police unsubstantiated allegations that may have been made to it in connection with a local authority tenant, if those allegations related to criminal activity. It could be argued that the amendment as worded would require local authorities to tell the police absolutely everything.

I suspect that that is not Johann Lamont's intention. If it were, that would have grave implications for civil liberties. Unless the minister is able to persuade me—or unless Scott Barrie works harder to persuade me—I will not be able to support the amendment.

Bill Aitken: I support amendment 68 with enthusiasm. Johann Lamont, with whom I disagree profoundly on most political issues, has the advantage over many members of the Parliament of having to operate in the real world. In some parts of our cities, in particular, the real world can be a very unpleasant place. Some of the people who live in peripheral schemes have to put up with behaviour by neighbours that, to say the least, impinges on their right to lead a peaceful life.

Stewart Stevenson raised the issue of unsubstantiated allegations and I accept that that may be a concern. However, amendment 68 refers to the provision of information to the police. We are not talking about prosecutions, in which evidence must be substantiated and corroborated.

11:45

A situation could arise, for example, through the misuse of drugs. Residents of a tenement property might complain to their local housing office that the premises next door to them are being used for the sale of drugs. The tenants who are being disturbed and are concerned by the activity might want a housing transfer, but feel inhibited from going to the police for fear of reprisals. Therefore, the housing department would notify the police. Such situations, unfortunately, arise more often than members would care to admit. Again, people who take other complaints of anti-social behaviour to the housing office might be afraid to submit their names directly to the police. That happens time and again, and amendment 68 would enable appropriate action to be taken.

In some respects, the wording of the amendment might seem slightly draconian. I accept that the wording could, perhaps, be tidied up, but the sentiment is entirely correct. Many of us cannot imagine what it would be like to live in a tenement with neighbours who are involved in drug dealing. Anything that can prevent that happening, or that can at least reduce the number of cases, must be welcomed. That is the intention behind amendment 68, and I support it entirely.

George Lyon: I am concerned about the wide-ranging nature of the amendment as it is currently worded. It would cover virtually every piece of information possible.

Bill Aitken referred to the exchange of information. In my experience, my local authority and the police exchange information regularly. I am interested, therefore, to hear why the information in question would not be passed between the two organisations. Why are we proposing to make it a legal duty when, I assume, it already happens? Local authorities and the police work closely on anti-social behaviour cases, and that information is free flowing. Perhaps, though, that is not the case in Glasgow, which always seems to be different from the rest of the world.

Bill Aitken: Frequently for the better, I might add.

Dr Jackson: People in Glasgow seem to think that people in other towns and cities do not experience the same problems, but we do. It is important that we acknowledge that point in respect of problems with anti-social neighbours and drugs.

George Lyon has a point. Meetings about anti-social issues and drug abuse take place between the council and the police in the Stirling area.

It is important that the partnership between the police and local authorities be made to work, so there might be a place for amendment 68. Unfortunately, the wording is cumbersome and it must be reconsidered.

Mr Hamilton: Believe it or not, even before I heard Bill Aitken's comments, I intended to speak in favour of amendment 68.

The Convener: You always say that.

Mr Hamilton: I realise the damage that I am doing to my career by supporting some of what he said.

I was struck by George Lyon's remarks about information already being exchanged. When I first read the amendment, I assumed that the exchange of information was something that happens already. If that is the case, I suppose the question is what the harm would be in ensuring that it happened across the country. There are some areas of the country in which it is not happening, so to put George Lyon's argument the other way round, if there is nothing new in the amendment, why do we not make the exchange of information a requirement?

I am attracted by the idea that we should make it easy for information to flow. If somebody makes a complaint to any local authority department and the complaint is then passed on to the police, that is a case of one part of the public sector talking to another part of the public sector. I do not have a problem with that; it strikes me as eminently sensible. The only thing that I have a slight problem with is the proposed duty

"to exchange information to whatever extent is necessary to enable the police authority to do all it reasonably can".

That would mean that it would be up to the police authority to define what was necessary and to what extent it needed information. It is one thing to encourage the free flow of information, but it is another to make the policy authority the agency that is responsible for defining what is necessary. I would like to know whether we can rebalance that, but I have considerable sympathy with the general principles of amendment 68.

The Convener: I too support the general principles behind amendment 68. The fact that the Executive put interim anti-social behaviour orders in the bill in the first place demonstrates its commitment to the issue and its understanding that anti-social behaviour is quickly becoming a high-profile area for all MSPs. We have had interesting debates with ministers prior to today and the Executive has scraped through some of those debates on very narrow points indeed. Members were inclined to support previous amendments, but felt that, on balance, they were given enough warm words by ministers. I think that we might get the same from the new minister.

Although I feel that amendment 68 is perhaps too wide in placing the duty completely on the police, I am minded to support the amendment and to let the Executive sort it out. We have let the Executive have its way on this for several weeks and perhaps we should demonstrate our commitment to wanting something further in the bill to deal with anti-social behaviour.

I am sure that George Lyon is right to say that the exchange of information is probably happening more and more, because police authorities and local authorities understand that they have to work together. However, I do not see why it would not be of benefit to include a duty in the bill. That would also demonstrate our expectations of those agencies. Local authorities and police authorities are responsible agencies, so I am not worried about the wide definition of

"exchange information to … prevent crime and disorder".

If such an exchange were to take place between two bodies that we had less knowledge of, I might have concerns, but I am not at all worried about the ability of local authorities and the police to apply that provision properly.

I accept that 10 per cent of the amendment probably needs to be changed, but at the moment I am minded to support it anyway.

Hugh Henry: When Bill Aitken reacted with enthusiasm to amendment 68, I had to reread it to see whether it contained forms of extreme punishment or other such actions that I had overlooked. However, I am content that it does not.

Johann Lamont has been tireless in her campaign against criminality and disorder in her constituency. As Bill Aitken said, she has experienced at first hand some of the profound effects on communities of those who are intent on inflicting damage on others and who pursue that intent by whatever means they can. She is right to articulate the concerns of decent, ordinary people who want to be protected in their own homes and communities. Her concerns and frustrations are articulated by many others who serve in the Parliament. The problems are not unique to Johann Lamont's constituency, and we recognise that there is a serious problem to be addressed.

A number of points have been made that are worth commenting on. As George Lyon said, it is right to say that there is an exchange of information between the relevant bodies. Johann Lamont's concern is that sufficient information is not being exchanged at the appropriate times. We should put on record that information is exchanged between agencies in appropriate circumstances.

In asking for amendment 68 to be withdrawn, we are not concerned about the intent behind the amendment. I share that intent and I know that members of the Executive would share it also. Our concern is about the impact of amendment 68 and whether it would have the desired effect or introduce unforeseen consequences.

I am not of the same opinion as the convever and, as I am new to the portfolio, I have not been following all the committee's discussions in detail. The convener mentioned that, at times, the committee has been on the verge of making decisions and has then decided not to. It does not make good law to pass something and then let the Executive sort it out; that would cause more problems than it would resolve. Amendment 68 seeks to provide that local authorities and police authorities working in common geographical areas can

"exchange information to whatever extent is necessary to enable the police authority to do all it reasonably can to prevent crime and disorder in its area."

I have said that I sympathise with the intention behind the amendment, but I remain unconvinced that the proposed change to the current legislation would have the intended effect. We have not been made aware that the police are encountering problems in tackling crime and disorder as a result of an unwillingness of local authorities to provide relevant information. I will certainly inquire whether there is a problem across Scotland that has not come to our attention, although I am sure that officials would bring such a problem to our attention.

We must be mindful of some of the wider implications such as the Data Protection Act 1998, which contains provisions relating to the processing of information that are designed to protect the rights of individuals. We must be careful that any proposed legislative changes, particularly broad changes such as those that are proposed by amendment 68, do not cut across the obligations of that act, or indeed across the individual's rights under the European convention on human rights.

As a result of the work undertaken by Lady Cosgrove and the expert panel on sex offending, the Solicitor General has agreed to chair a high-level, multi-agency steering group to drive forward improvements to the sharing of information, the development of protocols and the delivery of joint training. I acknowledge that that work will have regard to sex offenders, but I anticipate that its findings could have wider application. I therefore argue that, at this stage, although I am sympathetic to Johann Lamont's intentions, it would be premature to take the statutory power that she proposes.

Amendment 68 is too wide. It would place a duty on the police to share police information with the local authority. The exchange of information is not just a one-way process. It is difficult to see how it would help the police to prevent crime and disorder. In some cases, the effect of amendment 68 could be to jeopardise a police investigation if there were an obligation on the police to divulge information to the local authority.

There are a number of problems with amendment 68, but we understand fully what Johann Lamont is driving at and will reflect on that. I ask that the amendment be withdrawn.

The Convener: Are you saying that the findings of Lady Cosgrove's group may be applied more widely?

Hugh Henry: Yes. The group began by considering problems relating to sex offenders. It is examining joint training, how information may be shared and how protocols may be developed between different agencies. I see no reason why those principles should not be applied to other areas of interagency work.

12:00

George Lyon: The minister has said that the Executive is not aware of any concerns about the exchange of information between local authorities and the police. Could Johann Lamont—or Scott Barrie, who is representing her at today's meeting—provide examples of such concerns? Members are willing to support the intention behind the amendment, but it must be demonstrated that there is an issue that needs to be addressed. The wide-ranging nature of the amendment has also been emphasised. If we are to support a similar amendment at stage 3, clear examples of failure to exchange information between local authorities and the police must be provided. We must also take account of the issue that the minister raised of police information being released to local authorities.

Mr Hamilton: I do not understand three things that the minister said.

First, we started by agreeing that at the moment there is a free flow of information. For that reason, I do not understand why the amendment might cause problems under the Data Protection Act 1998. Presumably the act applies as much to the current situation as it would to any future situation.

Secondly, I am confused about why, if we are not aware that there is a problem, Lady Cosgrove's inquiry is dealing with this issue. If it is appropriate for the group to consider the matter, presumably there is a problem.

Thirdly, I do not understand why the exchange of information under the terms of the amendment might inhibit or detract from a police investigation. The amendment would oblige the police and local authorities

"to exchange information to whatever extent is necessary to enable the police authority to do all it reasonably can to prevent crime and disorder".

If the police felt that an exchange of information would impinge on their ability to prevent crime and disorder, presumably they could restrict it.

I am arguing against the point that I made at the beginning. I could not understand why the police have the dominant role in this relationship. The minister may have answered that question. He said that the police have the dominant role to ensure that no prosecution is lost through the exchange of information.

For the three reasons that I have given, I do not understand why the minister opposes the amendment. He spoke about the unforeseen consequences of the amendment, but I did not hear him say what those were.

The Convener: I have heard of speeches being made for and against an amendment, but not usually by the same person.

Mr Hamilton: I am open minded.

The Convener: That is what committees are all about.

Dr Jackson: I can speak only from experience, but it does not appear that information is shared as a matter of course. In some of the cases in which I have been involved, information has been shared because of my intervention. I take the point that Duncan Hamilton made originally—the aim of amendment 68 is to ensure that information is shared as a matter of course. It would be very useful if that happened.

I cannot understand why a slight change could not be made to the amendment at stage 3. The offending words appear to be "whatever extent is necessary". I am sure that those could be replaced by the words "as appropriate".

I take the point that the minister makes—that we want agencies to feel comfortable about sharing information and do not want them to share more than is appropriate. However, I support the convener's point that the police would not seek to have more information shared than is necessary. They are responsible and would act responsibly. Inserting the words "as appropriate" in the amendment would easily solve the problem.

Stewart Stevenson: The provisions of the Data Protection Act 1998 are being phased in over a number of years. My recollection of the act may be imperfect, but I believe that its provisions do not yet apply in toto to the paper recording of data. Can the minister or his advisers tell us whether that is the case? If, as it is phased in, the Data Protection Act 1998 is inhibiting the present useful free flow of information, it may assist us in our deliberations to know that. I point especially to the restrictions that have not yet, but will come into force on how paper records may be used.

The Convener: Minister, can you help us on that?

Hugh Henry: I will come back to Stewart Stevenson's point at the end.

Duncan Hamilton asked about my reference to unforeseen circumstances and said that I had not explained them. I thought that I had explained that we had concerns that it could cause problems under the Data Protection Act 1998. I also said that there could be problems under the European convention on human rights. Those are the unforeseen consequences to which I referred.

Duncan Hamilton also asked what the difficulty was with the amendment, if there is a free flow of information just now. I obviously stand to be corrected when I look at the *Official Report* of the meeting, but I thought that I said, as George Lyon indicated, that there are examples of information being exchanged already. However, Johann Lamont is clearly concerned that that is not sufficient. Not all information is being exchanged; currently, there are examples of information being exchanged where appropriate, rather than a requirement to exchange all information.

Duncan Hamilton's second question asked how, if there was no problem, Lady Cosgrove's work would help. Not all information is exchanged. There are examples of information being exchanged to the benefit of various agencies, but there are limits to that. We think that the principles associated with Lady Cosgrove's work could be important. If it can be established that there are better ways of sharing information within the constraints of the law and if we can develop joint protocols for the exchange of information and working together, that will have a wider application. If we can train officers in various agencies so that they have a better understanding of how other agencies work and, perhaps more critically, how their work impacts on another agency, that will be all to the good. Such training should not be solely concerned with work with sex offenders.

I understand Sylvia Jackson's point about the sharing of information. I have no problem with appropriate information being shared in order to

have a desired effect. The difficulty is that amendment 68 could lead to other difficulties and not necessarily achieve what is intended.

On Stewart Stevenson's last point, I am informed that the wholesale sharing of data is not permissible under the Data Protection Act 1998. Any exercise of what is proposed would have to be done in a manner compatible with other legal obligations, including the European convention on human rights. I am not sure how far the staged implementation that Stewart mentioned has progressed, but I will check and reply directly to the member and the convener.

The Convener: This is where we learn from our experiences as regards procedure. The committee must judge whether there are ECHR issues as there is no facility for us to test that. Members will just have to make their own minds up on whether there is an ECHR issue.

George Lyon: I return to the original point. Unless someone can tell us exactly what the problem is that is currently inhibiting the police, then either the local authorities or the police authorities should surely back up Johann Lamont's amendment 68 with evidence. If there is not a problem, that begs the question why we are proposing new legislation. Without the fundamental evidence to suggest that there is a problem, I do not see the point, to be honest.

Scott Barrie: We have spent half an hour on this subject, so I think that I was right to move the amendment, thereby allowing this debate to take place. I have some difficulty with the wording of amendment 68, but not with the general principle behind what Johann Lamont is seeking to do.

We have heard that information is shared very well. It is not that long since we had a two-tier system of local government. Those of us who worked under that system know about the difficulty that we had getting a district council representative to talk to a regional council representative over some fundamental issues. We may have thought that such information could easily be shared, but it tended to be jealously guarded. If that was the situation among local authorities, imagine what it would be like with the police entering the picture; some inhibiting factors might apply.

We have to be careful not to make local authority officers' jobs any harder than they are at the moment. Some people employed by local authorities have difficult jobs and have to deal with difficult people. I am thinking in particular of people working in housing services, especially housing visitors and—yes, I would say this—social workers, who have to visit many people who may or may not be involved in criminal activity.

If people have the perception that some council departments are effectively just another agency of the police, and that any information given will readily be exchanged—whether or not that can be done under the guise of preventing crime—then we could be making local authority officers' jobs more difficult than they are already. Having said that, I chaired many a case discussion in which information was shared between local authority representatives, with the police present. The police then took action based on that information. There are, therefore, good examples that we could follow.

We must be careful not to pass a law just because we think that it is a good idea. Someone else may have to sort it out later because it does not quite do what we thought it would. That is a situation that the Justice 2 Committee has wrestled with on many occasions in the past—it will no doubt do so in the future. That is the danger of amendment 68.

I would, however, be unhappy were the sentiments behind amendment 68 lost. It is unfortunate that Johann Lamont is chairing another committee today and could not be here to speak to her amendment. Knowing her as I do, I know that there must be a good reason why she lodged the amendment and why she thinks that its measures would enable the police to prevent crime, which is what we would all want.

I am not going to seek the committee's agreement to withdraw the amendment, because it is the committee that must make that decision, rather than me. If members wish me to press the amendment, I will do so; if members wish me to withdraw it, I will do that. I ask the committee for guidance. I think that amendment 68 is too widely worded, and I would feel unhappy about supporting it.

The Convener: I have to deem those remarks as your seeking the committee's agreement to withdraw the amendment, Scott. I let the committee decide whether it agrees to your withdrawing it.

Amendment 68, by agreement, withdrawn.

The Convener: That brings us to the end of today's stage 2 proceedings. I thank the Deputy Minister for Justice and his officials.

I should mention that our next meeting is on Tuesday 10 December at 9.45 am. We are again meeting in the chamber, and will be considering part 12 of the Criminal Justice (Scotland) Bill. I believe that the clerks have already secured someone from the Crown Office to come and speak to us at the beginning of the morning. The timings for that will be made available to members towards the end of the week.

Mr Hamilton: I would like to remind members that there should be an agenda item next week on the report-back on the organisation of the effective prosecution of serious crime and the appointment of advocate deputes. If members wish to include any comments or views in that report, I ask them to get those to me. That is now a matter of some priority.

The Convener: How long do members have to do that?

Mr Hamilton: Ten minutes.

The Convener: Ten minutes?

Mr Hamilton: No, I am joking. I will need to get any input in the next day or two; having comments by close of play on Friday would be good.

The Convener: That is quite an important piece of work, so it would be helpful if members could get their submissions to Duncan Hamilton by Friday, even if they have just a small contribution to make.

Meeting closed at 12:14.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178