JUSTICE 2 COMMITTEE

Wednesday 18 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
50th 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)
Paul Martin (Glasgow Springburn) (Lab)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Wednesday 18 December 2002

(*Morning*)

[THE CONVENER *opened the meeting at 09:53*]

Items in Private

The Convener (Pauline McNeill): Good morning. I welcome everyone to the 50th meeting this year of the Justice 2 Committee.

The first item is to ask the committee whether it agrees to take items 2 and 5 in private. Item 2 is the report on petition PE336 on asbestos and item 5 is the committee's forward work programme. It would also be helpful to get the committee's agreement that, if appropriate, we should meet in private when we discuss the petition on future occasions. That would save me from doing this at future meetings. Do members agree to take those items in private?

Members *indicated agreement*.

Bill Aitken (Glasgow) (Con): What about item 4? Should not that be taken in private?

The Convener: We previously agreed to take that item in private.

We will go into private session to deal with the petition.

09:54

Meeting continued in private.

10:53

Meeting continued in public.

Criminal Justice (Scotland) Bill: Stage 2

The Convener: Item 3 is the Criminal Justice (Scotland) Bill. This is the 8th stage 2 meeting on the bill. Members should have the appropriate papers in front of them.

I welcome again Hugh Henry, the Deputy Minister for Justice, and all his officials. With any luck, this will be the last time that we meet on this subject.

Section 61—Police custody and security officers

The Convener: Amendment 163 is grouped with amendments 164 and 165.

Mr Duncan Hamilton (Highlands and Islands) (SNP): Members will remember that last time we considered the bill we discussed the contracting out of services. The amendments in this group were largely predicated on the belief that I would lose the vote on amendment 157—that is an example of the usual Scottish National Party optimism coming through. The fact that I won that vote means that the amendments in this group are largely obsolete. The only question that I want to ask the minister is whether amendment 165 is necessary. Amendment 165 seeks to provide clarity and direction to the chief constable about the minimum level of training. Given that agreement to amendment 157 means that all the officers in question will be under the control, direction and guidance of the chief constable, I do not think that amendments 163 to 165 are necessary. However, I would welcome the minister's view on that.

I move amendment 163.

The Deputy Minister for Justice (Hugh Henry): I do not believe that amendments 163 to 165 are necessary. Ministers do not prescribe the content and standard of training for police officers or for any support staff that forces employ. Such a move would create a precedent and, it could be argued, might infringe chief constables' operational independence from ministers. I would be most hesitant about going down that path.

Mr Hamilton: The minister and I are in total agreement on that issue, so I will not press amendment 163 or move amendments 164 and 165.

Amendment 163, by agreement, withdrawn.

Amendments 164 and 165 not moved.

The Convener: Amendment 166 is grouped with amendments 167, 49, 168, 169, 50, 51, 52 and 53.

Mr Hamilton: We are in the same position with the amendments in my name in this group. I will not need to move amendments 166 to 169.

Amendments 166 and 167 not moved.

The Convener: As Duncan Hamilton has not moved amendments 166 and 167, amendment 49 becomes the lead amendment in the group.

Hugh Henry: Amendments 49 to 53 seek to undo provisions that treat police custody and security officers as if they were constables. After the introduction of the bill, we received a number of representations from members of the police service to suggest that those provisions were inappropriate. Constables are office holders, not employees. They have additional powers, including the power of arrest. On those grounds, it was argued that PCSOs were primarily civilians and should be treated as such.

Amendments 49 and 50 will remove PCSOs from the scope of the complaints provisions in the Police (Scotland) Act 1967 that apply to constables. Amendments 49 and 50 will also delete subsections (4), (6) and (7) from section 61 of the bill. The effect of that will be to remove Her Majesty's inspectorate of constabulary for Scotland's powers and duties in relation to PCSOs. Instead, PCSOs, as civilian employees, will be subject to the complaints and disciplinary procedures that apply to other civilian employees within the police service. PCSOs will not have the same powers and jurisdiction as constables, who are office holders rather than employees.

As the employer of PCSOs, the chief constable will have sufficient powers to deal with complaints against them. Last year, the Executive undertook consultation on changes to the police complaints system. We will clarify our position on that shortly and will deal with the position of support staff as well as officers.

I turn to amendments 51 to 53. Under section 42 of the Police (Scotland) Act 1967, it is an offence for any person to cause or to attempt to cause disaffection among constables or to induce or to attempt to induce any constable to withhold services. Under section 44 of the 1967 act, any constable who wilfully absents from duty other than in accordance with regulations is guilty of an offence.

Those sections were aimed at preventing industrial action by constables and are special provisions that relate to the office of constable. PCSOs will be civilian employees of a force and the provisions do not bind other civilians who are employed by police authorities. The net effect of amendments 51 and 52 will be to undo provisions in the bill so that no change will be made to sections 42 and 44(1) of the 1967 act. Similarly, amendment 53 will undo the bill's amendment of section 44(3) of the 1967 act.

It is sensible to distinguish between the role of constables and that of civilians—our amendments attempt to ensure that the bill reflects that.

I move amendment 49.

Amendment 49 agreed to.

Amendments 168 and 169 not moved.

Amendments 50 to 53 moved—[Hugh Henry]—and agreed to.

11:00

The Convener: Amendment 170 is in a group on its own.

Mr Hamilton: The amendment was an attempt to ensure that any person who entered into a contract would not be released from the requirements of the Freedom of Information (Scotland) Act 2002. However, given that nobody will enter into a contract, I do not feel the need to move the amendment.

Amendment 170 not moved.

The Convener: Amendment 171 is in a group on its own.

Mr Hamilton: Amendment 171 was the nuclear option. If we had not reached a consensus, I would have moved amendment 171, which would remove section 61. Fortunately, we have reached a consensus, so I do not feel the need to move the amendment.

Amendment 171 not moved.

Section 61, as amended, agreed to.

After section 61

The Convener: Amendment 1 is grouped with amendments 2 to 4.

Hugh Henry: I believe that there is a great deal of support for amendments 1 to 4, which address the problem of wildlife crime. They are designed to enhance the protection and conservation of Scotland's natural heritage by enabling the police and the courts to deal more effectively with wildlife criminals. The Executive is committed to improving arrangements for nature conservation in Scotland and we will publish a draft nature conservation bill in the spring, which will cover much important ground. However, we recognise the need to take immediate action to deal with the most blatant and destructive wildlife criminals. Our intention is that the measures in the amendments should come

into force when royal assent is granted and we will make appropriate provision for that at stage 3.

Committee members will recall the appalling incidents that occurred last spring, which included the theft of eggs from two osprey nests near Dunkeld and the poisoning of two white-tailed eagles. We must give Scotland's police forces and courts the additional tools that they require to ensure that wildlife criminals are effectively deterred, detected and held to account. That is what the amendments will achieve.

Custodial sentences, for which there is a clear need, are the headline initiative in the amendments. A significant minority of law breakers will be stopped only by the prospect of imprisonment. Some people see fines as simply business overheads; others try to disguise assets so that fines are limited; others appear in court and after being dealt with are back in court within weeks; and others think that they can do as they please without regard to the law. Is imprisonment a proportionate response? The amendments simply give the courts the option of sending offenders to jail. Scotland's sheriffs are highly experienced in taking account of all the relevant factors in cases that are before them and in determining the most appropriate penalty. That includes the ability to weigh up considerations such as the conservation impact of the offence and the threat that the offender poses.

Significant crimes in terms of conservation or those which demonstrate a blatant disregard for the law must be dealt with seriously if we are serious about protecting Scotland's natural heritage. The same arguments hold good for the upgrading of financial penalties.

At present, the majority of offences under part I of the Wildlife and Countryside Act 1981 attract maximum fines of £5,000. We are not seeking to change that arrangement. However, some offences relating to the more common bird species are currently punishable by a £1,000 fine at most. That is inadequate and fails to provide a serious or realistic deterrent. Therefore, we propose to standardise the maximum fine on summary conviction at £5,000, which will make the penalties throughout part I of the act consistent and more effective in deterring crime. In any case, discretion on the actual fine that is imposed will remain entirely with the courts.

It is self-evident that penalties can be applied only if an offender can be brought to justice. Giving the police a specific power of arrest in wildlife crime cases is therefore an important proposal. That power is not unusual—indeed, it is no different from the power that can be exercised in many other circumstances, including in relation to common-law offences. However, a statutory provision will be important in wildlife cases and will strengthen the hand of a police officer.

The need to give wider application to existing powers is also at the heart of our proposal to extend the availability of search warrants in wildlife cases. At present, that power is limited to a restricted number of offences—mainly those relating to the killing of rarer birds and animals—and to offences such as the illegal sale of specimens. That results in significant anomalies. The proposed change will ensure that, in future, the police will not be unreasonably prevented from searching under warrant and properly investigating wildlife offences. The usual safeguards will continue to apply. A sheriff must first be satisfied of the case for issuing a warrant and a fiscal must be convinced that it has been properly used. Again, what the amendments propose is no more than a change that makes the existing statute more consistent and effective.

I think that the Parliament and the public are at one in wanting to act to ensure that Scotland's magnificent and unique natural heritage is protected and preserved for future generations. The amendments will make an effective contribution to that aim and signal our collective determination to act in a manner that the public expect.

I move amendment 1.

Bill Aitken: The amendments are worth while and I support them. Committee members were impressed by the evidence session, which certainly taught me that there is a serious problem that we had perhaps not generally understood.

The minister stated that our sheriffs are highly experienced and well able to assess the seriousness of cases. There seems to be some inconsistency in what he said today and what he said last week. However, despite that inconsistency, I support the amendments.

Stewart Stevenson (Banff and Buchan) (SNP): I am happy to add my support for the amendments. At the risk of offending people who are doo enthusiasts, I have a particular affection for raptors. I always have a sense of wonder when I see a large bird of prey perching on a roadside fence to hunt. I enjoy that experience and want future generations to have the opportunity of enjoying that experience, too. My one request to the minister is that, when he sums up, he will reassure me and others that there will be sufficient police resources to enforce the provisions. I hope that he can do so.

Mr Hamilton: I add my whole-hearted support for the minister's amendments. All committee members were concerned about the matter and we were on the verge of lodging amendments. We are delighted that the Executive has done so—that is the appropriate way in which to proceed.

I echo what was said about police resources.

Many policemen or policewomen who take time out to guard nests during the appropriate season are not paid. We must pay tribute to that effort. It would be a shame if, once powers were given, enforcement was limited or restricted because of the scarcity of resources. However, the amendments are a positive step forward.

Further amendments could be lodged at stage 3 as a result of our evidence session and I hope that that will be done in conjunction with the forces that are involved. I know that the minister cannot possibly agree to an amendment that he has not yet seen, but it is worth registering the fact that we might come back to toughen things up even further. The points that he made about heritage are absolutely correct.

Scott Barrie (Dunfermline West) (Lab): I do not think that there will be any disagreement about the amendments. I want to ask the minister two very brief questions. He said that the proposals would come in when the bill receives royal assent. Will he indicate when he expects that to take place and whether it will be in time for the beginning of next year's egging season, which is due to commence around March? He mentioned the proposals to consult on a nature conservation bill. Are there any proposals for when a bill might be introduced, either in the next session or on a shorter time scale? We need to return to the subject in greater detail.

Hugh Henry: First, on Bill Aitken's throwaway remarks, I do not think that anything that I said this morning was inconsistent with the points that I made last week. We were talking about a completely different issue and in last week's debate I did not reflect any view other than the one that I expressed this morning about sheriffs' abilities.

Stewart Stevenson echoed Duncan Hamilton's question about sufficiency of resources and police officers. That is essentially a matter for police constables. We have put significant resources into police forces throughout Scotland and we are determined to drive up the number of police officers available. The initiative taken by Tayside police has been interesting. We would not want to prescribe how each force should deploy staff or what post they would designate. The appointment of at least one full-time wildlife liaison officer is certainly worthy of consideration. I do not want my remarks to be taken as my trying to tell chief constables what to do, but generally the initiative is seen as interesting, as it focuses expertise on a particular individual. That individual can in many cases help to drive the team around him or her by sharing knowledge and expertise and by encouraging other staff to support his or her work.

We know that police forces are being funded at record levels, but this is not the time to go into that. I am sure that those police forces that have the most evidence of this type of crime will consider seriously how to deploy their resources. With the bill, we are trying to give them the ability to act; the question of funding and deployment can be taken up elsewhere.

We cannot predict entirely the date of royal assent, but I hope that it will be in time for us to be able to act next spring. Any proposed nature conservation bill would be for the new minister and the new Parliament to determine and I do not wish to speculate on that.

Amendment 1 agreed to.

The Convener: Amendment 37 is in a group on its own.

11:15

Paul Martin (Glasgow Springburn) (Lab): Amendment 37 deals with offences against emergency service staff, particularly firefighters and paramedics. It would ensure that there is parity in the protection that they receive when carrying out their duties. In terms of the powers that are available to the sheriff in court cases, emergency service staff would receive the same protection as not only policemen, but sheriff officers, messengers at arms, revenue officers and any other person charged with the enforcement of a statutory provision. Already, significant additional powers appear to be available to the sheriff to ensure that we protect our police officers, but assaulting our firefighters and other emergency staff appears not to have the character of a particular offence.

Amendment 37 also takes into consideration the recent attacks that people who can be termed nothing other than mindless thugs have made on paramedics and other emergency staff who are carrying out their duties. Those attacks have been publicised by the media and the Parliament should use the opportunity of the Criminal Justice (Scotland) Bill to deal with the problem.

That is the background to amendment 37. I would welcome commitments from the minister on how we will legislate on the issue.

The Convener: I have considerable sympathy with amendment 37. During my previous life as a trade union official representing ambulance technicians, such assaults were a big issue in Glasgow—they were probably a big issue in other areas of the country, but Glasgow is the area with which I am familiar. Crews that were out trying to save lives were attacked while they were getting people on to stretchers, for example. That made their job difficult indeed.

The fact that ambulance personnel are not technically classified as emergency service staff

has always been a sore point for them. That goes back to the days of the ambulance dispute. We would have to overcome that technical problem in the wording.

Paul Martin has had similar experiences in relation to firefighters who have been attacked while doing their duties. There is merit in investigating the possibilities for ensuring added protection for those who work to save lives and for whom there is a record of problems. The committee has not been able to test whether giving such staff the same protection as is afforded to the police under section 41A of the Police (Scotland) Act 1967 would be the correct provision. However, I am pleased that Paul Martin has lodged amendment 37, because the issue is worthy of more discussion.

Bill Aitken: The fact that Paul Martin felt the need to lodge amendment 37 is depressing, but he was right to do so. He was also right to underline the number of incidents in which, particularly over the past six months or so, members of the emergency services who were attempting to assist members of the community have found themselves under attack in the manner that he described, which is particularly despicable.

The convener made the point that, under the Police (Scotland) Act 1967, greater protection is given to police officers in the execution of their duties. The thinking behind that legislation was probably not only that the police were worthy of greater protection than other sections of society, but that, given the nature of their duties, the police were more likely to find themselves in a confrontation than others would be.

The evidence that Paul Martin mentioned, which we have all seen, seems to contradict that view. Ambulance drivers and fire brigade operatives are now in a similar situation to that in which police officers find themselves; they are under threat just as police officers are. That must concern us considerably.

I do not seek to anticipate what the minister might say, but it could be argued that those who are guilty of such assaults should be charged on indictment, which would allow more severe sentences to be passed than prosecution under summary procedure would.

Paul Martin's suggestion has several attractions. The definition of emergency medical personnel raises a difficulty, but clarifying the definition should not be rocket science. Amendment 37 is worthy of support and I am inclined to support it.

Stewart Stevenson: I, too, am very much minded to support the amendment. In the past fortnight, I had the interesting experience of spending five hours on police patrol on a Saturday night and Sunday morning and of spending a couple of hours a few days later on foot patrol, which is a total of seven hours. That was an interesting insight into the challenges that the police meet on the street. Because the police dressed me in one of their fluorescent jackets, several members of the public assumed that I was a member of the police and were happy to take instructions from me, which I found slightly alarming.

The Convener: So do we.

Stewart Stevenson: I am minded to support the amendment, which Paul Martin was right to lodge. If the minister resists the amendment, I hope that he will do so solely because he intends to lodge a similar amendment at stage 3 that might address any perceived defects in amendment 37's drafting. If he takes that approach, I am sure that he will have my support and that of some of my colleagues.

Mr Hamilton: I, too, am attracted to the amendment. I would appreciate clarification on subsection (2) of the amendment, which would exclude people who are

"receiving the assistance of the fire brigade"

from being caught by subsection (1). Do other categories of people need to be excluded from the charge? They might include people who were not directly receiving assistance but who might be caught unnecessarily. Those people might not have deliberately assaulted a fire brigade member, but might have been in the vicinity.

Hugh Henry: Like the convener and the members who have spoken, I am sympathetic not only to the intention behind the amendment, but to the sentiments that Paul Martin expressed. He has campaigned tirelessly to protect his local community and the people who work in it. On many issues, he has vociferously and diligently tried to ensure that the law gives local residents proper protection.

In a sense, Paul Martin reflects the views of many members who represent constituencies in which disorder, crime, vandalism and lawbreaking are evident. Debates on a range of issues have shown members' determination not only to protect decent, ordinary people, but to give them the ability to fight back and to lead their lives in a way that others would take for granted.

Anyone who

"assaults … obstructs, molests or hinders a member of the fire brigade or … of any emergency medical service"

risks the lives of those individuals and other members of the public. Such services must respond quickly. Unnecessary obstruction places the public and emergency personnel in danger.

The same can be said of other key public sector workers. A tragic example of social workers not

being able to do their child protection job properly was referred to on the radio yesterday and this morning. The case was horrendous and involved a child who was mutilated, and who died, as a result of social workers being intimidated and not being able to visit.

We could argue that other public sector workers who carry out essential jobs should also be protected. The recent case shows that, if social workers are prevented from working because of violence, assault, threats and intimidation, the consequences can be horrendous. Paul Martin is, understandably, focusing on the emergency services, but we need to recognise that many public sector workers need protection when carrying out their duties.

There are some technical problems with the definitions in the amendment. In my opinion, it would be worth discussing with Paul Martin whether something more effective or appropriate could be put before Parliament at stage 3. Paul Martin and the Executive will wish to reserve their respective positions, but some of the issues raised are well worth exploring.

We all want to ensure that staff in the emergency services are protected in the course of their duties, but we need to ascertain whether any proposal would increase the protection available and whether the additional protection is necessary. Clearly, in some cases it is necessary, although, as Paul Martin and Bill Aitken mentioned, there is a balance to be struck. There may be an increase in the number of assaults and attacks on firefighters, but the huge preponderance of incidents relate to police officers, because of the particular nature of their job. It has not always been a matter of comparing like with like. One assault on an ambulance worker or fire worker is one assault too many, but we should always be aware of the issues in relation to the police.

We need to consider whether the phrase

"member of any emergency … service"

is sufficiently clear and covers all who might need the additional protection. An offence is already contained in section 30(2) of the Fire Services Act 1947, which states that any person who wilfully obstructs or interferes with any member of a fire brigade who is engaged in operations for firefighting purposes shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale. In addition, such persons may also be guilty of vandalism under section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995, which provides stiffer penalties, or under the common-law offence of malicious mischief.

The common law of assault provides protection from physical attacks for everyone. The maximum sentence for assault, when someone is prosecuted on indictment, is life imprisonment. The flexibility of the common law allows it to respond to assaults and other unacceptable behaviour towards the emergency services, whatever the circumstances, so a degree of flexibility is available to the judicial system.

Amendment 37 covers

"a member of the fire brigade or a member of any emergency medical service (including a member of the crew of an ambulance or a paramedic)".

It is not clear whether the amendment would or should cover a general practitioner attending an emergency, hospital staff, pharmacists or other providers of medical services. The scope of the amendment would need to be considered carefully before it could be introduced effectively.

I have mentioned some of the wider issues around public sector workers and the problems that they face. I am aware that the fire service has introduced monitoring to assess the scale of the problem. In the first half of this year, brigades reported 12 physical assaults against firefighters. All those incidents were in Strathclyde. Throughout Scotland, 82 other incidents were recorded. The majority of those were missile throwing and verbal attacks, and such incidents can be covered by existing powers. That is not to underestimate the problem nor to imply that Paul Martin's argument is not valid—there have been serious incidents—but penalties are available through the existing law. We must ask not only whether the proposal would be additional to existing law, but whether its definition and application would be effective.

I mentioned monitoring. We hope that the fire, police and ambulance services develop closer links and share good practice and the provision of training to deal with violent incidents. We must also examine the reporting system and violence at work policies. Similar issues arise in relation to attacks on medical staff in accident and emergency wards. The Executive has made it clear that violence towards national health service staff is also unacceptable.

Paul Martin raised a number of understandable points, but there are technical problems of definition. I am willing to discuss the matter further to find out whether a more effective and clearer amendment might be produced at stage 3. Although we sympathise with Paul Martin's views, amendment 37 might not achieve all that it is intended to achieve. Duncan Hamilton mentioned proposed subsection (2) in amendment 37. Paul Martin will have to reflect on that issue and we will discuss the point with him before stage 3.

11:30

The Convener: As ever with the Criminal Justice (Scotland) Bill, we are at the disadvantage of having to consider the issues surrounding an amendment without taking evidence, so I will allow members to seek clarification on a few points.

I will kick off. The minister pointed us to the Fire Services Act 1947 and the level 3 fine in that act. Might one way of dealing with attacks on firefighters be to impose a higher level fine by amending that act? For example, a level 4 fine, which is referred to in amendment 37, might be appropriate. Will you consider that possibility?

Hugh Henry: Technically, that is a possibility, although we have not considered it. We will reflect on the idea, but if we were to raise the level of the fine, that would have to be part of wider consideration and not only in relation to a specific group of staff.

The Convener: So you would consider other public service workers but you do not propose to draw a distinction between 999 services and other services. Perhaps you should consider the question of public sector workers and 999 services. Until we carry out research on the matter, we will not know whether there are practical differences. From my experience of the ambulance service—which I am concerned about because its needs are not always taken into account—I know that its members are often on the street late at night, trying to get people on stretchers when other activities are going on. They do not have adequate resources to prevent people from obstructing them. In accident and emergency wards, there is a police or security presence. Will you keep an open mind on the issue and take into account possible differences between 999 services and other services? You seem to be saying that you definitely want to broaden out the matter.

Hugh Henry: I was trying to get across the point that a range of public sector staff are worthy of additional support and consideration. I gave the example of social workers. Doctors who go out on serious emergency calls and are attacked for the drugs that they are carrying are another example. Whether such doctors are less worthy of consideration than ambulance workers who respond to 999 calls is a moot point. If we did not consider both groups, if there was an emergency involving a heart attack, the ambulance worker would be given additional protection but the doctor would not.

We will reflect on what you are saying about the different category of 999 emergency service calls and the workers employed in that regard. The broader point that we were trying to make is that some protection has to be given to workers who are engaged in supporting people in life-threatening situations. That is what Paul Martin's amendment seeks to do. Because of definitions and technicalities, the most sensible way to do that might be to restrict that protection to 999 workers, but other workers involved in similar activities might have to be included.

We need to consider such matters further before stage 3. If Paul Martin withdraws his amendment, we will consider the matter further. If amendment 37 is accepted, we will still have to consider the matter further because we believe that there are technical problems with the amendment.

Mr Hamilton: I would like to clarify further the extent to which the present law works. The minister mentioned 12 recorded cases involving assault in Strathclyde. How many of those resulted in a prosecution?

Hugh Henry: At the moment, the figures are not available, but the fire service is about to introduce procedures that will make such statistics readily available. I am unable to give an indication of those statistics at this meeting. The police have such statistics but, as I said earlier on, the number of attacks on police officers is vastly greater than the number of attacks on firefighters and medical personnel. In 2000, proceedings were taken under section 41 of the Police (Scotland) Act 1967 in more than 2,500 cases and charges were proved in almost 2,000 cases. Of those, 1,000 resulted in a fine and almost 400 resulted in a custodial sentence. There is a huge difference in the numbers of recorded incidents.

Mr Hamilton: Yes. Would it be fair to say that, because of the protection that exists for the police, a higher proportion of cases lead to prosecution? If that is the case, is not that a reason for supporting the proposed measure in principle?

Hugh Henry: Arguably, it is not. As Bill Aitken outlined, regardless of whether the proposal is introduced, the nature of the job that police officers do makes it more likely that they will be involved in serious confrontational incidents that could lead to a crime being committed.

There has been an increase in appalling and unacceptable incidents involving firefighters and ambulance staff. A lot of that is stone throwing by children who disappear before they can be arrested, but there have been one or two incidents involving serious attacks. The nature of the job that those workers do is different from the nature of the job that the police do, which can often lead to incidents of confrontation and violence.

In this debate, we are talking about whether additional protection can be given in the minority of cases that involve emergency personnel. It must be recognised that, even if the law were to be changed, people who work in the other

emergency services do a different job from that done by police officers and there would still be a lower incidence of attacks on them than there is on police officers.

Paul Martin: I thank the committee for the support that members have expressed in principle and I thank the minister for confirming that the Executive takes the issue seriously.

People have tended to deal with the issue by arguing that, if we were to accept the proposal for one category of public sector worker, we would need to extend it to those who are regularly on the front line in other parts of the public services. However, there is a significant difference between other workers and those who have to deal with the immediacy that is attached to attending a 999 call.

We need to ensure that staff who are dealing with 999 calls are protected. As Bill Aitken pointed out, any hindrance to firefighters who are going to deal with a house fire can have significant effects on lives. The minister made a similar point. Given the emergency that is attached to a 999 call, the important issue is ensuring that staff are protected.

There is a significant difference between the social worker, who may not be dealing with a call that has the immediacy of a 999 call, and the firefighter or paramedic who is required to go into an external environment in which they can become local targets.

The minister has offered an opportunity to discuss an amendment at stage 3. I know that the minister has not committed himself entirely to such an amendment, although that is what I would like him to do, but I welcome the opportunity and I will withdraw my amendment. I assure the minister that if he does not introduce an amendment, which we could collate in partnership, I will lodge my own amendment at stage 3.

An amendment would need to cover all emergency staff. I would be happy for the amendment to be qualified so that it does not extend to other public sector workers at this time. Perhaps at a later stage of the Criminal Justice (Scotland) Bill, the Parliament will have further opportunities to consider how we protect other public sector workers. I have confined my comments to how to deal with emergency staff, but the protection of other staff could also be considered.

I withdraw my amendment on the condition that there will be further discussions with the minister.

Amendment 37, by agreement, withdrawn.

After schedule 2

Amendment 2 moved—[Hugh Henry]—and agreed to.

Section 62—Disqualification from jury service

The Convener: Amendment 38 is grouped with amendment 14.

Hugh Henry: Amendments 38 and 14 amend sections 62 and 63 respectively.

The intention of section 62 is to disqualify from jury service a person convicted of a criminal offence who receives a probation order, drug treatment and testing order, community service order or restriction of liberty order. That intention is not achieved in the case of probation orders. That is because section 247 of the Criminal Procedure (Scotland) Act 1995 provides that the conviction of an offender who is placed on probation shall be disregarded for the purposes of any enactment that imposes any disqualification or disability on the convicted person, or authorises or requires the imposition of such disqualification or disability.

In order to achieve the policy intention, section 247 of the 1995 act needs to be disapplied for the purposes of section 62. The effect of amendment 38 will be that a person who receives a probation order cannot serve on a jury.

Amendment 14 is a minor technical amendment, which seeks to correct an error in section 63, where the words "the court" have been erroneously repeated during the typing process. Section 63 amends section 99 of the Criminal Procedure (Scotland) Act 1995 to enable judges to allow jurors to go home overnight after they have retired to consider their verdict in cases where that is deemed to be appropriate.

I move amendment 38.

Amendment 38 agreed to.

Section 62, as amended, agreed to.

Section 63—Separation of jury after retiral

Amendment 14 moved—[Hugh Henry]—and agreed to.

Section 63, as amended, agreed to.

After section 63

The Convener: Amendment 15 is grouped with amendment 17.

Hugh Henry: Amendment 15 will bring the provisions relating to live television links between courts and prisons into line with the provisions in England and Wales and in Northern Ireland. The amendment will introduce a new provision that enables courts and prisons to take advantage of advances in modern technology to streamline and improve the efficiency of the judicial process when that involves persons who have been imprisoned or held on remand.

Currently, accused persons who are remanded in custody are conveyed from prison to court to appear in person for each court hearing. Many of those hearings are procedural, and solemn proceedings can take only a few minutes. The new provision will enable such cases to be taken over a live television link between courts and places of detention. The hearings involved will not include proceedings at which evidence is to be led on the charge or charges against the accused. The accused will be able to interact with the court as if they were personally present before it.

Amendment 15 will reduce the need to convey prisoners physically in all cases and will bring consequential cost and security benefits. It is anticipated that, in addition to bringing potential benefits to the judicial process, the process will greatly reduce the stress and anxiety that prisoners feel because of the disruption to their daily routine and the possible change of prison location that is occasioned by appearances before courts. Facilities will be provided for the defence counsel and solicitors to consult their clients over the link before, during and after hearings. At any stage in the proceedings, sheriffs—either acting on their initiative or having been addressed by parties in the case—will have the power to determine that the provisions should not apply and that the accused should be brought before the court.

I move amendment 15.

11:45

Stewart Stevenson: Members of the committee who, like me, visited Tain sheriff court and saw a prisoner being brought from HMP Inverness at Porterfield to Tain—which represented about four or five man hours of effort for the two prison officers concerned to enable a prisoner to appear in court for about two minutes—will well understand why we should accept amendment 15. However, I would like the minister to explain how we can ensure that the link between the court and the place of detention is secure. How can we ensure that someone at the back of the court has not swapped the cable to put in a ringer for some purpose? I ask that question not to attack the amendment, but to allow the minister to give us the benefit of his thoughts on the matter so that, at a subsequent stage, we will not give a defence counsel the opportunity to use the possibility of such corruption of the process as part of his defence. I give the minister notice of the fact that I will ask a similar question about the amendments regarding electronic communications, which will be discussed following this debate.

Bill Aitken: Amendment 15 is infinitely sensible, but I seek clarification of a couple of points. Proposed subsection (1)(a)(ii) of the amendment states that the procedure will not apply at

"a diet at which evidence as to the charge may be led or presented".

I ask the minister to confirm that the procedure will not apply in the case of judicial examination at full committal proceedings. I also ask him to confirm that the procedure will apply in respect of summary intermediate diets.

Hugh Henry: I shall address Stewart Stevenson's first point first. The link will be over lines that are reserved specifically for the purpose. Stewart Stevenson then widened the issue out beyond the direct link and asked what interference could possibly occur. As I am not at all technically minded, I can say only that there do not seem to have been significant problems in the operation of such a system in England and Wales or Northern Ireland. I will seek further background information from those jurisdictions to see whether there have been any recorded incidents, how they have been dealt with and how protection has been introduced. Once we have that information, we will send it to the convener and to the member.

Bill Aitken asked whether the procedure will apply to judicial examination at full proceedings. The bill allows for a judicial examination, but that will be a matter for the sheriff. Intermediate diets are included in the terms of the provision.

Amendment 15 agreed to.

Section 64 agreed to.

After section 64

The Convener: Amendment 16 is grouped with amendment 18.

Hugh Henry: The committee will, no doubt, recall that the Executive indicated in the white paper "Making Scotland Safer" that we were looking at ways to improve the efficiency of the criminal justice system by more effective use of electronic communication. We said that we were examining how the available technology could best be applied to improve the system, so that certain of the documents that are used in criminal proceedings, such as indictments, complaints and warrants, could be sent electronically.

Our further consideration of the matter led us to conclude that provision for the electronic transmission and storage of most of those documents, if and when they were needed, could already be made by an order under the Electronic Communications Act 2000. Section 8 of that act provides for an order to be made to modify statutory provisions so that documents can be sent electronically. However, the provisions of the 2000 act do not allow provision to be made for the electronic transmission and storage of warrants obtained at common law. Amendment 16 is

required to enable ministers to make an order to regulate the electronic transmission and storage of such warrants.

I believe that amendment 16, in addition to contributing to the efficiency of the system as a whole, will also make an important contribution to the fight against crime. In many instances, it would reduce the time needed to process the search warrants in the chain between police, procurator fiscal and sheriff when time can be a critical factor in getting to the locus of the crime before evidence is destroyed. The amendment to the long title is, therefore, consequential.

In conclusion, amendments 16 and 18 are a sensible and minor extension of the provisions and principles that are already established by the Electronic Communications Act 2000, and I hope that you will be able to support them.

I move amendment 16.

The Convener: The committee has one or two questions on amendment 16. When the committee visited Hamilton sheriff court, the sheriffs raised the issue of the signing of warrants and a bizarre situation was revealed. When sheriffs there have to sign warrants after hours, they must return to the sheriffdom for the signing. That could involve their arriving at the boundary of the sheriffdom in their car, meeting someone else in another car and then signing the warrants in the appropriate place. How will the procedure in the amendment operate in practice? Will it overcome the bizarre situation that has existed up to now?

Hugh Henry: Do you want me to respond to that question immediately, or do other members have questions on the amendment?

The Convener: We will take a few questions, to allow you time to think about them.

Stewart Stevenson: I would like to develop that point in relation to subsection (2)(a) of the proposed new section, which gives the minister the right to modify something by order in relation to warrants. If electronic communication is used by the sheriff, the physical location of the sheriff is indeterminate. I seek an assurance that the physical location of the sheriff when he is electronically authorising a warrant will not, in practice, lead to any difficulties. As I do not know the implementation that has been considered, I ask the minister to consider the implications of the sheriff being outwith Scotland when he endorses the validity of a warrant. That concern is dependent on the implementation that is envisaged. However, the sheriff could be anywhere in the world. I would be happy to hear from the minister by correspondence after the meeting, if that would be an appropriate way to deal with the issue, as I am prepared to support the amendment.

I want assurance that, in the authorisation, transmission and subsequent storage and retrieval of warrants by electronic means, the prosecution will be able to defend any suggestions made by the defence that, at any stage in the process, the warrant was amended by third-party intervention, whether deliberately or accidentally. I want to ensure that, through this provision, we are not introducing a way whereby defence lawyers can exploit weaknesses. Having said that, I have not read the Electronic Communications Act 2000 and the minister may refer me to the relevant provisions of it.

Bill Aitken: Perhaps the minister shares the same disadvantage that I have: namely, that I am a technophobe. However, I have a genuine difficulty in seeing how the provision will work. I fully understand the approach that would be adopted towards communication by the police and the fiscal. I am concerned about what happens when the sheriff or, in extreme cases, the justice of the peace becomes involved. The police must take an oath before the sheriff to state why they are applying for a warrant in order to be questioned with regard to the application. I do not see how that could possibly be done by technology. The police officer must be present to be sworn in in person, when they are the deponent. I just do not see it working, unless I have misunderstood something.

The Convener: Minister, can you give us any information about the system?

Hugh Henry: Several concerns articulated by members are probably a reflection of a familiarity with electronic communication and technology that is similar to mine, as how these things work is mostly a mystery to me. However, I stress that the matters are already under consideration, and we would not make an order until work on the technological aspects is complete.

A joint working group, involving the Crown Office and Procurator Fiscal Service and the Association of Chief Police Officers in Scotland, is currently considering improvements that could be made to the system used to grant search warrants. The working group is considering standardisation of warrant applications, which would be a prerequisite for electronic transmission. We recognise that electronic transmission would require to be secure.

If the committee is content to accept the amendment before stage 3 and to discuss the practicalities and technicalities as opposed to the legalities, we could arrange a technical presentation so that members could raise any fundamental flaws that they found or worries that they had. We could explain how the system would work and discuss some of the electronic implications. Under the Electronic

Communications Act 2000, 11 orders have already been made, and eight more are due. Those include sensitive matters such as sending medical prescriptions electronically.

Let me move on to other points. Sheriffs would still have to be in their jurisdiction to grant a warrant. The amendment is not concerned with that. It is about speeding up the links between police, fiscal and sheriff. I accept that it is possible to be anywhere in the world to initiate something electronically, but we would still insist that sheriffs would be in their jurisdictions. There are sheriffs who live in their own jurisdiction; those outwith the jurisdiction would have to arrive in their jurisdiction well in advance to see the material and consider whether they would grant a warrant, even though they would still have to hear from the police. Therefore, in a sense we do not believe that there is a difference, except that the process will be speeded up. However, some of the fundamental prerequisites remain.

The Convener: At this stage, the committee will have to accept some of the provisions on trust. I am signed up to the principle of short-cutting some of those lengthy procedures. I am not a technophobe, so this does not present a problem to me. However, the committee is faced with a problem because members are trying to get their heads around procedure that they do not fully understand and are trying to translate that procedure to determine how it would operate after the bill becomes an act.

Certain requirements cannot be dispensed with. The requirement to swear under oath will remain. If electronic transmission is used, is a signature still required?

12:00

Hugh Henry: Electronic transmission will be used instead of a signature. The amendment allows Scottish ministers to provide by regulation the technical requirements for electronic transmission. The regulations will cover issues such as authenticating the sheriff's signature and ensuring that the electronic transmission is secure from interception. Having the technical details made by regulation also allows for them to be updated more easily to take account of improvements in technology.

The Convener: We might be swapping cars for computers. In other words, if a sheriff, who may be required to sign something outside his or her jurisdiction, could access a computer, he or she could provide an electronic signature.

Hugh Henry: Yes, but the sheriff would have to be in his or her jurisdiction.

The Convener: That creates a rather odd situation. We already know of sheriffs who merely drive to the borders of their jurisdiction. I am not sure of the percentage of sheriffs who live in their jurisdictions. The new provision may only substitute that rather bizarre situation with another bizarre situation, whereby sheriffs only need computer access to do their jobs.

Hugh Henry: We are attempting to use the opportunities afforded by electronic communication to improve the system. We do not intend to dispense completely with the current system, nor are we proposing a fundamental change to some of the intrinsic requirements. That would be a much more fundamental step. There are certain requirements and safeguards built into the system. We are stating that in situations where it could be used appropriately to speed up matters, electronic transmission would be required. However, we have not made fundamental changes to the basic requirements and the way in which the system operates.

The Convener: We may have resolved that issue. From my conversation with the sheriffs in Hamilton, I thought that that problem would be solved. However, perhaps it is dealt with better by section 49, which proposes that new section 9A, entitled "Competence of justice's acting outwith jurisdiction", be inserted after section 9 of the 1995 act to state:

> "It is competent for a justice, even if not present within his jurisdiction, to sign any warrant, judgment, interlocutor or other document relating to proceedings within that jurisdiction provided that when he does so he is present within Scotland."

Does that provision cover everyone?

Hugh Henry: It applies to justices only.

The Convener: It might be worth while to consider the issue further before stage 3. Why should that provision not apply to sheriffs also? Some of the problems associated with electronic communication might be solved if they were required only to be present in Scotland.

Bill Aitken: I have a serious difficulty. I cannot see how the provision would work. Someone must give evidence under oath as to why he or she wants a warrant, and that must be done face to face with the person signing it. There must be that interface and the physical questioning that would follow.

Mr Hamilton: It strikes me that the blind are leading the blind. Although I appreciate the minister's offer of further information and a presentation on what is meant, the time for that is surely between now and stage 3. Although no member of the committee has a problem with the principle of amendment 16, the committee cannot support it today on the basis of the information that we have. It is not our intention to spike the proposed measure; we just want to ensure that we agree to a good amendment.

Hugh Henry: I am content for amendment 16 to be withdrawn, to allow time for the committee to receive a presentation on some of the technical and practical aspects of the proposal, as well as the legal aspects. I can arrange for our officials to contact the clerks to find out the best way of doing that.

The Convener: Although you have the committee's support in principle for what you seek to achieve, it would be helpful if you were to withdraw amendment 16 at this stage. That would allow us to iron out some of the detail.

Amendment 16, by agreement, withdrawn.

Sections 65 and 66 agreed to.

Schedule 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Convener: Amendment 149 is grouped with amendments 150, 153 and 151.

Hugh Henry: The amendments are technical amendments.

Amendments 149, 150, 86, 153 and 151 moved—[Hugh Henry]—and agreed to.

Schedule 3, as amended, agreed to.

Section 67 agreed to.

Schedule 4

REPEALS

Amendment 3 moved—[Hugh Henry]—and agreed to.

Schedule 4, as amended, agreed to.

Section 68 agreed to.

Section 69—Orders

The Convener: Amendment 154 is in a group on its own.

Hugh Henry: Section 69 provides that it will be possible to exercise by statutory instrument any power of the Scottish ministers to make orders or regulations under the bill. Amendment 154 will amend section 69 to alter the procedure for making statutory instruments to exercise powers under certain provisions in the bill. The relevant powers are contained in sections 6(1)(b), 11(1), 14(1), 14(12), 15(5), 36(5) and 65, which deal with risk management plans, victims, drugs courts and transitional provisions. Instruments that are made in exercising those powers are subject to negative procedure; it is proposed that they should be subject to affirmative procedure.

Amendment 154 takes account of the recommendations that the Subordinate Legislation Committee made in its report on the bill and of the Justice 2 Committee's comments on the order-making power in section 36(5). The Subordinate Legislation Committee concluded that the nature of the provisions in the sections that I mentioned means that they should be subject to the higher level of parliamentary scrutiny that the affirmative resolution procedure affords. The Executive has accepted those recommendations.

During the stage 1 debate, the Deputy First Minister announced that the Executive would lodge amendments on the order-making powers in sections 14(1) and 14(12). In relation to section 65, the Executive has gone slightly further than the Subordinate Legislation Committee's recommendations. It seeks to provide that any order that amends primary legislation that is made under section 65 will be subject to affirmative resolution.

We also seek to amend the power in section 36(5), which provides for the Scottish ministers to vary by order the length of interim sanctions that are available to the drugs courts. During stage 2 consideration on 13 November, the Justice 2 Committee commented that the order-making power in section 36(5) should be subject to the affirmative resolution procedure.

We have reflected on the points that the committee made. On 21 November, Richard Simpson wrote to the convener to confirm that we would lodge an amendment to section 69 to make section 36(5) subject to affirmative resolution. I confirmed that during the debate on drugs courts on 28 November.

It is right that the Justice 2 Committee and the Subordinate Legislation Committee have scrutinised the order-making powers in the bill. I hope that the committee will welcome the action that we have taken to allow fuller debate to take place on the statutory instruments that we lay before the Parliament.

I move amendment 154.

The Convener: It is fair to say that the committee is pleased that you have adopted our recommendation.

Amendment 154 agreed to.

Section 69, as amended, agreed to.

Section 70 agreed to.

Long Title

Amendment 84 moved—[Hugh Henry]—and agreed to.

Amendment 152 moved—[Stewart Stevenson]—and agreed to.

Amendment 172 not moved.

Amendments 17, 18, 119, 120 and 4 moved—[Hugh Henry]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the Criminal Justice (Scotland) Bill. That was a short session for us. I thank Hugh Henry, who had to step in in the middle of the process. We welcome all the dialogue that we have had with him. We also thank the officials who supported him in the background.

Hugh Henry: Thank you very much.

The Convener: The next meeting of the Justice 2 Committee will be on Wednesday 8 January at 10 am in committee room 2. We plan to consider in private our long-awaited inquiry into the Crown Office and Procurator Fiscal Service.

12:11

Meeting continued in private until 12:53.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178