JUSTICE 2 COMMITTEE

Tuesday 25 November 2003
(*Afternoon*)

Session 2

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JUSTICE 2 COMMITTEE
15th Meeting 2003, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
Colin Fox (Lothians) (SSP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mike Pringle (Edinburgh South) (LD)
*Nicola Sturgeon (Glasgow) (SNP)

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Ms Rosemary Byrne (South of Scotland) (SSP)
Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Michael Matheson (Central Scotland) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

THE FOLLOWING GAVE EVIDENCE:

Catherine Brown (Scottish Executive Justice Department)
Brian Cole (Scottish Executive Justice Department)
David Doris (Scottish Executive Development Department)
Sharon Grant (Scottish Executive Justice Department)
Michael Kellet (Scottish Executive Development Department)
Gillian Russell (Scottish Executive Legal and Parliamentary Services)
Kit Wyeth (Scottish Executive Education Department)

CLERK TO THE COMMITTEE

Gillian Baxendine
Lynn Tullis

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Tuesday 25 November 2003

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:06*]

Item in Private

The Convener (Miss Annabel Goldie): Good afternoon ladies and gentlemen. I welcome everyone to the 15th meeting of the Justice 2 Committee in this session. Do members wish to take item 6 in private?

Members *indicated agreement*.

Subordinate Legislation

Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511)

14:06

The Convener: Item 2 concerns one piece of subordinate legislation. I have an interest to declare. I am a member of the Law Society of Scotland and an enrolled solicitor in Scotland. Do any other members have an interest to declare?

Members *indicated disagreement.*

The Convener: Nicola Sturgeon wishes to move that nothing further be done under the amendment regulations. There is a procedure to guide the committee on how to determine the motion. Under that procedure, Executive ministers and their advisers are entitled to be present. I welcome the Deputy Minister for Justice, Hugh Henry, and his colleagues from the Justice Department, Ian Allen, Kirsty Finlay and Anne Cairns.

Members should have received a note from the clerk setting out the history of the regulations, correspondence from the Executive and a response from the Law Society. I thank the Deputy Minister for Justice for his letter, which was also circulated to members.

The format for this occasion is a mini-debate. Before I proceed to that stage, I invite members to raise points on which they wish to receive clarification from the Executive. Equally, if members have any factual or technical points on which they seek guidance, they should feel free to raise them.

As no member has a point to raise, we move to the mini-debate. The structure is the same as that of a normal debate. First, I will invite Nicola Sturgeon to speak to and move the motion in her name, after which I will open up the debate to members. I will also ascertain from the minister whether he would like to speak at the beginning of the debate, after Nicola Sturgeon has spoken. It is appropriate that after they have listened to the open part of the debate, Nicola Sturgeon and the minister should be asked to close the debate. We can then determine how to deal with the motion.

There is no set length of time for these proceedings. Would I be correct in assuming that your comments will be reasonably brief, Nicola? I do not want in any way to constrain you, but are we in for a half-hour peroration, for example?

Nicola Sturgeon (Glasgow) (SNP): No. Perhaps 20 minutes.

The Convener: Twenty minutes?

Nicola Sturgeon: No—not really. I will be as brief as possible. I will probably take a maximum of five minutes.

The Convener: Seriously, I do not want to constrain you. I just wanted to get some idea of what we are doing.

Nicola Sturgeon: I do not think that being a former member of the Law Society of Scotland is a registrable interest, but it is probably appropriate to place that on the record, given the subject of the regulations.

I am not opposed in principle to a public defender system. If such a system can be shown to be more cost-effective and of just as high a quality as the alternative, then there is nothing inherently wrong with it. My objection to the regulations before us is that I do not think that the case has yet been made for extending the pilot project.

I assume that the whole point of conducting a pilot project in Edinburgh was to obtain the evidence base on which future decisions on the public defender system could be based. The limited amount of evidence that there is does not, in my view, make the case for the pilot project to be extended. Only one evaluation report of the pilot project has been carried out, which was published in September 2001, three years after the project commenced. I appreciate that that time scale was laid down in statute and so was not open to negotiation. In the intervening two years, no substantive research has been carried out to update the report's conclusions.

It is fair to say that the report's conclusions were mixed. It had some positive things to say about the public defender system. For example, it found that many more guilty pleas were being made at an earlier stage in proceedings, which delivered benefits for the criminal justice system as a whole. On the other hand, comments were made about the conviction rate being higher for public defenders' clients than for those represented through the private sector, even taking into account the tendency for earlier guilty pleas.

The report contained some remarkable findings about client satisfaction. Clients under the public defender system were not entirely enthusiastic about it. The statistics that I am about to quote do not cover those people who, early in the project, had no choice but to be represented by the public defender; they apply to those who, later in the project, volunteered to be represented by the public defender rather than by a private solicitor. Of those people, only 48 per cent—as opposed to 71 per cent for clients of private solicitors—said that they felt that the public defender had stood up for their rights. Only 60 per cent—compared with 83 per cent of clients of private solicitors—felt that they would go back to the public defender. On that basis, the evidence was mixed.

The report looked into cost. The evidence that was put forward does not justify a massive extension of the pilot project. When the report was published, it was said that there was potential for the public defender system to be more cost-effective than private solicitors doing legal aid work. It was found early on in the project that there was no difference in cost between the public defender and private solicitors. In the early stages of the project, the volume of work was low, so the unit costs—the costs per case—were higher.

My difficulty in assessing whether we have moved on is that no evidence has been put forward since that report to indicate how the cost of the public defender system compares to private solicitors' work now—two years later. Some information is in the briefing paper from the Public Defence Solicitors Office. The briefing gives information about its costs today, but it does not give comparative information about the costs of private solicitors.

14:15

The briefing shows us that the work of the PDSO in Edinburgh has not increased in quantity, although it states that the quality of the cases is improving. There has not been a substantial increase in the volume of work; between 2000-01 and 2002-03, there was a slight decrease in the volume of work. However, the running costs of the office have fallen slightly, which means that there is a slight—but only slight—decrease in the cost per case.

The briefing states that the PDSO is still working with spare capacity. My argument is that a more sensible approach would be to get the Edinburgh project working at full capacity in order that proper cost comparisons could be made between the public defender system and the work of private solicitors. If there is a reason why it is proving difficult to increase demand for the public defender and get the office working to full capacity, perhaps there is something that we require to investigate.

I am not convinced that evidence has been put forward that justifies taking the step of extending the pilot project at this time. It would be more appropriate further to evaluate the Edinburgh project and produce evidence so that if we decided to move forward at a later stage, our decision would be based clearly on evidence.

I will make two final points. One is about funding of the proposed pilots in Glasgow and Inverness. The note from the Scottish Executive states that because the salaries of the public defender solicitors will be met from the existing legal aid

budget there will be no additional costs. I imagine that that is true in terms of salary costs, but we are given no information about costs associated with setting up offices. My understanding—the minister will correct me if I am wrong—is that in Glasgow the intention is to set up an office in the city centre. I can say from personal experience that that does not come cheap. We are not given any information about the costs—other than the salaries of the solicitors—that would enable us to see what the overall cost of extending the project would be.

My final point is about consultation. The Subordinate Legislation Committee and others have made the point that stakeholders other than the Scottish Legal Aid Board have not been consulted. I take on board the points that have been made counter to that—that there is no obligation on the Executive to consult on an instrument of this nature and that the policy behind it has already been consulted on and debated at length since the idea of having public defenders was first mooted some years ago. That is correct, but I still think that there should have been more consultation on the regulations. This is being billed as the extension of a pilot scheme, but to extend something that is already running in Edinburgh to Glasgow and Inverness is a massive extension. The choice of location is not incidental or irrelevant; it is certainly not irrelevant to private solicitors, for example. A public defender pilot in Glasgow will have much less effect on private solicitors in that city, which is big enough to absorb it, than it will in Inverness, where it is reasonable to assume that many smaller private firms may have something to fear from the pilot. That is not a reason not to extend the pilot, but it is a reason why there should have been greater consultation.

I will end where I started. I am not opposed to this in principle, but if we are serious about evidence-based policy, we should take decisions on the basis of evidence. I do not think that there is evidence that the Edinburgh project has been a soaraway success—or even, on balance, a success at all—to justify extending the scheme in the way that is proposed.

I move,

That the Justice 2 Committee recommends that nothing further be done under the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Amendment Regulations 2003 (SSI 2003/511).

The Convener: Nicola Sturgeon spoke for a very concise nine minutes, so feel free to take the same amount of time if you so desire, minister.

The Deputy Minister for Justice (Hugh Henry): I must confess that I am somewhat surprised about what is before us today. Nicola Sturgeon said that she is not opposed to the public defender system, but she certainly set out a fairly robust case against not only the extension of the scheme but the principle.

I will not go into the history of the proposals, which are well laid out in the papers that members have before them, but I will address the need to consult and to flag up our intentions. In February 2002, Jim Wallace announced his intention to continue to pilot the scheme and, following consideration in the Parliament, the necessary statutory changes were incorporated into the Criminal Justice (Scotland) Act 2003. Cathy Jamieson announced that the new pilot projects would be located in Glasgow and Inverness.

It was always our intention to go beyond the Edinburgh scheme. We felt that going to Glasgow and Inverness would provide a useful comparison with Edinburgh. The reasons included one that Nicola Sturgeon mentioned, which is that Inverness has a smaller population than Edinburgh and has a rural hinterland. The fact that questions might be raised about access to appropriate skills was another reason for trying out the scheme in an area like Inverness. We also wanted to compare Inverness with a city like Glasgow, which is an area of high density with an urban population and a high demand on legal aid and judicial services. We felt that the balance between the two areas would enable us to draw conclusions.

As for the need to have more evaluation, I do not know how much more we need to have. The current evaluation, which is more than 270 pages long, was conducted over a significant period of time by a number of leading academics. The evaluation has been thorough. Nicola Sturgeon made a point about whether there is enough business in the pilot areas, but one of the ways in which the scheme has to be tested is by extending it. Simply restricting the evaluation to a relatively small pilot would not give us all the information or all the answers that we require. The principle of introducing a scheme such as the one that we are discussing is well established, as is the principle of extending the pilots.

MSPs were asked to consider the changes that would allow the introduction of the new pilots during the passage of the Criminal Justice (Scotland) Bill and this debate should have taken place at that point. At that time, we debated amendments that were lodged by Bill Aitken and the Executive was clear about its plans. We said that an office in a rural area and an office in an urban area would allow an increased work load without affecting local business.

The time to oppose the principle of the extension of the scheme was when the Criminal Justice (Scotland) Bill was passing through the Parliament. Nicola Sturgeon should not come back after the scheme has been extended and after the instrument has been put into effect to try to nullify and unravel what has been put in place.

Notwithstanding some of the criticisms that Nicola Sturgeon made, I believe that the scheme is making a positive contribution to the extension of access to justice in Scotland. I recognise that much more requires to be done. However, the extension of the pilots will give us more, better and more varied information on which any conclusions that we draw can be based. I hope that, at this very late stage and given that we have had an opportunity to debate some of the principles, we do not destroy what is potentially a valuable scheme.

Jackie Baillie (Dumbarton) (Lab): I have a brief comment. I concur with the minister that the motion is too little, too late. There have been several opportunities to address both the substantive points that Nicola Sturgeon has raised. One is whether there is sufficient evidence to support an extension; the other seems to be whether the consultation has been sufficient.

I was struck by the fact that the Law Society's letter echoes the Executive's comments on the genesis of the regulations and states that the Executive was under no obligation to consult on the issues, except as part of the process of producing the Criminal Justice (Scotland) Act 2003. I do not recall the matter being debated much then and I do not think that it is helpful for it to be debated now. In general, pilots are useful mechanisms for the Executive and others to test whether a proposition works in practice. I am convinced by the argument that we should extend the pilot to a rural area and to a comparable urban area. I have no difficulty with supporting the regulations.

The Convener: I do not really want to make a speech, but two issues occur to me. I am not hostile to the principle of a public defender system or to the need for a pilot scheme. The practical justification that is given in support of the regulations is that they are required to extend the scheme to Glasgow and Inverness. However, that is not what the regulations say; in fact, the regulations will remove totally the restriction in the original regulations, which means that all of Scotland will become a canvas on which experiments may be carried out. I am slightly uneasy about that.

Nicola Sturgeon made the point that the acid test of whether the system is good or bad is how it works in practice. At present, we have an inadequate basis on which to test that proposition—it is not sufficient to decide only on the basis of the pilot in Edinburgh. There are strong arguments for saying that using Glasgow and a rural location would provide a good prospect to determine the matter further. However, I am slightly uneasy that that is not what the regulations will do, given that they will wipe away the existing restriction. I point that out because it is important that the pilot scheme is evaluated sensibly. We all anticipate that, when the pilot scheme expires in 2008, we shall be asked to homologate the arrangement on a pan-Scotland basis. Before we do that, we will expect to consider evidence on and evaluations of the impact of the pilot. I am a little anxious that the scheme might be extended throughout Scotland without the necessary mechanisms being in place to monitor it.

Hugh Henry: You have my assurance that that is not our intention. The wording of the regulations allows us to determine where the new pilots will be. We have chosen Inverness and Glasgow and we will not move beyond that. You also have my assurance that rigorous evaluation will be carried out and that any intention to change the pilot—whether that is to abandon the scheme or to extend it—will be brought back to the committee and to Parliament. If the pilot is a success, we will shout about it from the rooftops, but if not, we will be big enough to admit that.

The Convener: I thank you for that.

Nicola Sturgeon: On the point that this is not the time or the place to raise the matter, I must point out that this is the first opportunity since I became a member of the committee at which I could have raised objections. A certain period is allowed before instruments that are subject to the negative procedure come into effect in order to allow members to lodge motions to annul them, if they feel that that is necessary. That is the correct parliamentary procedure. Any member who wishes to use that power of scrutiny may do so. I am not sure that I should apologise for using that power when I have legitimate concerns.

As I said at the outset, I am not opposed to the principle of the public defender system if it can be shown that it is of as high a quality as, and more cost-effective than, the alternative. I do not think that either of those has been demonstrated. I have no reason to doubt the minister's view that the evaluation was thorough, but it reached a mixed conclusion. The fairest thing that can be said about the evaluation is that the jury is out on whether the system has been successful.

If we cannot get any further information from the Edinburgh pilot and have to go elsewhere to get more information in order to evaluate the project, I suggest that we should ask why we cannot get more information from Edinburgh and why the system is still operating below capacity after five years. Why did the demand and the case load not increase over the years of the project? Those are pertinent questions to ask before a decision is made to extend the project.

I have already made my points about consultation—they were the least of the comments

that I had to make today and they are not central to the argument.

The minister did not refer to what I said about the cost of extending the pilot project. I do not think that what the Executive's notes say about there being no added cost is true. If the minister wishes to give more information on that, I will be happy to hear it.

14:30

The Convener: Although this is a little informal, I ask the minister whether he wishes to make any concluding comments.

Hugh Henry: I had not intended to. There are certain things that I would be tempted to say but which might reopen the debate. If you wish the debate to continue, convener, I am more than happy to make those remarks, but I am in your hands.

Nicola Sturgeon: If it is in order, I would be pleased if the minister could give a direct answer to what is a direct question: what will be the cost of extending the pilot projects?

The Convener: Do you wish to respond to that, minister?

Hugh Henry: Nicola Sturgeon indicated that this has been her first opportunity to object to the proposal. However, like every other member of the Parliament, she had the opportunity to lodge amendments when the matter was debated. She did not do so. We have had no correspondence or any other indication from Nicola Sturgeon about any concerns that she has until the very last minute, which I find a bit surprising.

Nicola Sturgeon raised some cost-related issues concerning Glasgow city centre. Those will be the responsibility of the Scottish Legal Aid Board. We would not be responsible for determining expenditure in that regard. There has been a slight reduction in the number of cases that have been handled by the PDSO between 2001-02 and 2002-03. Fewer solicitors were available and the total spend fell. It could be argued that that demonstrated better value for money. I think that the issues of cost that Nicola Sturgeon raised are not central to the argument. They are largely the responsibility of others. In any case, I do not think that they are a significant barrier to the extension of the scheme.

The Convener: I will regard those as your concluding remarks, minister. Do you have any final remarks to make, Nicola?

Nicola Sturgeon: I do not think that an answer was given to my question. There are two points in relation to cost. There is the comparison between the cost per case of private solicitors and that of the PDSO. Secondly, there is the cost of setting up pilot projects in various areas. I do not think that answers have been given to either of those points. I do not want to prolong the discussion, so we can move to the vote if you wish.

The Convener: I take it that you wish to press your motion.

Nicola Sturgeon: Yes, in the absence of answers to reasonable questions.

The Convener: The question is, that motion S2M-630 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Sturgeon, Nicola (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

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

Motion disagreed to.

The Convener: The vote will be recorded in the *Official Report*. The matter is effectively at an end, and no further parliamentary procedure on the regulations will follow.

I thank you, minister, and your colleagues for attending this afternoon, which was very helpful. I know that you had to be here under the rules, but I thank you nonetheless for your helpful replies.

Antisocial Behaviour etc (Scotland) Bill: Stage 1

14:34

The Convener: Item 3 on the agenda is on the Antisocial Behaviour etc (Scotland) Bill. I welcome the officials from the Scottish Executive's bill team, who look like the cast for a forthcoming festive musical, such are their numbers. Michael Kellet, head of the Development Department's Antisocial Behaviour etc (Scotland) Bill team, is joined by Gillian Russell from the office of the solicitor to the Scottish Executive and by Catherine Brown of the police division of the Justice Department. There is a gentleman whose name-plate I cannot quite identify, as I cannot see that far—I understand that he is Kit Wyeth from the young people and looked-after children division of the Education Department. In the row behind are David Doris of the Development Department antisocial behaviour unit; Brian Cole from the Justice Department community justice services division; and Sharon Grant, also from the community justice services division. Robert Marshall, from the office of the solicitor to the Scottish Executive, cannot be with us today—which is probably just as well, because he would have been all on his own in the third row. The numbers look conveniently symmetrical.

It might be helpful, Mr Kellet, if you would make an opening statement of perhaps five minutes, explaining the background to the bill. There are various areas that committee members will wish to explore, and I propose to open up the discussion after you have spoken. We will try to direct our questions as appropriate.

Michael Kellet (Scottish Executive Development Department): Thank you very much for the invitation to come before the committee today. Members of the committee will be aware that legislation on antisocial behaviour was a commitment in the partnership agreement. That commitment arose from ministers' view that antisocial behaviour was a very serious issue in communities throughout Scotland and was not being tackled effectively. It arose from ministers' own experience and that of other MSPs in having to deal with the fallout from antisocial behaviour, week in, week out, in their surgeries and postbags. Tackling antisocial behaviour is a high priority for communities, and it is a high priority for ministers, who are committed to making speedy progress towards dealing with it more effectively.

We are grateful for the chance to attend and give evidence on the Antisocial Behaviour etc (Scotland) Bill. I understand that the committee wishes to focus on the justice-oriented elements of the bill, and we have fielded our team accordingly. I understood from the clerks, and you have now confirmed, that you would like us to give a short presentation on the bill. I will try to keep it short in order to allow as much time as possible for questions.

It is important to be clear that the bill is only one part of ministers' wider strategy to tackle antisocial behaviour, although it is an important part. It is intended to put in place the legal framework that is necessary to tackle antisocial behaviour effectively. However, it is not the whole story. The other elements of the wider strategy include encouraging agencies to use existing tools more effectively; putting in place the detailed arrangements to implement the bill; piloting new approaches and disseminating good practice; and establishing arrangements for inspection, monitoring and evaluation.

As I said, ministers were determined to move quickly on antisocial behaviour, which is why "Putting our communities first: A Strategy for tackling Anti-social Behaviour" was published on 26 June. That paper brought together proposals for the bill—many of which featured in the partnership agreement—and other initiatives, as part of ministers' wider strategy. Even before the paper was published, ministers made it clear that they did not want the consultation to be paper based. They identified early on the need to hear the views of those who suffer from antisocial behaviour and of those who are tasked with dealing with it locally.

We wrote to every constituency MSP and had a summer of ministerial visits to more than 30 constituencies throughout Scotland. Ministers found those meetings to be invaluable for gaining a full understanding of the scale and impact of the problem of antisocial behaviour. Ministers and officials also spent considerable time engaging with the wide range of stakeholders, which included discussions with the police staff associations, children's charities, housing organisations and equality groups. As members know, the consultation finished on 11 September and we published the University of Glasgow's analysis of the responses to the consultation on 23 October. I hope that members have seen that report, but if not, we would be happy to make copies available.

The bill is large and ranges across a number of ministerial portfolios and Executive departments, including the Justice Department but also the education, development and environment portfolios. The common thread is that the bill puts in place the legal framework that is required to tackle antisocial behaviour effectively. Much of the bill is about giving agencies such as local authorities, the police, the children's hearings system and registered social landlords the

additional tools that they need to tackle antisocial behaviour locally.

However, additional tools are not enough; ministers are determined to ensure that those with the responsibility at the local level work together to tackle antisocial behaviour, which is why antisocial behaviour strategies are provided for in part 1 of the bill. Ministers see those strategies as a crucial part of the solution to the problem because they are the means by which agencies and those who are affected by antisocial behaviour will identify how antisocial behaviour manifests itself in their area and how it can best be tackled. Antisocial behaviour strategies should provide the context in which the new tools that are provided in the rest of the bill are used. In some senses, they are the gel that should ensure a co-ordinated, proportionate and targeted response to antisocial behaviour and they are the means by which local communities can hold agencies to account for their actions in tackling antisocial behaviour locally.

My colleagues and I will be happy to answer the committee's questions. I did not think it appropriate to go into the detail of the bill at this stage because that will come through in questions. In summary, ministers see the bill as an important step forward in tackling antisocial behaviour in Scotland.

The Convener: I have a broad question. I could not help noticing that part 1 of the bill will replace section 83 of the Criminal Justice (Scotland) Act 2003. Of itself, that is neither here nor there, but it makes me pose the question whether we are rushing things too much. Should we allow a little more time to let that act, which was passed only this year, come into effect and to see what the implications are?

Michael Kellet: Section 83 of the Criminal Justice (Scotland) Act 2003 has not been commenced. Ministers have not done so because, having considered the provision, they decided that it was not adequate to bring the range of stakeholders and local organisations together to tackle antisocial behaviour. If the bill is enacted, section 83 will be repealed and replaced by part 1 of the bill. Ministers are considering means of encouraging local authorities, on a non-statutory basis, to ensure that, in the lull, local agencies continue to work together to tackle antisocial behaviour. Section 83 has not been commenced and, if the bill is enacted, it will be repealed.

The Convener: To follow on from that, what is wrong with the existing law?

Michael Kellet: Do you mean the law on bringing together agencies at the local level?

The Convener: I mean on dealing with antisocial behaviour.

Michael Kellet: Ministers' view is that the legal framework that is required to tackle antisocial behaviour is not entirely in place. That does not mean that tools to tackle antisocial behaviour do not exist—of course they do—but the bill is designed to fill the gaps that ministers consider exist. The antisocial behaviour strategies are part of that, but the other provisions also flow from that basic premise.

The Convener: Let me finalise my questioning by asking whether there is any intention to repeal existing common-law offences or statutory offences other than those in the 2003 act.

Michael Kellet: No. There is no intention to repeal or take away the existing powers. The bill is about supplementing those existing powers with other tools to make the toolbox that local agencies have for tackling antisocial behaviour as full and as broad as it should be.

The Convener: I know that members are anxious to speak, so we will probably want to devote about an hour to this item, as there is a lot of interest in the bill. I suggest that members should indicate that they want to speak. Rather than each member being required to interrogate rapidly for 10 minutes, members might want to follow the lines of questioning that are being pursued and chip in. I will be as flexible as I can in allowing people to contribute.

I see that all members' hands are up. We will start with Karen Whitefield.

14:45

Karen Whitefield (Airdrie and Shotts) (Lab): Much of the bill has been welcomed by communities around Scotland, but it also contains some contentious proposals. I want to ask about two of those areas: the dispersal of groups and parenting orders.

I will ask first about the dispersal of groups. The Executive commissioned the University of Glasgow to examine the consultation responses. Some 80 per cent of respondents said that they believed that the police had sufficient powers to disperse groups. Will you explain why the Executive believes that the proposals are necessary? What difference do you believe that they will make?

Catherine Brown (Scottish Executive Justice Department): From the written evidence that was received and the evidence given to ministers during their visits to communities throughout the summer, it was clear that many people live in fear of being a victim of antisocial behaviour. The clear message that ministers got was that people want something done about groups of people of any age who hang about in public places and who, by

their very presence, can cause fear and alarm. The measures that are being proposed in the bill are explicitly aimed at addressing those fears.

In specific areas, such behaviour is significant as it is on-going and is a constant problem—

The Convener: Sorry, will you clarify whether "such behaviour" is the mere act of congregating?

Catherine Brown: It is the kind of behaviour that can cause fear and alarm. Members of the public might express concern at the presence of people who are shouting or causing a disturbance and the police or whoever is called might agree that that behaviour causes fear and alarm. The behaviour might not constitute criminal behaviour, but it generates fear.

Karen Whitefield: How will it be possible for individual police officers to judge in such a way that all young people are treated fairly rather than as people who cause fear and alarm? They may just be congregating at the street corner having a chat to one another. Although someone who wants to walk past them might feel some concern, the young people may not pose any threat at all. How will we ensure that there is equality in the way that that is implemented?

Catherine Brown: The bill seeks to provide a measured approach to the use of the dispersal power. The power cannot be used immediately but is a measured step to deal with a significant and on-going problem. The police will deal with situations as and when and wherever they arise, but the dispersal power is specifically targeted at communities that are suffering in a fairly constant way from groups of individuals who hang about and cause fear and alarm.

The provisions are structured in such a way that key tests must be met before the dispersal provision can be considered. Those are that there is evidence that members of the public have been alarmed or distressed as a result of the presence or behaviour of the groups and that there is a persistent and on-going problem. A crucial point in all that is that the police could exercise the power only after consulting the local authority. The dispersal power must be part of a consensus. The measure would be taken only after there had been discussion and agreement with the local authority and the local community on the kind of step that should be taken.

That does not necessarily mean that there has to be huge delay; it means that the power will not come into effect unilaterally or indiscriminately. The proposals are framed to ensure that a consistent, measured, targeted and timed approach will be taken. The power has a time limit on it and cannot go on for ever. Ministers are keen to ensure that the measures reflect the concerns that they heard. The power will not be used inconsistently or indiscriminately.

Karen Whitefield: We are aware that problems exist in communities, but they are often caused by a small group of people. The vast majority of young people and others do not cause disruption. You talked about key tests. What safeguards are to be put in place to ensure that children can go into another community where they may have friends, meet up with them and play safely in public areas? Children who do not cause harm or distress to anyone must be able to do that. How can we ensure that there are sufficient safeguards to make that possible? How will we ensure that the proposals do not penalise well-behaved children who are just going about their daily business?

Michael Kellet: It is important to bear in mind what I said in my introduction about the powers under the bill, including the power of dispersal, being set in the context of the antisocial behaviour strategy. The use of the dispersal power should be discussed in that context.

We are talking about antisocial behaviour. Ministers do not want to persecute or cause difficulty for groups of youngsters who are coming together for innocent purposes or who are playing as young people do. However, where groups of youngsters persist in engaging in antisocial behaviour, we expect the discussions that led to the antisocial behaviour strategy and partnership working to determine whether the use of the power is appropriate in those local circumstances. That is the means of ensuring that young people are not targeted unfairly.

It is also important to be aware that another power, the power of designation, has to be implemented by a senior police officer such as a superintendent before the power of dispersal can be used. The senior police officer can implement the power of designation only after they have consulted the local authority. Only when a designation power is in place can a police officer on the ground—a constable or other officer—use the power to disperse. There are a number of checks and balances and hurdles to be overcome before the power of dispersal can be used. Discussion at the local level should ensure that the power is used only where it is appropriate and that it is not used to target unfairly innocent parties, whether they be younger or older people.

Catherine Brown: I have one further point to add. Some of the police associations' concerns relate to the possibility that, if powers like this were to be introduced, the police could lose some of the community interaction that they have at the moment. However, as Michael Kellet said, the powers are part of a wider effort to address the situation. The police have made it clear that they do not want to lose the interaction that they have with young people in the community who are behaving well and who are enjoying life.

Karen Whitefield: I will move on to—

Mike Pringle (Edinburgh South) (LD): I have a question on this aspect—we might as well get all the questions on this aspect out of the way. My concern is that you talked about "groups". I have not looked up a dictionary to see what the definition of a "group" is. [*Interruption.*] I am assured that a group is two or more people. How are we going to address the fact that a group is defined as two people? The practicalities of that will be extremely difficult to enforce. Why did you choose two people and not three or four?

Catherine Brown: I think that the definition is the same as the one that is used in other statutory provisions in other pieces of legislation. Certainly, elsewhere, amendments have been lodged to change "groups of people" into "two or more people". Those changes were made for various reasons. I do not think that the police will seek to use anything other than their better judgment when they deal with situations.

A situation could be caused by a small group of people. Indeed, the police might want to do something about a disturbance that was being caused by two individuals. The likelihood is that a much wider discussion would have to be held before an area could be determined and dispersal powers would come into play.

Nicola Sturgeon: What I am struggling to get my head around is not the motivation behind these sections, with which we would all agree, but how they improve on the current situation. If a group of people, young or not, is causing a disturbance by shouting, screaming, drinking or generally making a nuisance of themselves, most police officers will tell you that they can move those people on and that they do not need these new powers, which appear to be bureaucratic, to do so. What is it that stops police officers from doing that?

The only thing about what is proposed that differs from the current situation is that, under the bill, there does not have to be any inappropriate behaviour on the group's part. Section 16(1)(a) refers to people being

"alarmed or distressed as a result of the presence"

of, for example, two or more people simply standing in the street talking to each other. As long as there is an old woman looking out of a window who might feel intimidated by them, that is enough for those people to be moved on. That worries people, because it might lead to people being persecuted or moved on simply because someone does not like the look of them.

Catherine Brown: Ministers heard those arguments in the responses to the consultation. They concluded that the statutory measures would put beyond doubt the police's powers to enforce a time-limited, targeted measure on a particular area that was plagued by behaviour that caused people genuine concern. Ministers were also keen to balance that against normal policing of communities. Normal community interaction by the police would be intended to address a one-off incident in which someone was particularly alarmed by two people. The test is whether the behaviour is on-going, consistent and causing fear and alarm.

The bill provides for the police to be given guidance and direction in respect of the powers. Crucial to that, the police associations have made it clear that they are willing to work with the Executive during the coming months on the operational effect of the provisions. The introduction of the powers is about striking a balance and addressing fears without creating more.

Nicola Sturgeon: I am not asking you to comment on the policy; this is a factual question. Do you accept that where a group of people is causing a disturbance in the street, there is nothing to stop the police from moving those people on right now?

Catherine Brown: The police have powers to move people on and they have said that. The question is whether those powers are as specific as the provisions that the bill makes for the police in specific areas. Ministers concluded that the bill's provisions put the matter beyond doubt; the police will have powers to act in specific, designated areas.

Michael Kellet: It is important to be aware that there are two tests for the power of dispersal. The test in section 16 is about authorisation and designation; it is about the superintendent or another senior police officer deciding that antisocial behaviour by groups is a serious problem in a particular area. Before making the designation, he must meet that test and consult the local authority.

On the matter of an operational police officer making a decision on the ground about whether a group that he sees in the area is in contravention of the designation, I refer the committee to section 18, which refers to an instance

"where a constable has reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place … has resulted, or is likely to result, in any members of the public being alarmed or distressed".

Even after the designation has been made by the superintendent, there is provision for local officers to make reasonable judgments on the ground about what is going on and whether it is appropriate to use the powers.

Nicola Sturgeon: You have made my point for me. I have read the two tests, but my point is that if there is a group causing a disturbance tonight at Drumoyne in Govan, a police officer can move it on. Under the bill, the police will have to jump through bureaucratic hoops. The provisions may be intended to clarify the powers that the police already have, but once the bill is enacted, police officers will not just move people on. They will think that they have to go through the procedure and that will make it harder for them rather than easier.

Michael Kellet: The procedure will apply only where a designation has been made. The important point is that ministers envisage the power giving immediate relief to communities that suffer particularly severely from antisocial behaviour. During the summer, ministers heard evidence from communities throughout Scotland. One of the striking examples that they heard about was sheltered housing complexes in particular communities that were being targeted by groups of people because of the vulnerability of residents. Groups of people were hanging about night after night, causing alarm and distress. Ministers see the power as a means of giving immediate relief to such communities. It will be made clear to local communities that it is not acceptable that groups of people are hanging about, and that if the people are found in contravention of the designation and are causing or are likely to cause trouble, they can be moved on. Ministers believe that that clarification is useful.

15:00

Nicola Sturgeon: They should be moved on anyway, with or without this power, but I will let the matter rest there.

The Convener: I would like to clarify a couple of points, Mr Kellet. You used the phrase "hanging about"; is the effect of the bill to make the hanging about the offence?

Michael Kellet: To be clear, the offence is returning to an area in contravention of a direction given by a police officer under section 18. When an order to disperse has been given, and it is properly authorised under the legislation, the offence is clearly committed when the person reappears in the area in contravention of that direction. That is the offence that the bill creates.

The Convener: But that is the offence—it is when the person goes there.

Michael Kellet: In contravention of a properly authorised direction by a police officer that the person should not be in that area.

The Convener: He may be blowing his nose, or recovering his cat or his dog, but if he goes there, that is the offence.

Michael Kellet: Yes. I think there is a provision in the bill for "reasonable excuse", but it is clear that the offence is going back to an area after a police officer has given a clear direction not to return to the area within the designated time period.

The Convener: Just to try and get a feel for this, how broad in extent are the phrases "specified period" and "relevant locality"? If a senior police officer decides that all public parks have been noted trouble spots, can he designate those as relevant localities?

Michael Kellet: We need to discuss that with local police officers. Ministers envisage the powers being carefully targeted on particular areas, which may be small areas, such as sheltered housing complexes, to which I referred in my previous answer.

The Convener: But under the bill as drafted, they could be generic areas, like "all the public parks in my division".

Michael Kellet: The test of significant and persistent distress being caused will still need to be met. The police will also need to have consulted the local authority, which is a prerequisite for making a designation.

The Convener: And what about the phrase "specified time"? Could that be the hours of British summer time, because it is well known, of course, that most of the trouble takes place on summer evenings?

Michael Kellet: We are giving flexibility to the senior police officer who is making the designation to target effectively times and occasions when antisocial behaviour by groups is a problem in a defined locality. The bill allows a period of designation to last 24 hours. It allows flexibility, so that if the antisocial behaviour happens between 6 and 10 at night, the authorisation could apply during those hours. It is about allowing police officers to target the power when there is a problem in the local area. That is the flexibility that ministers are keen to achieve.

The Convener: Are there further questions?

Karen Whitefield: I would like to move on to parenting orders. The Executive has stated that, initially, parenting orders will apply only in local authority areas where there are sufficient resources to provide parental support. You will be aware that that level of support within local authorities across Scotland is patchy, so what does that mean? Does it mean that, in practice, we will not be enforcing parenting orders across Scotland? If it does not mean that, what resources will the Executive make available to ensure that that level of support can be provided to parents?

Kit Wyeth (Scottish Executive Education Department): You are right to say that the current provision of such services is patchy—there is no argument about that. The bill enables us to pilot parenting orders in areas where sufficient provision is available. We see it as an initiative that will start on a pilot basis, rather than be rolled out across Scotland at the first instance.

That provision is probably not available in any local authority as we speak. However, in being committed to parenting orders, ministers are committed to putting in place the services and support that parents need to be able to access. There is a clear acceptance on ministers' part that the parents need those resources and services before the sections on piloting parenting orders can be commenced.

Karen Whitefield: On the issue of imprisonment, are we sure that there will be an opportunity for people to get the support that they need before they run the risk of going to prison because of the actions of their children? What is the Executive's view on the fact that perhaps imprisoning the parents will only add to the problem rather than address the children's problems that lead to their antisocial behaviour?

Kit Wyeth: There would be a number of steps in the process before a court could even consider jailing a parent in such circumstances. As we said, it would require the services to be in place and to have been offered to the parents on a voluntary basis, and the parents not to have engaged with them. The matter would then be referred to a court for a parenting order to be made and the services would then be made available again, but on a statutory basis. The parent would again have to fail to engage with those services. The bill makes it clear that, in those circumstances, the first sanction would be a fine. If that was not paid, there would be a further sanction, which would probably be a supervised attendance order. Only if that were ignored or not taken up could a further fine or, possibly, imprisonment be imposed.

It is worth pointing out that, for each of those possible sanctions for breaching a parenting order, the sheriff and the court would be required to take account of the wider interests of the child in question and of any other children that the parent might have as well as the wider circumstances of the family. Jailing a parent is not the kind of measure that any sheriff would take lightly, without having considered all the available options.

Karen Whitefield: What discussions have you had with the Justice Department about fine defaulters and the Executive's commitment to keeping people who default on their fines out of prison? We do not believe that prison is necessarily the right place for fine defaulters. If the Executive shares that belief, is there not the potential for a contradiction in its policy?

Michael Kellet: There were announcements last week about the Executive's commitment, with which the committee will be more familiar than we are. The provisions for keeping fine defaulters out of prison, when prison is inappropriate, support this policy. The policy is designed to ensure that, ultimately, children get the parenting that they deserve from their parents. It is not about a punitive measure; it is about ensuring that effective parenting is given. If there are more effective measures than jail for a parent who has not paid their fine for breach of a parenting order, they will work together with this policy. I do not see a contradiction and neither do ministers.

Nicola Sturgeon: I understand that parenting orders will be a last resort and that parents will be offered all sorts of voluntary support to avoid getting to that stage. Only if they do not take up that support or co-operate will a court order be applied for. I would like to try to get inside the heads of parents in that situation. If they allow themselves to get to the stage at which a court order must be applied for to make them look after their kids, it could be argued that they are not really very interested in the welfare of their kids. The fact of the court process might make them even more hostile to the whole process, instead of making them start to do the right thing. If a parent has to be taken to court to be made to perform the role of a parent, should the question not be asked, at that stage, whether it is in the interests of the child's welfare for them to remain with that parent?

Kit Wyeth: That is right. We are talking about parents with whom it will be difficult to engage and whom it will be difficult to make accept their responsibilities to their children. There is evidence from the evaluation of parenting orders in England to suggest that putting a parent into the court process can create additional barriers to their engaging with the services that are offered. However, the evidence is also that that hurdle can be overcome and that parents on parenting orders who are compelled to attend parenting classes often get over the hurdle, start to re-engage with their children more effectively and take a far bigger role in and have a far bigger influence on their lives. There is some evidence that such an approach works.

We would hope that young people for whom it is not right to be with a parent would be well known to the hearings system, the reporter and others who can make that judgment. You have to appreciate that other systems are at work in the matter and that there are other ways of assessing such matters. The reporter and the hearings system have a role to play before a parent is taken to court for a parenting order. If a hearing's view is that a child should be removed from their parent, that decision will probably have been taken before a parent even arrives at court.

The Convener: We will move on to a broader range of questions.

Maureen Macmillan (Highlands and Islands) (Lab): I will ask about how antisocial behaviour orders will work in practice. You talk about local agencies working together and say that that would have to be the case before an antisocial behaviour order could be sought, because there would have to be some sort of rapport between the local authority, the police and the reporter to the children's panel. At the moment, antisocial behaviour orders apply to people who are over 16. In such cases, co-operation between the police and the local authorities is necessary, and there is a perception that that is not working well in some cases, but you say that such relationships will have to work really well for antisocial behaviour orders for the under-16s. How will we get them to work?

David Doris (Scottish Executive Development Department): The main thrust of improving joint working is through the antisocial behaviour strategies to which we have referred. They are set out in part 1, which places a duty on the police and local authorities to prepare joint strategies. Other agencies will be consulted on, involved in and to a certain degree engaged in the preparation of those strategies. Through those strategies and the setting up of specialist antisocial behaviour units in local authority areas, the procedures for joint working at a local level will be made more robust. One of the elements of the strategies is that local authorities will be required to report on progress on their implementation, which will include practice in implementing antisocial behaviour orders locally.

Michael Kellet: In the report "Targeting Anti-Social Behaviour: The Use of Anti-Social Behaviour Orders in Scotland", which the Chartered Institute of Housing in Scotland published in the past couple of weeks—we could make copies available if members have not seen it—there is evidence that local authorities believe that, in a large number of cases, ASBOs have been effective in changing the behaviour of the adult who was subject to the ASBO and in ameliorating any problems in the local community.

Maureen Macmillan: I suppose that, by the time that we got to the stage of seeking an ASBO for an under-16, that young person would be well known to the local authority, the police and the children's panel, because the ASBO is a last resort. Some organisations believe that we do not need that last resort. They believe that, if we properly use other kinds of programmes—such as supervision orders and community service orders—and have a strong input into the lives of such young people, antisocial behaviour orders will not be necessary.

David Doris: For the most part, the disposals that are available through the children's hearings and other alternatives prove effective in dealing with antisocial behaviour, but there is a small minority of persistently antisocial young people whose behaviour has a disproportionate impact on communities and, in some instances, the court order is required to make clear that that behaviour is unacceptable. Ministers are confident that the extension of ASBOs to under-16s will have a positive impact by protecting people from antisocial behaviour, changing the behaviour of those subject to the orders and acting as a deterrent to others.

Maureen Macmillan: It has also been put to me that ASBOs for under-16s should be dealt with by the children's panel and not through the courts.

15:15

Michael Kellet: That was certainly suggested during the consultation period in the discussions that I mentioned earlier. Our view was that such a court order would change the essential nature of the children's hearings system as a forum that looks holistically at the circumstances surrounding a child and takes action in the best interests of that child. We thought that giving it the power to impose a fairly directive order and a potential criminal penalty if that order was not complied with would change the fundamental nature of the children's hearings system. That is the main reason why ministers thought that dealing with ASBOs through the courts was the appropriate mechanism for under-16s as well as for adults.

Section 11 makes it clear that, even where an ASBO has been taken out for an under-16, the sheriff will have the power to refer that child to a children's hearing. There is no discretion—a children's hearing has to be convened to discuss the child's circumstances. That is a reaction to the view that we heard that an ASBO might be important but will not be enough in itself to change a child's behaviour, particularly that of under-16s, and that support and other necessary measures that you mentioned must be put in place. Such a mechanism is a way of ensuring that the children's hearings system has a place and is the forum that thinks about and determines the best means of giving a child the wider support that they probably need to allow them to comply with the terms of the ASBO. We see the two systems as gelling, we hope, and allowing support and the direction of the ASBO to work hand in hand.

The Convener: Jackie Baillie has a question.

Mike Pringle: Can I say something about ASBOs?

The Convener: I think that Jackie Baillie wants to ask about them.

Jackie Baillie: Thank you, convener—you will get a chance in a minute, Mike.

I want to return to effectiveness, as that is the nub of the key provision of the bill. There is a question about effectiveness once ASBOs are in place, but there is also a process point that can result in communities being frustrated. Once antisocial behaviour is identified, there can be a time lag of a year to two years before the courts do anything. There are resource implications, but will interim ASBOs apply to the under-16s?

Secondly, I am aware of the work undertaken by the Chartered Institute of Housing in Scotland, but what are the sanctions for a breach of an ASBO for an under-16, given that we are talking about a tiny minority who are intent on running their way through the system by whatever means they can? Once there is an ASBO, what happens if it is breached?

Michael Kellet: The answer to your first question is yes. It is clear that interim ASBOs will apply to under-16s. The bill makes it clear that the breach provisions for someone who is under 16 are different from those for an adult. There is a provision in the bill whereby, if a child is prosecuted for breach of an ASBO, a penalty of imprisonment will not be available unless there are other separate offences and nominally more serious offences that go alongside that breach.

Nicola Sturgeon: So what is the penalty?

Michael Kellet: In such situations, if the only criminal offence before a court is a breach of the ASBO by someone who is under 16, the court would have all the options open to it, apart from imprisonment.

Nicola Sturgeon: So a 14-year-old would be fined.

Michael Kellet: A whole range of options would be open to a criminal court. The bill provides that imprisonment is the only option that is not available in such situations.

Mike Pringle: The bill refers to the "specified person" being

"at least 12 years of age".

However, under the interpretation section, the bill states that

"'child' means a person who is under the age of 16 years".

I thought that, legally, it was possible to prosecute anyone who was over the age of eight. My understanding is that it is not just 12-year-olds who commit serious antisocial behaviour offences—children who are considerably younger than that do so, too. We have talked about groups of people together, which could involve an eight-year-old, a 12-year-old, a 15-year-old, a 17-year-old and an 18-year-old. If we wanted to use ASBOs against that group of people, it would be possible to take out an ASBO on those members of it who were over 12, but not on those who were under 12. What was the reasoning for the age limit of 12?

Michael Kellet: The reasoning was that a balance had to be struck. Ministers suggested in the consultation paper that we published in June that 12 might be an appropriate age at which ASBOs could be effective. There was a need to ensure that not too many children at too young an age would be brought into the court process. Moreover, for the measure to be effective, a child would need to understand the process that they were going through. Ministers took the view that, if the age limit for ASBOs were to be lowered below 16, 12 would be an appropriate cut-off; that view was largely supported in the consultation responses that we received. Of course, that does not mean that, if a younger person were involved in serious offences, the normal laws and criminal procedure would not apply. An ASBO would not necessarily be an appropriate vehicle for dealing with such behaviour at that stage.

Gillian Russell (Scottish Executive Legal and Parliamentary Services): In addition, for civil-law purposes, a child who is aged 12 or over is presumed to have legal capacity to instruct a solicitor to defend in any civil proceedings and ASBOs obviously belong to the civil proceedings context. We thought that the age limit of 12 tied in neatly with that.

Mike Pringle: We have talked about how the extended use of ASBOs will apply to very small numbers of offenders. The reason behind my question is that the use of ASBOs would therefore apply only to very small numbers of people who are under 12.

Michael Kellet: That is a fair point, but I still think that ministers would say that 12 is the appropriate age limit to strike the balance that I have described.

The Convener: Does the same explanation apply to community reparation orders, which also have a 12-to-21 age grouping?

Michael Kellet: I understand that the rationale is exactly the same.

Brian Cole (Scottish Executive Justice Department): That is indeed the case. We need to recall that CROs will be confined to summary cases. The courts deal with only a very small number of summary cases that involve people who are under 16.

The Convener: Right. Have you finished your questions, Mike?

Mike Pringle: I think that Nicola Sturgeon has a question.

The Convener: Wait a minute—I am convening the meeting. Have you finished?

Mike Pringle: I am sorry; I thought that Nicola Sturgeon was going to come in.

My other question is on section 10, which says:

"the constable may arrest the person without warrant."

My understanding is that the police do not need a warrant to arrest someone. Is that right?

David Doris: There is a common-law power of arrest in relation to antisocial behaviour orders, but there was some ambiguity about whether certain breaches constituted an arrestable offence, so to clarify the position and to put it beyond doubt, we are creating a statutory power of arrest.

Nicola Sturgeon: On the same general topic, what would you say to the general observation that, under the bill, civil procedures will be used to tackle what is effectively criminal behaviour? For example, ASBOs are a civil measure, at least until one gets to the point of a breach, and the civil procedure can be very lengthy, although I admit that there are interim ASBOs. If someone challenges, or appeals against, an order, the whole civil process, which involves options hearings and civil proofs, has to be gone through—that is a lengthy procedure. Perhaps we should be trying to fast-track such people through the hearings system or the youth court that is being piloted. How does the proposal on ASBOs fit in with the youth court, for example? Would it not be more appropriate to fast-track some of the persistent young offenders down that route, rather than to put them into the civil courts, which, as someone has already said, can take years to come to a conclusion?

Michael Kellet: There are a number of aspects to that issue. In reality, it is a question of horses for courses—it is about giving agencies at local level a number of options to use. The decision on which option—an ASBO, the fast-track children's hearings system or some other means—is most appropriate in a particular situation will be made locally. I do not think that ministers would accept that there need be a long delay in obtaining an order that is effective, particularly now that interim ASBOs have been introduced. We have anecdotal evidence, from Fife in particular, that over the summer interim orders have been obtained in just one or two days. It looks as though interim orders are being used successfully in a number of areas. They allow speedy and effective control of individuals' behaviour.

Maureen Macmillan: My question is about restriction of liberty orders. What are the practicalities of issuing such orders? For adults, the orders generally work by keeping the offenders at home—to stop them going out and housebreaking or whatever. How would the orders be used for young teenagers? Would they be used not to keep them at home but to keep them away from particular places or to ensure that they went to school? I believe that there is a restriction on the number of hours a day that RLOs can be used on a person. What is the ministers' thinking on those issues?

Sharon Grant (Scottish Executive Justice Department): As members will know, restriction of liberty orders have gone through a piloting period; they have been available to all courts in Scotland for 18 months. They have been proven to be quite a successful measure for courts to take—for keeping a person off the street or out of a pub where they might be prone to causing trouble at certain times of the night or on certain days of the week, for example.

The orders are flexible. The maximum period for a restriction of liberty order in any one day is 12 hours. However, 12 hours does not have to be the total; the court could order a restriction of anything up to 12 hours. That allows people the opportunity to carry on with education, work, training or interventions.

Restriction of liberty orders can be used to prevent someone from going to a particular place. For adults in a domestic violence case, that is usually to prevent someone from going to an ex-partner's house. However, the restriction does not have to be from a house; at the moment, an order is being used to prevent someone from going to a college where there had been problems. Ministers thought that the orders would be a flexible way of allowing courts and local authorities—while addressing the offending behaviour of an individual—to restrict that individual's movements when they were more likely to offend or get into trouble.

Maureen Macmillan: Would the orders be used in a different way for young people? I was wondering about school. Could a restriction of liberty order be used if someone was not in school during school hours, for example?

Sharon Grant: A tag would not necessarily be used; there are other things that we can do. It is possible to use voice verification, in which a person phones a number and their voice is taped so that a computer can recognise their voice pattern. However, in pilot schemes in England and Wales a few years ago, magistrates and local authorities refrained from using tags in schools, mainly because it was thought that tagging might cause disruption to the child or teenager and might mean that others would label a child who needed support as a criminal.

Maureen Macmillan: Restriction of liberty orders have been touted as an alternative to

secure accommodation. You give the impression that you do not think that the orders would be used terribly often because of the effect that they might have on vulnerable children. Is there a balance to be struck?

Sharon Grant: The balance is struck in the Executive's proposal to offer RLOs to the children's hearings system as part of a package of support measures. It would not be a blanket package of measures; not everyone who went through the children's hearings system and needed a package of support would necessarily be given a tag. The package would be carefully thought out and assessed, as would the person's needs. In the court system, courts would not tag someone who was assessed as being unsuitable for tagging. They would look towards putting other support measures in place to assist the child or teenager in rehabilitation or in interventions to stop their offending behaviour.

Maureen Macmillan: Do you see RLOs as a way of trying to control chaotic behaviour?

Sharon Grant: In the adult system, there is evidence from feedback from individual offenders that RLOs have brought some order into their life and have broken the pattern of offending. The orders have taken the younger offenders in particular away from peer group pressure, because they have been able to say, "I can't go out because it's my restriction time. If I go out I'll breach it and then I'm in even more trouble." RLOs have influenced some offenders to break the pattern.

15:30

The Convener: Are RLOs intended as a substitute for secure accommodation for under-16s?

Michael Kellet: The bill is clear on that matter. It is important to be clear that we are talking about electronic monitoring in two separate contexts in the bill: one is in respect of RLOs as a court-based disposal and the other is in respect of RLOs as a disposal by the children's hearings system. In respect of the children's hearings system, the bill provides that a hearing may, if it so chooses, impose an electronic monitoring requirement. It is not necessary for that child to meet the criteria for secure accommodation before an electronic monitoring requirement is put in place.

Ministers are aware that restrictions of movement conditions are already within the power of the children's hearings system. Children's hearings already have the power to say to a child, "You shouldn't leave the house after 10 o'clock at night, you should be in by 10, and don't leave again until 6 in the morning." In that context, the tag, as it were, is only an extra tool that is provided to the hearings system to allow it to monitor compliance with that requirement. In certain circumstances, a hearing might decide that, even for a child who met the secure criteria, an electronic tag might be a better option, but that is not to say that a child has to meet those criteria before the option of a tag becomes available.

The Convener: I am aware that there are other aspects of the bill that we have not touched on, such as children's hearings and fixed penalties. Do members have questions on any of those areas?

Jackie Baillie: I am conscious that the closure of premises is an issue in England and Wales. There is a debate about why we have assumed the powers in Scotland. Can you give us any idea of the scale of the problem that is perceived in Scotland? Closure of premises applies to domestic as well as non-domestic premises and there is deep concern that the powers would conflict with existing housing legislation. I wonder whether part of the problem is that the police, rather than local authorities, will be using that power.

Michael Kellet: On the scale of the problem, ministers accept that the power of closure of premises is targeted at persistent antisocial behaviour. They do not envisage it being used often or liberally. The power is targeted at serious problems in community premises that are the centre—almost the epicentre—of antisocial behaviour. That may include drinking dens or premises that are the centre of drug dealing. The power is intended to give communities relief from serious and concentrated antisocial behaviour. I hope that that answers the first point.

Checks and balances are built into the system. Consultation with local authorities is a prerequisite for a closure notice to be served by a senior police officer. That police officer must apply for a closure order—the full order—to the court on the next working day. The court will make an order to close the premises only if it believes that that is justified in the circumstances that have been explained to it.

As you say, a closure order is possible in respect of residential premises—they have not been excluded. If somebody is deprived of their home because of the operation of a closure order, the normal rules for dealing with homeless people apply. The bill does nothing to change those rules, so the local authority's obligations in dealing with people who are homeless will still apply in relation to people who are made homeless because of the operation of that power.

Jackie Baillie: So the problem is just moved on.

Michael Kellet: No. The power is not about moving the problem on; it is about giving immediate relief to communities that are suffering

from an intense problem. If there are serious problems, we expect that a closure order would be used in conjunction with other measures, such as the police investigating serious drug dealing, for example, so that the problem will not just be displaced.

Karen Whitefield: Part 11 of the bill relates to fixed-penalty notices. Are you aware of any monitoring or evaluation of the piloting of fixed-penalty notices in England and Wales? Has any consideration been given to holding a pilot in which the fixed-penalty notices are levied not by the police but by an antisocial behaviour task force? I had discussions with North Lanarkshire Council's antisocial behaviour task force, which has been successful in obtaining 59 ASBOs and nine interim ASBOs in the past few years. The task force believes that it should be able to levy fixed-penalty notices—because one of its responsibilities is to connect with all agencies, it has a much better idea of where the problems are in North Lanarkshire. Have you had representations on that? What would your thoughts be?

Michael Kellet: Down south, there was a series of pilots on fixed-penalty notices for low-level antisocial behaviour along similar lines to those that we propose to introduce under the bill. I have a paper in front of me that shows that, in a pilot conducted by West Midlands police, fixed-penalty notices were able to save a police officer at least two hours in the preparation of case papers, as opposed to the normal reporting of a case to the Crown Prosecution Service. Although the systems north and south of the border are different and separate, we hope that similar savings in police and court time can be realised in Scotland. There is some evidence from down south that fixed-penalty notices are working well.

I am not aware of representations to give the power to issue fixed-penalty notices to bodies other than the police, but obviously ministers would want to consider that possibility. However, ministers would say that, as we are talking about criminal offences, particularly in the context of part 11 of the bill, it is appropriate that the police should deal with such matters. All that the fixed-penalty notice does is give the police another option for dealing with an offender: the police can keep the person in custody for court the next day, release them on the basis of a complaint to follow later or issue a fixed-penalty notice. A lot of the offences that we are talking about involve alcohol or breach of the peace, so I suspect that the police and ministers would take the view that it might not be appropriate to give the power to issue fixed-penalty notices to bodies other than the police.

Nicola Sturgeon: Part 7 of the bill deals with antisocial behaviour notices. I concede that I might be reading this wrongly, but it seems strange to me that an antisocial behaviour notice can be served on a landlord as a result of his tenant's antisocial behaviour. If the landlord does not take the action required by the notice—presumably to curb the antisocial behaviour of the tenant—one of the penalties is the removal of his right to charge rent. Does that not at least create the danger that a tenant who is behaving antisocially will be rewarded by not having to pay rent? Perhaps we would be providing a perverse incentive for tenants to behave antisocially.

Michael Kellet: I apologise—despite the size of the team here today, housing colleagues who have responsibility for that part of the bill are not here, and I do not have that information. Rather than guessing at an answer, I think that it might be more appropriate for us to write to the committee to explain the rationale behind section 53. I apologise.

Nicola Sturgeon: That is okay.

Mike Pringle: I have a simple question about community reparation orders. How do they differ from the community service orders that the courts have at their disposal at the moment?

Brian Cole: They differ in a number of ways. A community reparation order is for between 10 and 100 hours; a community service order is for between 80 and either 240 or 300 hours, depending on the nature of the charge. A community service order is, by statute, an alternative to custody. In other words, it is at the high end of the tariff. A community reparation order is confined to summary cases and is deliberately designed to be a low-tariff sentencing option for the courts. Those are the principal differences.

The Convener: What about supervised attendance orders?

Brian Cole: Historically, supervised attendance orders have been used with fine defaulters. The Criminal Procedure (Scotland) Act 1995 contains a provision for the orders to be used as a disposal of first instance, but that was restricted to cases involving 16 and 17-year-olds. Changes brought about by the Criminal Justice (Scotland) Act 2003 have removed that age barrier. Nevertheless, differences remain. The use of the orders as a disposal of first instance has not been applied in the meantime and will be piloted. It is important to remember that the orders will not necessarily contain a period of reparation. Many current schemes in the country comprise modules that are based around money management and life skills. They do not necessarily include any unpaid work being done for the community, which is what community reparation orders are designed for.

The Convener: We have not talked in any great detail about the effect of the bill on children's hearings. A number of respondents have been concerned about electronic monitoring in the hearings system. Has there been dialogue with people in the children's hearings system on how they propose to deal with the new powers?

Kit Wyeth: As part of the extensive consultation process that ministers and officials undertook over the summer, we met a number of children's hearings interests, including the group representing the chairs of children's panels throughout Scotland. We continue that dialogue and are meeting them again next week. It is fair to say that they had concerns about some of the proposed measures, but, on the whole, they were supportive. They certainly saw a place for electronic monitoring in the hearings system, as long as it was used appropriately as part of a package of support measures and was not used on its own.

The Convener: A provision will enable a reporter to request a sheriff to make an order to enforce the implementation of a supervision requirement. Does that provision sit happily with what children's hearings seek to do?

Kit Wyeth: Responses from children's panel chairs and children's panel interests were supportive of that measure. A concern that was raised by the recent Audit Scotland report was that some supervision requirements are not implemented—some young people's needs are not being met for various reasons. The respondents welcomed the provision that would allow a reporter or a hearing to refer to a court when a local authority was not implementing a supervision requirement.

The Convener: Might there not be confusion between, on one hand, the role of children's hearings and the power of the reporter, and, on the other, the role of the sheriff court?

Kit Wyeth: I would not think so, necessarily. It is for the hearing to decide what it considers to be in the interests of the child, which will be put in the supervision requirement. If that is not being implemented by the authority, the panel will be able to invite the sheriff to consider the situation to decide whether there is a need to compel the local authority to comply with the conditions of the requirement.

Karen Whitefield: Section 104, in part 12 of the bill, places a number of duties on local authorities. Has the Executive costed the additional resources that will be required to enable local authorities to fulfil their obligations?

15:45

Kit Wyeth: As you are probably aware, a package of money has been made available to help to support the measures in the antisocial behaviour strategy. Obviously, some of those measures are more relevant to the youth justice side, including issues around supervision requirements and local authority duties. At this stage, the question is one of exploring with local authorities and others exactly what the resourcing gap is in order to help them to implement supervision requirements and to provide some of the services that do not exist at the moment, such as the parenting services that we discussed earlier. There is a recognition that there is a resource gap and that resources have to be allocated to deal with that. There still has to be detailed discussion about exactly how much money will be required and that discussion will take place shortly.

The Convener: On the closure of premises, fairly extensive measures are available under the liquor licensing legislation to close premises if the licence to use the premises is being abused. Again, is there any intention to repeal or clarify legislation?

Michael Kellet: No. The ministers' view is that if there are problems with antisocial behaviour in relation to licensed premises, they should be dealt with, in the first instance, through the licensing system, although we appreciate that the system is undergoing change at the moment. The closure power in the bill would apply only if that process had failed to deal with a problem.

The Convener: Is it therefore anticipated that the powers in the bill in respect of premises will be directed predominantly at residential premises? I am sure that all committee members have constituents who have had grounds to complain about the conduct of occupants of a dwelling house. However, the police often find it difficult to take action unless an offence has been committed in the house. I am curious to know what the underlying rationale for the inclusion of the provision was. What premises are being identified as those that the police need more powers to deal with?

Michael Kellet: The premises are varied, including residential properties and flats. They also include empty and boarded-up retail premises that have been broken into and have become a centre of serious antisocial behaviour as a result of being used for drug dealing or as a drinking den. The measure is about giving immediate relief to communities and allowing the police to deal with particular problems where, for example, after the police have arrested a person who was dealing drugs out of such a property, another drug dealer moves in. In such situations, the police could deal

not only with the individuals, but with the premises that were causing the problems in the local area. The measure is a tool that is over and above existing powers, but ministers consider that it will be useful in dealing with serious problems relating to antisocial behaviour.

Karen Whitefield: On RLOs, I note that you said that there would be full involvement by the children's hearings system. However, representatives of the children's hearings system in Lanarkshire have raised concerns that RLOs might pose a threat to children. Often, children's antisocial behaviour is a manifestation of the fact that they are being abused at home or are living in an abusive environment; forcing such children to stay at home puts them further at risk. I would like to know more about the Executive's thinking on the matter.

Michael Kellet: The ministers' view would be that any decision to impose a tag, whether by the court or the children's hearings system, should be made only with full knowledge of the circumstances of the child. The ministers' view would be that, in such a situation as you describe, in which a child's safety was at threat in the home, an RLO that confined the child to the home would be wholly inappropriate. It is important that the mechanisms in the bill allow the decision-making forum to have full information about the child. The ministers' view is that they do.

Karen Whitefield: Sometimes, social services are not aware that there is an abuse problem because abusers are often good at covering their tracks. Some abusers masquerade as upstanding citizens and we might not be able to identify those parents from whom children are at risk. I agree that we can deal with the problem where we recognise it, but I am concerned about situations in which we are not aware of the problem.

Michael Kellet: I suppose that the ministers' view would be that that is a problem that applies across the board and does not relate only to RLOs. For example, the children's hearings system can already require a child to reside at home with its parents—that supervision requirement is used often. The only solution to that problem is having local agencies work together at a local level to ensure that the fullest possible information about a child is brought together in the decision-making forum.

Kit Wyeth: As part of the use of the RLOs in the children's hearings system, guidance will be prepared for panel members and training will be made available to them to help them to use their judgment to the best possible effect when they are considering whether to restrict the liberty of a young person.

The Convener: I thank Mr Kellet and his team for their time.

15:51

Meeting suspended.

16:02

On resuming—

Mainstreaming Equality

The Convener: Item 4 on our agenda is mainstreaming equality. Members have received a paper from the clerk on correspondence from the convener of the Equal Opportunities Committee. Feedback is invited on the steps that committees plan to take on mainstreaming equality in their work. Specifically, the committee is invited to consider and agree to the Equal Opportunities Committee's recommendations.

It is obvious that there is broad support for the work of the Equal Opportunities Committee; that support is also reflected elsewhere, beyond this committee. The paper mentions three of the Equal Opportunities Committee's recommendations, the third of which—recommendation 7—relates to what we might do in our annual reports. There is also a reference to the Procedures Committee's recommendation. It is not for me to pre-empt the debate that will take place tomorrow afternoon on the report of the Procedures Committee from the first session of the Parliament, but I know from speaking to other conveners that there is a slight concern that committees should not lose their autonomy of operation and their flexibility. At the Conveners Group, there was some discussion of annual reports and the Procedures Committee's views on them. The clear view of all parties who were represented at the Conveners Group was that a report should be a factual reflection of what the individual committee had been doing and that no preconceived template should be laid down.

I hope that that background to recommendation 7 is of some assistance. Members might think it appropriate simply to reflect that mainstreaming equality is an essential part of our work and that we should comment on it in our annual report if it is appropriate and necessary to do so, rather than there being a prescriptive direction on us to do so.

Jackie Baillie: As I read it, recommendation 7 does not prescribe the form in which we should reflect mainstreaming equality in our annual report. We could, therefore, come to an accommodation that would meet the marginal concerns that you expressed and which other conveners have expressed, while still adopting the principle that, where possible, the annual report should reflect how we have mainstreamed equality in our work. I do not think that it is anything to die in a ditch over.

The Convener: I agree. I was merely reflecting the earlier discussions to which I was privy and which I thought I should share with committee members. By their nature, recommendations 2 and 5 mean that the committee will be concerned with equalities issues as part of its activity. I think that we should take that as read, but I was a little uneasy that we should then have a further obligation placed upon us in relation to the content of our annual report. If we are doing the job properly, we will have observed all those matters. If we are not doing the job properly, I am sure that there will be organisations external and internal to the Parliament that will bring that to our attention.

Do recommendations 2 and 5 enjoy our support?

Members *indicated agreement*.

The Convener: Does the committee have a view on recommendation 7?

Jackie Baillie: We should support it. If we want to, we could note that we support recommendation 7 on the understanding that it does not prescribe a means by which we must reflect mainstreaming of equality in our annual report.

The Convener: That would be a sensible way of moving forward. We should support the concept that, if it is appropriate, we should refer to mainstreaming equality in our annual report, but we do not want a prescriptive direction to be placed on the committee. Does that summarise the committee's view?

Members *indicated agreement*.

Fingerprint Evidence

16:07

The Convener: Item 5 concerns fingerprint evidence and, in particular, a letter that I received from Alex Neil. Members have received copies of the letter, which raises a substantive issue of which I was unaware.

Mr Neil has raised three issues: the extent to which the recommendations arising from the McKie case have been implemented; the implications for the justice system of the introduction of a non-numeric fingerprint evidence approach by the Scottish Criminal Record Office in conjunction with the Crown Office; and any other implications of the introduction of the new fingerprint evidence system.

I do not know the technical details of the new system, when it is proposed for or what the background is, but a serious issue has been raised and it is appropriate that we find out more about it. If the committee is agreeable, we could write to the Lord Advocate to seek his views. Based on his response, the committee could make a decision on whether it wanted the Lord Advocate to give oral evidence. Would that be agreeable as a first step to approaching the subject?

Nicola Sturgeon: I am happy to go along with that, but if it were up to me, I might suggest a different course of action. Like you, convener, I do not know or understand the technicalities of the new system. Would it be possible to ask the Scottish Parliament information centre for a briefing note on the background and the issues? I know that the Shirley McKie case forms the background, but I do not know the main recommendations that have arisen from that case, for example, and I do not know much about the other issues.

I know that the Lord Advocate, or perhaps the Minister for Justice, is responsible for the issue at ministerial level. However, I am not sure that they are best placed to answer some of the questions that we might have in the first place. I suggest that our first port of call should be the SCRO. We could ask for its view on the issues and then, depending on its response, decide whether there are policy issues that we want to raise with the minister or the Lord Advocate, or whoever is responsible.

The Convener: That suggestion is noted.

Karen Whitefield: I have no objection to the committee's acting in response to the issues that Alex Neil has raised, but we must take up those issues with the people who have responsibility for them. I understand that the SCRO is accountable to Cathy Jamieson, who is the Minister for Justice, and that she is responsible for ensuring that the recommendations from the report that was published after the Shirley McKie case have been implemented. Perhaps it would be better if we wrote to the minister.

I have no objection to our writing to the Lord Advocate, but I understand that he will comment only on how the matter in question affects the prosecution of cases, which is what he is responsible for. He would not comment on the implementation of the recommendations, how they have worked, how effective they have been or whether they have been evaluated, as those matters are the responsibility of the Justice Department. On that basis, I suggest that it would be better to write to Cathy Jamieson to seek her views.

Nicola Sturgeon: I do not think that we need to have a big disagreement. I do not know any more about the matter than the information that has been given to us, but there are two issues, which might be related. One is whether the recommendations arising from the McKie case have been implemented, which is a policy implementation issue. The Minister for Justice is probably the best person to speak about such matters.

The second issue relates to the introduction of the new non-numeric fingerprint evidence system, which sounds like a highly technical issue about which it would probably be better for us to speak to the experts in the first instance. Perhaps this is not a perfect analogy, but when the Health and Community Care Committee took evidence about hepatitis C in the previous session, it went to the Scottish National Blood Transfusion Service in the first instance, although the minister was accountable for that service, to get expert technical evidence. Such an approach would probably be appropriate in this case. I have no objection to the committee's writing to the Minister for Justice rather than to the Lord Advocate—it is probably right to do so—but the SCRO is probably best placed to answer either in writing or through oral evidence any technical questions that we have.

Jackie Baillie: That is probably a sensible approach, but I have one fear about it. Should we tie up another evidence-taking session or could we deal with the matter in writing?

The Convener: The discussion has been helpful and good points have been made. The issue is very technical. I was thinking of obtaining forensic professional advice, as I do not understand the significance of the matter. Such an approach would be sensible. We have a pretty busy timetable in the next few months and it would be sensible to deal with as much of the matter through correspondence as we reasonably can.

There seems to be absolutely no objection to writing to the Minister for Justice, the Lord Advocate and the SCRO in the first instance. I understand that the Minister for Justice is responsible for the operation of the SCRO. The Lord Advocate has a role to play, as he is accountable for the success or failure of the prosecution of cases in the criminal justice system in our courts. Of course, the critical factor in such prosecutions is fingerprint evidence.

We could write to the Minister for Justice, the Lord Advocate and the SCRO for technical background information. The committee could then consider responses and decide what other action—if any—it wanted to take. Do members agree with that initial course of action?

Members *indicated agreement*.

The Convener: I should make it clear that Alex Neil expressed a desire to be present this afternoon for consideration of this agenda item, but was prevented from attending.

Agenda item 6 will be considered in private. We will allow the public galleries to clear.

16:14

Meeting continued in private until 16:21.

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