

JUSTICE 2 COMMITTEE

Tuesday 20 September 2005

Session 2

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MANAGEMENT OF OFFENDERS ETC (SCOTLAND) BILL: STAGE 2 1661

JUSTICE 2 COMMITTEE

22nd Meeting 2005, Session 2

CONVENER

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

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

Colin Fox (Lothians) (SSP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERKS TO THE COMMITTEE

Gillian Baxendine

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 4

Scottish Parliament

Justice 2 Committee

Tuesday 20 September 2005

[THE CONVENER *opened the meeting at 14:02*]

Management of Offenders etc (Scotland) Bill: Stage 2

The Convener (Miss Annabel Goldie): I declare this meeting of the Justice 2 Committee open. It is our 22nd meeting this year and our sole item of business will be stage 2 amendments to the Management of Offenders etc (Scotland) Bill.

I do not have a note of any apologies. I think that Jackie Baillie hopes to join us, but she may be a little late. Colin Fox is not attending meetings during the month of September.

I welcome Hugh Henry, the Deputy Minister for Justice, and his officials from the Scottish Executive Justice Department. With their papers, members should have received a marshalled list of amendments. I propose that we get under way without further ado.

Section 1—Duty to co-operate

The Convener: Amendment 2, in the name of the minister, is in a group on its own.

The Deputy Minister for Justice (Hugh Henry): Amendment 2 extends the definition of “relevant persons” in the bill to include those who access local authority functions under section 27(1A) and section 27ZA of the Social Work (Scotland) Act 1968. That will ensure that the bill takes into account amendments made to the 1968 act by the Criminal Justice (Scotland) Act 2003 relating to services for persons subject to voluntary supervision and persons with dependency problems. As the functions of community justice social work departments under section 27(1A) and section 27ZA are funded through the 100 per cent grant, it is sensible to include those persons under the provisions in the bill to ensure a coherent service in criminal justice social work. I urge that amendment 2 be agreed to.

I move amendment 2.

Amendment 2 agreed to.

Section 1, as amended, agreed to.

Section 2—Community justice authorities

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 4, 5 and 37 to 40.

Hugh Henry: Amendment 3 is consequential to section 2(5)(e) and takes account of amendment 4. The purpose of amendment 4 is to allow for community justice authorities to have responsibility for the allocation of funds under section 27B of the Social Work (Scotland) Act 1968, which deals with grants in respect of accommodation for persons under supervision. It would be sensible for CJAs to have the power to handle and distribute those funds to local authorities. The intention of the provision is to support the integrated delivery of services under our plan.

Amendment 37 is a technical amendment and is consequential to amendment 3. It ensures that the requisite amendments to the 1968 act will contain the correct references.

Amendment 40 relates to amendments 3 and 4. It amends the 1968 act to enable ministers to provide grants to the CJA under section 27B, while retaining the power to provide funds directly to local authorities. That addition to section 14(2) of the bill amends section 27B of the 1968 act, which mirrors the changes to section 27A of the act that the bill already provides for.

Section 14(2) of the bill introduces necessary amendments to section 27A of the Social Work (Scotland) Act 1968. Currently, the bill enables ministers to provide funds to CJAs for distribution to local authorities or for the delivery of functions transferred under section 7(2) of the bill, which deals with the statutory transfer of functions. Amendment 38 inserts a reference to section 7(3) of the bill into the 1968 act. Section 7(3) allows a CJA to perform a function on behalf of any number of the local authorities within its area. The amendment ensures that ministers can additionally provide funds to CJAs for delivering services on behalf of local authorities under section 7(3). That will avoid the need for additional funding transfers backwards and forwards for CJAs or for local authorities.

Amendment 39 is a technical amendment to clarify the location of that subsection as referred to in the 1968 act. That ensures consistency with the cross-reference style as adopted in the act.

Amendment 5 provides CJAs with the explicit power to set conditions on the grant that is to be paid to local authorities under section 2(5)(e) of the bill. At the moment, ministers can set conditions of grant on local authorities. The bill already makes provision for grant conditions on CJAs, which will be set by Scottish ministers through section 27A(1B) of the 1968 act. The amendment provides similar powers to the CJA over local authorities to ensure that it remains possible to apply conditions to the way in which moneys that are provided by the Executive are used. If we did not do that, we would break a well-established link that currently enables ministers to

impose conditions on local authorities' expenditure of grant.

I move amendment 3.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 6, in the name of the minister, is grouped with amendment 31.

Hugh Henry: Amendment 6 places the community justice authorities under a duty to publish their annual report. That would be in line with best practice and in the interests of an open exchange of information. The provision has been drafted to allow CJAs flexibility as to the means and manner of publication.

On a related point, the bill as currently drafted requires the responsible authorities to prepare an annual report on the exercise of their functions in relation to sexual and violent offenders under section 9. There is no provision requiring that anything should be done with that report. At the suggestion of the Association of Directors of Social Work, amendment 31 provides that that annual report be submitted to the CJA. That ensures integration of the requirements that are imposed on responsible authorities under section 9 with the work of the CJA. Amendment 6 completes the cycle by requiring the CJA to submit that report to the Scottish ministers.

I move amendment 6.

The Convener: I seek clarification on a small drafting matter. Amendment 6 refers to

"a report submitted to"

a CJA

"under section 10(2)(c)".

To put the matter beyond doubt, is that section 10(2)(c) of the Social Work (Scotland) Act 1968?

Hugh Henry: No. The reference is to a paragraph that will be inserted into the bill by amendment 31.

The Convener: That is helpful.

Amendment 6 agreed to.

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8 and 10.

Hugh Henry: Amendment 7 amends the powers in section 2(10) of the bill for the Scottish ministers to provide guidance and direction to CJAs. As drafted, section 2(10) provides ministers with powers only to provide guidance for the preparation and content of plans under section 2, but that will be amended so that ministers can provide guidance on any of the functions in section

2. Ministers will also be able to issue guidance to an authority as to its actions under section 3. The amendment will enable ministers to be clearer about the CJAs' role and functions, which will help to ensure that guidance can be used to provide further detail if needed on, for example, the role of the chief officer or relations with local authority chief social work officers.

Amendment 7 will also introduce limits to the scope of the powers of direction in section 2(10). We considered the committee's comments on the issue and those that members made during the stage 1 debate. While we feel that it is important that the powers are retained, we have considered the wording of the provision further. Amendment 7 has been drafted following discussions with local government, the Scottish Prison Service and voluntary sector representatives.

Amendment 7 will limit the use of directions to occasions on which the ministers are satisfied that a CJA is not complying with the guidance that has been issued or that it is not likely to comply. The amendment will restrict the powers so that directions can be issued only following written notice of ministers' intention to issue a direction. Ministers will have a duty to consider any representations that are made to them within seven days of the issue of the written notice.

Amendment 7 will also provide CJAs with a right of appeal to the sheriff against the terms of directions. Finally, the amendment will impose an obligation on ministers to report to the Parliament following the issue of directions. Ministers will therefore be held accountable to the Parliament, so ministerial decisions to use the power of direction will be transparent.

Amendments 8 and 10 are consequential amendments that take account of the renumbering in section 2(10).

We have reflected on the concerns that were raised on the issue—I hope that amendment 7 will provide assurances.

I move amendment 7.

Bill Butler (Glasgow Anniesland) (Lab): I welcome amendment 7, because, as colleagues will know, several of us had concerns about the powers of direction. The measures that the minister outlined give a considerable degree of comfort on the issue.

Mr Stewart Maxwell (West of Scotland) (SNP): I concur with Bill Butler's comments on the Executive's movement, which is helpful. For clarification, will the minister explain why a period of seven days has been chosen for the time within which anybody who has been directed must object? That seems a short period.

Hugh Henry: We accepted the arguments that were made and produced new measures, but it is fair to say that there are times when we must move quickly. We are concerned that extending the period beyond seven days could introduce unnecessary delays, leading to complications or risks to the quality of service delivery. Having built in safeguards and having sought to give those assurances, we believe that it is necessary—not for the Executive or the authorities, but for reasons of public safety—to ensure that, if concerns exist, the public can be reassured that action will be taken swiftly.

Amendment 7 agreed to.

Amendment 8 moved—[Hugh Henry]—and agreed to.

14:15

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

Hugh Henry: The purpose of amendment 9 is to clarify that CJAs may work with partner bodies that are individuals or office holders as well as those that are organisations. The amendment makes it clear that individuals can be designated as partner bodies for the purposes of section 2 and provides future flexibility in the design of partner bodies.

I move amendment 9.

Amendment 9 agreed to.

Section 2, as amended, agreed to.

Section 3—Further provisions as respects community justice authorities

Amendment 10 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 11, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 11 clarifies the provision in section 3(6) relating to the meeting of CJA expenditure by ministers. As currently worded, the section could be interpreted as meaning that all expenditure of a CJA, in so far as it is not met by any other source, is to be paid for by ministers without any limitation. The amendment ensures that Scottish ministers are not liable to pay all expenditure that is incurred by CJAs, even in the event of a local decision to spend more than the grant that is offered by the Executive. The committee will agree that that is a wholly appropriate and prudent response.

I move amendment 11.

The Convener: As long as the bill for that does not land up in the lap of the hapless council tax payer, I am not too concerned about the amendment.

Amendment 11 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 6 agreed to.

Section 7—Transfer of functions to community justice authority

The Convener: Amendment 12, in the name of the minister, is grouped with amendments 13 to 20.

Hugh Henry: If the committee will bear with me, I will discuss the amendments in detail. Amendments 12 to 20 amend provisions in sections 7 and 8. Section 7 deals with the transfer of functions to CJAs. Section 8 is concerned with the transfer of property that is associated with the transfer of a function.

The purpose of amendment 12 is to extend the list of functions that can be transferred to a CJA under section 7 to include functions exercised under sections 27(1A), 27ZA and 27B of the Social Work (Scotland) Act 1968. The amendment also includes certain functions that are exercised by Scottish ministers under the Prisons (Scotland) Act 1989. The intention of adding the functions that are exercised under sections 27(1A) and 27ZA of the 1968 act is to take into account the amendments that were made to the 1968 act by the Criminal Justice (Scotland) Act 2003. Amendment 12 links in with amendment 2, which inserts references to those sections into the definition of “relevant persons” for the purposes of the bill.

The effect of adding the reference to section 27B of the 1968 act is to include services for which ministers make grants to local authorities in respect of residential accommodation for persons under supervision. That links in with amendment 4, which inserts such a reference to enable CJAs to allocate to local authorities funds given under section 27B.

Amendment 12 also adds certain of ministers’ functions under the Prisons (Scotland) Act 1989 to the list of functions that can be transferred. Those are functions that are exercised through the Scottish Prison Service and that relate to the preparation of offenders for release from imprisonment or detention in custody. The intention is that those SPS functions that are relevant to the work of a CJA could in future be transferred to a CJA. Such functions could include prison-based social work activities, which the SPS currently purchases from local authorities or others. We have developed the amendment to allow for a future transfer of those functions to the CJA. The intention is that that will support the more integrated system for management of offenders. However, as the amendment makes clear, only the functions related to the preparation

of offenders for release are covered by the section. There is no question of CJAs being able to take on other functions of prisons.

The amendment allows only for the statutory transfer of functions from ministers to CJAs. We are also considering whether CJAs should undertake functions on behalf of Scottish ministers, in effect acting as their agents. That would require amendment to section 7(3).

I turn to amendments 13 and 17. We have listened to the concern of local authorities regarding ministerial powers to transfer functions from local authorities to CJAs. It was never our intention to use such powers against the will of local authorities. Consequently, the original provision was drafted to make a transfer order subject to affirmative procedure. That requirement still exists, but amendment 17 places a further duty to consult local authorities and obtain their agreement to the laying of the order. I argue that the amendment provides sufficient safeguards to ensure that function transfer against the will of local authorities does not occur. Similarly, an order transferring a function from Scottish ministers—in effect, the SPS—to a CJA cannot be laid without the agreement of the CJA to undertake that function.

Amendment 13 is supplemental to amendment 17 and ensures that the statutory transfer of functions under section 7 is subject to the procedures and conditions that are set out by amendment 17 and inserted in subsection (5).

The effect of amendments 14 and 15 is to allow a CJA to deliver a function that is covered by subsection (1) on behalf of any number of the local authorities in its area. The amendments accommodate the wishes of local authorities that wish to transfer the day-to-day delivery of a function, but not the ultimate statutory responsibility for it, and of those that prefer to maintain delivery at local authority level. The amendments do not raise issues of mixed competency, as the statutory responsibility for the function does not change—it remains with the local authority. The amendments also avoid potential disputes within a CJA between local authorities that wish to use the CJA as an agent and those that do not. The amendments provide individual local authorities and CJAs with greater flexibility for decisions on transfer of functions to CJAs.

Amendment 16 imposes a duty on a CJA to consult interested parties when considering undertaking a function on behalf of one or more of the local authorities in its area. The amendment provides a means of ensuring that all local authorities, partner organisations and Scottish ministers are aware of any change in service

delivery and is in keeping with the general theme of joint working that permeates the bill.

Amendments 18, 19 and 20 amend section 8. Section 7 provides an order-making power to allow transfer of functions to CJAs from local authorities or the Scottish ministers—in practice, the SPS. Section 8 allows property that is used for the purposes of the function also to transfer to the CJA.

As the bill is drafted, should an order that is made under section 7 be revoked, any property that accompanied the transfer would remain with the CJA. There is therefore a need to amend section 8 to allow the transfer back of any property that is associated with the function to the body that assumes that function following revocation. Amendment 18 will ensure that that is the case.

Amendment 19 seeks to ensure that no right of pre-emption or other similar right operates or becomes exercisable in the case of transfer of property to and further transfer from the CJA. Amendment 20 seeks to ensure that other rights or liabilities that are associated with the property transfer with the property when it is transferred from one body to another.

I move amendment 12.

The Convener: I think that you have given the necessary reassurance but, to put it beyond doubt in my mind, can you say whether it is correct that the transfer of powers as proposed under amendment 12 will not give a CJA decision-making power over the release from prison or detention of any individual?

Hugh Henry: That is correct.

The Convener: That decision remains with current authorities.

Hugh Henry: Yes. As I made clear, we are talking about the exercise of functions that the Scottish Prison Service currently buys in from social work agencies or others, such as the preparation of offenders for release to social work. There is no question of other functions being taken under amendment 12.

Bill Butler: I welcome amendment 17, because it adds the necessary safeguard of affirmative procedure to the requirement to consult and secure agreement from local authorities on the transfer of functions to CJAs.

Maureen Macmillan (Highlands and Islands) (Lab): I have a question on amendment 12, on the preparation of offenders for release from imprisonment and the possible role of the CJA. Would the relevant CJA be the CJA in the area where the prison is located or the CJA in the area from which the prisoner came originally and to where they are going to be sent back? Could it be

both CJAs? I am not sure how it would work for prisoners whose homes were not in the CJA area of the prison.

Hugh Henry: The relevant CJA would be the CJA that is responsible for providing support to the prisoner on release. Sometimes there might be confusion about where that might be and where support might be more appropriately provided. We are discussing with the SPS the use of the prison estate, so it could be either CJA. The whole intention of the bill is to ensure that prisoners are properly prepared before release and properly supported after release. We want to ensure that there is no confusion about responsibility. We will continue to discuss this matter, and if we believe that support should more appropriately be provided in one or the other, we will ensure that it is provided in the way that is most appropriate for the prisoner.

Maureen Macmillan: Thank you. That is a cause of concern in areas without prisons.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Could you clarify amendments 14 and 15, because I am concerned that there is a muddle? We have already clarified the areas on which you will issue guidance—for example on planning, co-ordinating and monitoring CJAs—and how that will be done. However, with amendments 14 and 15, you are in effect offering to let local authorities opt out of combining responsibilities or functions within a CJA. How would that be consistent? If, for example, a CJA covered four local authorities, only one of which asked the CJA to provide services for it, such as the preparation of prisoners for release, how could the CJA then co-ordinate those services, which would in effect be a ministerial instruction?

14:30

Hugh Henry: We have been attempting to reflect some of the concerns that were expressed by members of the Parliament, local authorities, social work professionals and others when we first proposed to set up an agency to tackle reoffending. Members were keen to ensure that responsibility for service delivery still lay at the local level and that we did not inappropriately interfere with that. We took steps to examine the continuity of employment and staff in the bodies concerned. We have separated the need to have strategic organisation and oversight from day-to-day service delivery. Local authorities will still have responsibility for functions in this area, which reflects comments from a wide range of organisations and individuals during the formative stages of the bill.

Jeremy Purvis: If a CJA receives funding directly from the Executive and is vested with the

functions of a local authority within its area, would there not be some disparity with regard to how those services could be delivered? One local authority vesting its functions to the CJA could in effect have subsidised services.

Hugh Henry: We want to emphasise that the action plan that is to be developed should ensure consistency across the whole of a CJA's area. If we reflect on the fact that a CJA will be comprised of individual local authorities, we have to accept that there is the potential for what we could describe negatively as a disparity of service delivery in certain areas. However, it was put to us during the formulation of the bill and during the consultation process that we should not view the process negatively, but rather view it as local decision makers and service delivery agencies taking full responsibility for shaping the services in their area as they best see fit.

We have not attempted to impose a centralisation whereby services will be delivered in exactly the same way in each local authority area under a given CJA. However, given the requirement for the action plan and with the CJA taking overall responsibility, we have attempted to allow the CJA to hold those who are responsible for local service delivery to account should there be a failure to meet the required standards. We are not attempting to dictate exactly how service delivery should be provided in each case. That reflects the debate that took place during the early stages of consultation.

Maureen Macmillan: I welcome the minister's last remarks. The islands authorities were very keen to uphold those arrangements and to do things in the way that they had traditionally done them, rather than having some other system imposed on them.

Amendment 12 agreed to.

Amendments 13 to 17 moved—[Hugh Henry]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Transfer of property to community justice authority

Amendments 18 to 20 moved—[Hugh Henry]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Arrangements for assessing and managing risks posed by certain offenders

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 22 to 30.

I will allow time for the minister's new set of advisers to replace the current set. It looks as

though the weary are being replaced by the energetic, but I am sure that that is not the case.

Hugh Henry: I could not possibly comment—I have too much at stake in future work to make such a suggestion.

With the committee's indulgence, I will cover a fairly detailed set of amendments. I thank the agencies in the tripartite group and those who gave evidence to the committee who assisted in formulating amendments 21 to 30.

Amendment 29 will extend the definition of responsible authorities in section 9(6) to include health boards and special health boards, otherwise known as the health service. Amendment 30 provides that the health service will be involved in establishing joint arrangements for the assessment and management of the risk that is posed by mentally disordered offenders who also fall within the group of sexual and violent offenders that is defined in subsection (1).

The amendments set out the function and duties under which the health service will act as a responsible authority in relation to the establishment and management of the risk that is posed by mentally disordered offenders who are subject to a compulsion order, restriction order, hospital direction or transfer for treatment direction under the Criminal Procedure (Scotland) Act 1995 and the Mental Health (Care and Treatment) (Scotland) Act 2003.

The amendments will give the health service a statutory function to establish joint arrangements with the other three responsible authorities—the Scottish Prison Service, the local authority and the police—to assess and manage risk, which includes sharing relevant information, for that group of mentally disordered offenders. Significantly, the amendments will allow the health service to formalise the care programme approach that is in place throughout Scotland. Under that process, a range of agencies works with the health service to ensure safe pre-discharge and post-discharge arrangements for mentally disordered offenders.

Subsection (3) gives ministers the power to make an order requiring other agencies to co-operate with the responsible authorities in establishing and implementing the arrangements for offenders who are in the community or being released from prison. The responsible authorities also have a duty to co-operate with those agencies and with one another. It is important that the health service should be under an express duty to co-operate with the other three responsible authorities as regards non-mentally disordered offenders and we will add a new provision—subsection (11)—to achieve that.

Arguably, the provisions in relation to offenders in the criminal justice system could be left as they are. However, including mentally disordered offenders provides the opportunity to close a potential loophole and to cover all the possibilities so far as they are reasonably identifiable.

We are acting in the interests of public safety and—I am pleased to say—with the support of other responsible authorities, namely the Scottish Prison Service, the Association of Directors of Social Work and the Association of Chief Police Officers in Scotland.

I should add that the provisions on mentally disordered offenders have proved challenging to those who were tasked with developing the amendments. I ask for some indulgence from the committee if we need to refine the definitions in subsections (1) and (10) by further amendment at stage 3. It is important that we make these amendments at this stage. We are right to identify the issues for the committee and give members an opportunity to reflect on what is a detailed but significant set of amendments. It is appropriate to make the amendments now, knowing that changes may be required at stage 3, rather than produce the whole set of amendments at stage 3 without giving the opportunity for more considered reflection. The amendments will provide the basis for the creation of a stronger framework within which the justice and health portfolios will work together to manage risks to the public.

Amendment 30 will also insert new subsection (12), which defines the terms “Health Board” and “Special Health Board”, and new subsection (13), which will clarify that the use of the term “the Scottish Ministers” in subsection (6) applies to the exercise of ministers’ functions through the Scottish Prison Service under the Prisons (Scotland) Act 1989. Amendments 21, 26 and 27 are consequential to amendment 30.

Amendment 22 will refine the definition of the violent offenders who will be caught by section 9(1)(b). The amendment defines the group as those who are subject to a probation order or those who will be subject to statutory supervision on release. That includes prisoners who are sentenced to four years or more and those who are subject to an extended sentence or a supervised release order. Amendment 22 will also add new categories to cover mentally disordered offenders who are acquitted on the ground of insanity and subject to a restriction order, and those where a plea in bar of trial on the ground of insanity is successfully made.

The police have been involved in risk assessment and management of sex offenders for a number of years, as part of their duties under the Sex Offenders Act 1997. Sections 9 and 10 will formalise those arrangements and allow the

police, local authorities and the Scottish Prison Service to deliver a more consistent and joined-up approach, assisted by the use of common assessment tools and a shared management plan. However, we accept that establishing joint arrangements to deal with the violent offender group will be a new area of work for the police. We therefore propose to consult the Risk Management Authority for advice on developing a national approach to the assessment and management of that group of offenders. Guidance to underpin the legislation will be issued to agencies on implementation.

To allow proper time for preparation and to learn from experience, we intend to stage the commencement of the act, starting with the provisions on sex offenders and then phasing in those on violent offenders. However, that will not prevent any of the responsible authorities from carrying out their existing functions in respect of violent offenders.

Amendment 23 will amend section 9(1)(c) to clarify that it is the conviction that will be the basis on which the responsible authorities consider that a person may cause serious harm to the public. Amendment 24 is consequential to amendment 22, which will add new paragraph (ba) to section 9(1). Amendment 24 will amend section 9(2)(b) to take into account those persons who are found not guilty of charges by reason of insanity but who are nevertheless required to register under the notification requirements in section 80(1)(b) of the Sexual Offences Act 2003.

Amendment 24 will provide that, for the purposes of determining which authorities must make the arrangements that are required under section 9 of the bill, the location of the offences is immaterial. Amendment 25 will clarify that, in relation to the new groups of mentally disordered offenders that will be included in subsection (1), the location of the offences is also immaterial. An offender who commits an offence outwith the area of a responsible authority—or outside Scotland—can be subject to the joint arrangements that the responsible authorities will have to establish under subsection (1). The relevant test will be whether an offender's presence in the area poses a risk, which will ensure that offenders who move from area to area will be subject to the provisions.

14:45

Amendment 28 will ensure that, in the area of each local authority, the responsible authorities and persons specified in subsection (3) with a duty to co-operate draw up a memorandum setting out the ways in which they are to co-operate with one another. The memorandum should ensure that the responsible authorities and the agencies with a duty to co-operate have a clear understanding of

their roles and responsibilities, which include the sharing of information on the arrangements for the assessment and management of risk.

I hope that the committee agrees that the amendments provide additional safety for our communities. By including mentally disordered offenders, we will plug a gap in the provisions for a group that undoubtedly poses a risk to the public.

I move amendment 21.

The Convener: I know that the amendments in the group form a significant part of the Executive's amendment of the bill. I think that all members take on board your comments earlier. It is welcome to see amendments of this type coming forward, albeit that they are complex and technically difficult. The opportunity is given to committee members to grapple with the provisions and to other interested parties to submit their views and thoughts. I also appreciate your comment that you may revisit this area at stage 3.

The subject is complex. My question, which I will put in layman's terms, concerns the involvement of health boards and special health boards. I understand that although persons who may be suffering from mental health difficulties will be covered by the bill, people who have committed criminal acts and who have been sectioned and therefore not become the subject of criminal proceedings will continue to be excluded from the arrangements. Is that correct?

Hugh Henry: That is correct.

The Convener: So they will remain without the criminal justice framework. As no member has a question and the minister does not wish to wind up, I move straight to the question on amendment 21.

Amendment 21 agreed to.

Amendments 22 to 30 moved—[Hugh Henry]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Review of arrangements

Amendment 31 moved—[Hugh Henry]—and agreed to.

Section 10, as amended, agreed to.

The Convener: That concludes our stage 2 consideration of the bill for today. We will continue with our consideration at our next meeting. I thank the minister and his officials for attending the meeting.

Meeting closed at 14:48.

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