

JUSTICE 2 COMMITTEE

Tuesday 8 November 2005

Session 2

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CONTENTS

Tuesday 8 November 2005

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POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL: STAGE 1	1775
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JUSTICE 2 COMMITTEE

† 30th 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

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Carolyn Leckie (Central Scotland) (SSP)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

George Bell (Aberdeen Joint Alcohol and Drug Action Team)

Laura Gordon (Glasgow Chamber of Commerce)

Neil Hunter (Glasgow City Council)

David Liddell (Scottish Drugs Forum)

Fiona Moriarty (Scottish Retail Consortium)

Chief Superintendent Ian Paterson (Aberdeen Joint Alcohol and Drug Action Team)

CLERK TO THE COMMITTEE

Gillian Baxendine

Tracey Haw e

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 2

† 29th Meeting 2005, Session 2—Joint meeting with Justice 1 Committee held in private

Scottish Parliament

Justice 2 Committee

Tuesday 8 November 2005

[THE DEPUTY CONVENER *opened the meeting at 15:34*]

Police, Public Order and Criminal Justice (Scotland) Bill: Stage 1

The Deputy Convener (Bill Butler): Good afternoon, colleagues, and welcome to the 30th meeting in 2005 of the Justice 2 Committee. Apologies have been received from Annabel Goldie, Colin Fox and Jackie Baillie. Carolyn Leckie is substituting for Colin Fox and Cathie Craigie is substituting for Jackie Baillie.

Agenda item 1 is on the Police, Public Order and Criminal Justice (Scotland) Bill. I welcome Fiona Moriarty, who is director of the Scottish Retail Consortium, and Laura Gordon, who is a board member of the Glasgow Chamber of Commerce. Thank you for attending the Justice 2 Committee today. We await your responses to our questions with interest. First we will talk about public processions and then we will move on to discuss offensive weapons. To begin with, what impact do marches have on the running of businesses?

Fiona Moriarty (Scottish Retail Consortium): I will let Laura Gordon tackle that question.

Laura Gordon (Glasgow Chamber of Commerce): We represent about 1,600 businesses in Glasgow. We appreciate the need for marches and we wholly accept the benefit of freedom of expression to the community, but marches are often accompanied by public disorder, incidents of vandalism and unrest. Our members are keen to support the proposal in the bill to extend the notice period to 28 days. That will give our members more time to prepare for possible unrest or problems that will affect the smooth running of their businesses, particularly at the weekend, which is the busiest time for retailers.

The Deputy Convener: You said that your members are keen to support the proposed extension of the notice period. For the record, and for the benefit of the committee, will you explain what involvement businesses have when a local authority is considering a march that has been planned?

Laura Gordon: I am not absolutely certain about the procedure or about whether businesses are consulted individually, but I am aware that our members support the proposal, because they

would have more notice and therefore more time to prepare themselves.

The Deputy Convener: Do your members feel that, at present, they do not have any input into the planning of marches?

Laura Gordon: I am not aware of any complaints about that, but our members support the proposed extension. The information that I will present to you today is based on a survey of our members and on the information that we have gleaned from them over the years. One major retailer says that processions have a noticeable adverse effect on trade in the city and that a lot of preparation is required in the city centre to ensure that parades are set up properly.

The Deputy Convener: For the record, which business said that?

Laura Gordon: It was the Buchanan Galleries partnership.

The Deputy Convener: In Glasgow.

Laura Gordon: Yes.

Mr Stewart Maxwell (West of Scotland) (SNP): By coincidence, I want to ask you a question on that very point. When you were asked about the impact of marches on the running of businesses, you said that the important point is how much warning is given. Is there any statistical evidence on the level of sales on days when there are marches in the city centre?

Laura Gordon: I do not have those figures, but perhaps Fiona Moriarty can help on that, as she represents the retail sector.

Fiona Moriarty: I can give anecdotal evidence, but, if you want me to speak to our members about footfall and sales figures, I can do so. I did not prepare to speak on that subject today, as I am here to talk about knife crime, but obviously I know a little about the effect of marches. When there is a large march, footfall and sales are undoubtedly down. As you know, retail is all about footfall. If people are not going into shops, shops cannot turn their visits into sales.

Mr Maxwell: The impression that most of us have—certainly, it is the one that I have—is that what you describe would be the likely impact of a large-scale march in a town or city centre. As your members will have a clear idea of the effect on sales and the throughput of customers, I hoped that they would provide more hard evidence, rather than anecdotal evidence, to give us a definite idea of what happens.

The Deputy Convener: Could Fiona Moriarty ask her organisation's members those questions and provide answers in writing to the committee?

Fiona Moriarty: Sure—I will do that. If you give me a deadline, that will be fine. I will do that in conjunction with the Scottish Chambers of Commerce and work through the chambers in the main cities throughout Scotland, rather than focus purely on Glasgow.

The Deputy Convener: That would be helpful. We would be grateful if you forwarded that information to the committee's clerking team as soon as it is available.

Maureen Macmillan (Highlands and Islands) (Lab): I live a long way away from Glasgow and I have never been in the city when such a march has taken place. I do not know what local businesses must do to prepare. What are the implications of a march for local businesses? How do they prepare? Do they barricade their premises?

Laura Gordon: When the G8 demonstrations took place in Edinburgh and Stirling, barricading of shops was required. All that I know is that our members in Glasgow city centre must take measures. I do not know exactly what the measures are, but I can get back to the committee with more information. I have not been briefed about the exact measures that businesses take. As a citizen of Glasgow, I have seen businesses close early when demonstrations and marches of an extreme political nature are to take place. That is my personal experience.

The Deputy Convener: Could you write to the committee with information about those measures?

Laura Gordon: Yes.

The Deputy Convener: That would be great.

Maureen Macmillan: It is necessary for us to know the exact implications in terms of preparation and loss of trade. When marches occur, other sectors—such as the hospitality industry—might do better than on a normal day. Is there an upside and a downside?

Fiona Moriarty: The hospitality sector definitely benefits in larger cities, but that goes no way towards compensating for the loss of sales in the retail environment, which is all that I can speak for.

I will add a little about precautions. If a large-scale march is likely or expected to become problematic, additional security staff will be drafted in, all closed-circuit television cameras will operate in a store—that might not be the case on a normal day—and staff will be trained and briefed. Staff would tend to arrive a little early for their shift to be clear about what to do if any incidents should occur.

We should not ignore the nervousness about going into the city centre that the individual staff

member who works on the shop floor feels. Do staff have to travel into the city? Should they take the bus? Will they be able to park their cars? They will wonder how they will get home at the end of their shift and whether they will be safe if the situation deteriorates. The human factor needs to be taken into account in relation to some larger marches.

Maureen Macmillan: I presume that what you say applies not only to people who work in the city, but to people who want to go there to shop.

Fiona Moriarty: Yes.

Maureen Macmillan: Will the proposals in the bill give businesses an adequate opportunity to present their case to Glasgow City Council? Is the council aware of the dimensions to which you refer?

Fiona Moriarty: I will let Laura Gordon answer.

Laura Gordon: I am sorry—will you repeat the question?

Maureen Macmillan: I presume that councils are aware of businesses' concerns, so is the proposed extra time necessary? Will it be a good addition?

Laura Gordon: We would like increased co-operation between march organisers and local authorities to balance the right to march with the right for businesses to go about their daily work. Increasing the notice period would provide more chance for consultation. From the responses that we have submitted, I imagine that businesses would like that issue to be addressed, because a seven-day period is not long enough for all the preparation that is required. As Fiona Moriarty said, if extra staff and increased security measures are required, more time will be needed.

Maureen Macmillan: There will need to be more forward planning.

15:45

Laura Gordon: I should also point out that the issue affects not only the people in Glasgow but tourists. Glasgow Chamber of Commerce is involved not only in the retail and business sectors, but in the tourism sector, which many of our members come from. We do not want aggressive demonstrations or processions to drive visitors from the city.

Carolyn Leckie (Central Scotland) (SSP): To be honest, I do not recognise the picture that you are painting and I think that it is important that any conclusions are based on hard evidence. As somebody who has probably been on every demonstration in Glasgow in the past five or six years, I know that their general character is extremely relaxed. I would say that, rather than

having a negative impact on business, they have a positive impact. Gregg's on the corner of George Square, for example, is absolutely stowed out when there is a demonstration and probably makes a fortune. Quite often, people jump off the demonstrations to go into shops as they pass by. I would want to see some hard data in connection with what has been said, as I think that there are positive and negative aspects and that there is probably increased trade when there is a demonstration.

The Deputy Convener: Have you a question, Carolyn?

Carolyn Leckie: Yes. I want to pull out some information about the general references that are being made. I would like some hard evidence of negative effects in the past few years. The G8 situation was quite unusual and there is a debate about who caused it. However, in relation to demonstrations in Glasgow, I would like to see some more meat in some of the answers that we are being given, rather than just general opinions.

Laura Gordon: I agree that it is a minority of people who cause the problems in any demonstration and that facilitating demonstrations is good for the city, for the culture and for people's general view of the city. I am not for one minute suggesting that the processions should be reduced or banned. However, after taking part in a survey, our members agreed that they would like more consultation with the march organisers and the local authorities and a greater notice period, which would enable our members better to equip themselves for any incidents of potential damage or problems arising from a lack of security.

The Deputy Convener: Following on from what Carolyn Leckie said, would it be possible for you to provide us with hard evidence of positive and negative consequences that your members have encountered? I think that you have already said that you would do that. Would that be possible?

Laura Gordon: Yes.

Mr Maxwell: Obviously, not all the processions that we are talking about are demonstrations; many of them are what we might call traditional marches. There are a lot of different types of events and they have different effects in different areas. Do you have any evidence of displacement of activity? For example, if there is a march in the city centre, does Braehead benefit while the Buchanan Galleries suffers? Is there a displacement or is there a general downturn? In that regard, might the situation be different in Glasgow from how it would be in smaller places, such as towns in Lanarkshire, where there is less scope for people to go elsewhere? Carolyn Leckie is right to say that we must have solid, factual evidence of what is going on, so I should ask

whether there is any evidence to support the view of your members.

Fiona Moriarty: In smaller towns in rural communities, such as Perth and Stirling, there are more independent traders who are more reliant on Saturdays, which is the day on which most marches are held. If there is no footfall or sales on Saturday, the chances are that those traders will not be able to claw back the sales. However, if a retailer in Glasgow, such as Boots, loses custom on a Saturday in its Sauchiehall Street branch, the chances are that a lot of that spend will be displaced to the Fort, Braehead or Livingston—the people who might have travelled from the east will stay closer to home. There will be displacement, which is fine for bigger retailers, as they will benefit.

Mr Maxwell: Or will there be displacement from Saturday to Sunday?

Fiona Moriarty: Yes, that is also possible. There is bound to be some loss of trade, but it will be a small percentage.

Mr Maxwell: We just want a full picture of the effects.

The Deputy Convener: Do you have evidence to back up what you say?

Fiona Moriarty: I can find some. We start getting into slightly tricky territory here. Asking individual retailers to divulge—

The Deputy Convener: We would not do that, as it would be impracticable and unfair. However, it would be helpful if you had any general evidence to back up what you say.

Fiona Moriarty: Okay.

The Deputy Convener: We move on to the proposals on offensive weapons.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): The Scottish Retail Consortium's submission gives a flavour of your feeling on knife crime and how it affects business. The Glasgow Chamber of Commerce addresses the issue in its written response. However, for the record, could you tell the committee what effect knife crime has on the businesses that you represent?

Fiona Moriarty: I am keen to explore the issue of licensing if we have time. It is important to say on the record that the SRC completely supports the Scottish Executive in its moves to protect the public, punish criminals and give people a second chance, if appropriate. We are interested in the topic for two reasons. First, the possible move towards licensing is a concern to our members. Moreover, our members tend to be in the front line of attacks. The weapon of choice for attacks tends to be some sort of sharp implement. The issue is important for us and I hope that we can explore the licensing side if we have time.

The Deputy Convener: That does not form part of the proposals. If you wish to make comments on the issue, that is fair enough, but it would be helpful if we stuck to the proposals in the bill.

Fiona Moriarty: Just for the record, I should say that I was asked here to speak about licensing. That is what I have prepared for.

The Deputy Convener: You may mention it, as it might be helpful. Please continue.

Fiona Moriarty: I will pass to Laura Gordon for feedback from her members.

Laura Gordon: As I said, we represent members from many different sectors, including transport, retail and hospitality, all of which are in the front line of knife crime. Our members voted overwhelmingly in support of the proposals. They felt that the increase in the prison term, the stop-and-search powers and the increase in the age at which knives may be purchased would deter knife crime. However, I do not know whether the proposals go far enough. Our members overwhelmingly support measures that would combat knife crime, because it is such a big issue for them as individuals and as businesses in the city.

Cathie Craigie: One of the proposals is that the legal age at which one may buy a knife should be increased from 16 to 18. I gather from what you say that you would support that. However, does the proposal go far enough?

Laura Gordon: Personally, I do not think that it does; I do not think that it will make much difference. Sixteen-year-olds look very much like 18-year-olds and there is not necessarily a huge difference in how they behave. However, I cannot speak on behalf of chamber members; all I know is that our members have given their support to the proposals, although they have not given any statistics or reasons for that.

Fiona Moriarty: We would be fully supportive of increasing the age from 16 to 18. Retailers take seriously their responsibility in relation to any age-restricted item. We are rolling out a programme across Scotland called challenge 21. That means that, unless a retailer is absolutely convinced that someone is 21 or over, they should ask for identification and challenge the purchase of an age-restricted item. Certain purchases are termed suspect purchases and should be challenged as well. For example, if a young person over 18 is buying nine cans of lighter fluid, the retailer should be asking why. We are trying to be proactive in responsible retailing and want our members to train their staff to ask questions and to support them within the management structure so that staff can deal with an issue that becomes difficult or confrontational.

Cathie Craigie: That is interesting and I am glad that your organisation is doing what you say. However, how would you deal with a rogue retailer—one of which I have in my constituency—who has been selling knives to young people?

Fiona Moriarty: The chances are that that retailer will not be one of our members. If any retailer—member or non-member—is caught persistently selling an age-restricted product such as solvents, DVDs or knives, they should have the book thrown at them. That is what they would deserve. We need to draw a line in the sand. Certain products are age restricted, generally because they are either mentally or physically harmful to young people.

Cathie Craigie: Am I right in saying that both organisations are supportive of what is contained in the bill but would go further in relation to age?

Laura Gordon: I spoke personally a moment ago because we did not take the views of our members on anything apart from the specific proposals. Our members whole-heartedly supported the age change from 16 to 18, which they felt was a step in the right direction.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): As you know, the increase in minimum purchase age will not apply where a knife is “designed for domestic purpose”. Perhaps you can help me out. I am a little confused about why you can have a challenge 21 scheme that encourages retailers to query suspect purchases but, at the same time, want clearly defined regulations that would specify what a knife designed for domestic purpose would be. Why can you not use the same judgment that you would use with regard to other suspect purchasers? You say that retailers want to be responsible, so they should not be selling a suspect knife to someone of a suspect age.

Fiona Moriarty: The issue comes down to the legal definition of a non-domestic knife. We believe that there is no place in Scottish society for the sale of certain items—push daggers, death star swords, butterfly knives and so on—in a retail outlet. We are quite happy to say that and to support a ban on the sale of those items. People buy those items to maim, injure or scare other people. If the sale and purchase of those items were banned, we would support that.

Along with obviously domestic knives, such as bread knives and chopping knives, there are do-it-yourself knives and other business knives. Most of those will be captured in the definition of non-domestic knives. However, we are concerned about knives such as Stanley knives, camping knives, Swiss knives and craft knives. They would be regarded as being non-domestic, which would mean—depending on how the legislation pans

out—that either they would be banned altogether, which is unlikely, or their sale would be restricted, which is what we are concerned about.

Jeremy Purvis: Yes, but—leaving aside the fact that the debate about licensing will be coming to the Parliament in due course—why would a retailer not make a judgment about the sale of those items at the moment?

Fiona Moriarty: They always would.

Jeremy Purvis: So why would you need extremely specific regulations with regard to what would be termed a domestic or a non-domestic knife?

16:00

Fiona Moriarty: We do not want that. To be honest, the more fluid the situation, the better. Our preferred option is to have no definition and retain the status quo. Going down the route of defining what a non-domestic knife is would cause us problems.

I think that I misunderstood your original question, so I will return to it. Every retailer who sells knives will have checks and balances in store to ensure that knives do not go to somebody whom they regard as an underage person or to somebody whom they feel should not have access to that sort of item. Most large DIY stores, such as B & Q, have till prompts, which come up in black and white and red, so that the till operator can check whether, for example, someone is 16 or whether they will use an item for legitimate purposes—they could be an apprentice of some sort. There are many such prompts—and checks and balances—in any sales process. If a till operator is not sure of something, they press a button and get a supervisor over, who then makes a decision.

Jeremy Purvis: I just want to be clear about this, because I may well be muddying the waters. Are you satisfied by the exclusion from the bill of a definition of domestic knives? You would want definitions only if a regulatory or licensing system was introduced at some stage.

Fiona Moriarty: Absolutely.

Mr Maxwell: We have covered the issues of types of knives and age. Have you any comments on other provisions in the bill that deal with offensive weapons? For example, there is the increase of the maximum sentence on indictment from two to four years and the police's powers of arrest.

Fiona Moriarty: We fully support those measures. As far as our members are concerned, the measures signal clearly what is acceptable and what is unacceptable behaviour and what will

happen if someone steps away from acceptable behaviour. It will be simple: if someone is caught with a knife in a public place, there will be a range of increasing penalties. We fully support all that. As I said, the weapon of choice for attacks on retail staff tends to be some form of sharp instrument, such as a knife or a razor blade, so we have a vested interest in supporting what the bill proposes.

Mr Maxwell: There has been debate in the past week about the issue of the sentencing provision, given that the on-indictment cases account for only about 2 per cent of the total number of knife-possession cases. Surely most of the cases that you are talking about, such as those in which shop staff are threatened, would be unaffected by that measure.

Fiona Moriarty: I do not know enough about what you just mentioned to comment. Laura Gordon has a legal background and might want to come in here.

Laura Gordon: It is not the business of Glasgow Chamber of Commerce to get involved in the sentencing debate. However, from our members' point of view, it is worrying that offenders do not appear to fear punishment sufficiently for the crimes that they commit. The current maximum sentence of two years does not appear to act as enough of a deterrent, which is why we support amending the legislation to increase it to four years.

Mr Maxwell: That is clear. Moving on, do you have any comments generally about the provision on fireworks, particularly the prohibition on the possession of certain types of powerful fireworks? Again, fireworks are an age-restricted product.

Laura Gordon: We support the proposed changes. We are concerned particularly about what went on over this weekend. The use of fireworks, apart from at official fireworks displays, tends to get out of control because underage people possess fireworks and because people use them as offensive weapons. Certainly, on Saturday night, there were areas of Glasgow in which people would not be happy to walk about. People were brandishing fireworks and throwing them at cars and other people. I know that from personal experience as well as from reading about it in the newspapers. Our members are keen for the stop-and-search powers to be expanded, as the bill proposes, and for the age above which people may buy fireworks to be raised.

Mr Maxwell: You paint a vivid picture of the public nuisance on 5 November. A ban on the sale of fireworks has been discussed at Westminster, and many members have had correspondence from members of the public on the issue. They suggest that the sale of fireworks be banned and

that fireworks be restricted to official displays only. What do you think of that? How would it affect your members who sell fireworks?

Fiona Moriarty: Our members would be very upset, understandably. However, we need to be realistic and pragmatic: year on year, the fireworks problem gets more out of hand. I was down south for last fireworks night and saw that the story is the same wherever one is in the United Kingdom. The incidents described in the Scottish press today are unacceptable: families are being terrorised in their own homes, and people are getting injured.

It is a big debate. I need to discuss with the members of the consortium how we deal with the issue and what we can bring to the table on it.

Mr Maxwell: I presume that you accept that the people who use fireworks get them from somewhere—most likely from local shops, although not necessarily from members of your organisation. Can you see any way round the problem—which, for example, required 50 policemen to be sent to deal with a riot in Rutherglen—other than by removing it entirely?

Fiona Moriarty: No. It is a big problem. Even if fireworks were to be banned except for at controlled displays run by legitimate organisations, clubs, or individuals, fireworks could still be bought on the internet or across the border in England. If people are intent on using any age-restricted item for a purpose other than its intended purpose, they will find a way to do so.

The problem just seems to get worse every year. I need to have a think about it and speak to my members about it.

Cathie Craigie: Deputy Convener, I hope that you will not rule me out of order.

The Deputy Convener: That depends on what you say, Cathie.

Cathie Craigie: I see this as a perfect opportunity to send a message to the retail organisations. I know that many of the problems with fireworks come from rogue sellers. However, perhaps Fiona Moriarty could question her members about the big stores that were doing buy-one-get-one-free promotions for the biggest and noisiest fireworks. That is not how responsible traders behave towards the communities that they serve, which have to live with the noise and fear that such fireworks create. Does she agree that a responsible retailer should not be running a two-for-one fireworks promotion?

Fiona Moriarty: There is an argument to be developed on that. However, the crux of the matter is that fireworks are on sale. There are limits to the types of fireworks that retailers can sell, whom they can sell them to, and when they can sell them. They are fairly tightly controlled. If someone

is going to throw a firework through someone else's front door, they will do that whether or not they can get the fireworks in a two-for-one promotion. As I say, because the problem gets worse year on year, we need to have a look at it with some of our members. However, the bottom line is that if people want to abuse fireworks, they will do so whether our members sell them or not.

Maureen Macmillan: Do your members liaise with the police on the sale of fireworks? I know that in the past there have been some very successful joint ventures between the police and retailers in small towns. For example, retailers would not sell fireworks to anyone under 21, and the police ran a campaign on the matter. Has anything similar been done on a larger scale in the cities?

Fiona Moriarty: Not on a larger scale. I am familiar with some of the projects that you mentioned. They tend to work well in smaller or rural communities where it is agreed which retailers will sell fireworks, when they will sell them, the days on which they will sell them, and to whom they will sell them. That works in smaller or rural communities because a retailer will know most of the young people who come through the doors. That boils down to the fact that the retailer knows that Tim Whoever has a track record, so they will not sell fireworks to him. Such a system works well when the local retailer is at the hub of the community and knows who the troublemakers and the good guys are. We have not considered rolling that out nationally. We need to explore that.

The Deputy Convener: I thank Fiona Moriarty and Laura Gordon for attending the meeting this afternoon and for giving their time and opinions on the questions that have been posed. We will recess for two minutes for the panel of witnesses to change.

16:10

Meeting suspended.

16:12

On resuming—

The Deputy Convener: I welcome the second panel of witnesses. David Liddell is the director of the Scottish Drugs Forum. Neil Hunter is from Glasgow City Council's addiction services. Chief Superintendent Ian Paterson and George Bell are from the Aberdeen joint alcohol and drug action team, whose criminal justice and community safety sub-group Chief Superintendent Paterson chairs. I thank the gentlemen for coming to give evidence on the Police, Public Order and Criminal Justice (Scotland) Bill. Carolyn Leckie will pose the first question.

Carolyn Leckie: Does each panel member think that the proposal in the bill for mandatory drug testing and assessment will be an effective method for increasing voluntary engagement with treatment services? How will it improve the success of rehabilitation?

David Liddell (Scottish Drugs Forum): We have examined the proposal in detail and we do not take an ideological position on it. We have been very supportive of the operation of drug treatment and testing orders. However, the proposal in the bill will stretch the net wide by picking up large numbers of people and will not be cost effective. Drug treatment and testing orders are particularly effective among over-30s who have had significant previous criminal offences—high-tariff individuals. In contrast, the bill's proposal is less focused.

From our point of view, the key issue is the amount of resource that will be devoted to the proposals. If 10,000 individuals were tested, 5,000 could test positive, of which 4,000 could be assessed and perhaps 2,000 might come forward for treatment. How many of those individuals would be retained in treatment for a long period? Such questions need to be asked.

16:15

As the people who will be picked up through the testing are likely to be younger problem drug users—with whom the treatment agencies have problems with engaging in any case—our view is that although the trickle of people into treatment will be welcomed, the measure will result in only small numbers of people being retained in treatment for the long term. We first need to put resources into high-quality, easily accessible treatment and care services, after which we can consider the issue of testing.

One key point about the proposed four pilots of the measure is that they need to be run in areas where high-quality and easily accessible services are in place and where there are high retention rates. It could be a waste of resources to run the pilots in areas where there are difficulties with accessing treatment services and the quality of services is not great.

Chief Superintendent Ian Paterson (Aberdeen Joint Alcohol and Drug Action Team): Our group has three main points on the matter. First, we support the ethos of identifying greater numbers of drug users. Secondly, we face the difficulty that current resources are insufficient to deal with the current numbers of drug users. The waiting list for treatment in Aberdeen has about 490 people on it, although steps have been taken in the past few weeks that will result in 225 people coming off the list. Our concern is that, given the

ballpark figure for the number of people who may be tested in Aberdeen, which may well be about 140-odd individuals per week, and given that provision cannot cope with demand at present, the waiting list will get even bigger, albeit that some of those 140 people will already be on the list.

That leads me to the third point, which relates more to my area of work than that of my colleague George Bell. I appreciate that the committee might not have to go into how all the t's are crossed and all the i's are dotted in the procedure, but we have difficulty with several procedural issues. Some members and their colleagues may regularly criticise chief constables for having police officers sitting about doing X, Y or Z, but that is a difficulty that may arise as a result of the bill. When we test individuals who may have drugs in their body, they will often not be in a fit condition, physically or mentally, to say yes or no. If the process is delayed, we will then have difficulty in complying with the six-hour time limit. I am not sure where that limit comes from—perhaps it ties into our power to detain a person before we arrest them.

Another issue is that if somebody is going to court on a Monday and is to be kept all weekend at the police headquarters, perhaps the assessment should be done there. The individuals with whom we deal in relation to drugs are often chaotic individuals, so if we make an appointment for them six days hence, they may not turn up. That would not necessarily mean that they did not want the assessment; they may not know what six days is or what time it is.

There are several procedural matters, but I return to my point that we support the ethos, although we are a bit concerned about going straight into the new measures. We would have been happier if we had been asked to do some sums about what resources will be needed. It is clear that the process will be fairly resource intensive from my point of view and from that of my colleague George Bell.

George Bell (Aberdeen Joint Alcohol and Drug Action Team): I have one brief point on the issue of mandatory testing. Somebody might refuse to be tested and get a criminal charge for that while at the same time being found not guilty on the original charge. I also echo the point about the resource issues. Another issue, to which Mr Liddell referred, is that of the age limit. Perhaps 16 is a little young for the age at which the testing will start. Consideration should be given to a slightly older age limit.

Neil Hunter (Glasgow City Council): In our evidence on running one of the drugs court pilots, we emphasised our support for the mandatory testing proposals. We had a few caveats, one of which was the need to recognise the difference between testing and assessment, and assessment

and retention in treatment and care and rehabilitation services. Retention in treatment and care and rehabilitation services is the one sure positive outcome indicator of whether an individual will make progress through treatment. Although those things may be linked in some way, they are not the same.

People are motivated to go into treatment and rehabilitation for a number of different reasons. A mandatory scheme has some role to play in that. Strathclyde police force's E divisional headquarters is one of the pilot sites for the arrest referral. We have been working extensively with Strathclyde police on the scheme. In the first year of operations, we identified over 2,000 offenders who may be suitable for some kind of treatment or care intervention, of whom just over 700 came forward voluntarily for assessment.

We are fairly certain that those numbers would increase if a mandatory element were to be introduced. I cannot tell the committee whether the number of people in treatment and rehabilitation, which is the end point, would increase as a result of the introduction of mandatory testing. Some degree of compulsion has a place for people who are particularly difficult to target and get into treatment voluntarily. We have more work to do to tease out what the mandatory element will mean for the overall number of people retained in treatment.

A degree of compulsion probably has at worst a neutral effect on an individual's motivation to get treatment and care. Again, our evidence in running one of the drugs court pilots and the DTTO scheme suggests that, at the very least, people who are compelled to participate would not be less motivated to get treatment and can be retained if services are of sufficient scale and if staff are sufficiently skilful at engaging for the long term. Although we agree in principle with the idea of mandatory treatment, it raises a number of issues.

Carolyn Leckie: I will pick up on a couple of points and ask you to expand on them. The first is to ask how many more people with a drug problem will be identified as a result of the proposal than would have been identified previously. We know from the statistics that many offences are related to drug misuse. Is it not the case therefore that the people about whom we are talking may already have been identified as having a problem and are known to the agencies? Surely the bigger problem is to get them the resources and support that they need and to put in place the systems.

Perhaps the mandatory element should apply to the provision of rehabilitation services and not to the person. People should be able to access services voluntarily. I am worried about that issue and about the efficacy of treatment for people who, for a number of reasons, are not motivated to

come forward for treatment. Neil Hunter referred to that. What is the evidence that treating people compulsorily has an effect on their drug habit and associated behaviour?

My other big concern—I will wrap up my questions on this point—relates to making non-compliance with testing a criminal offence. We know that drugs are a problem in prisons. If someone gets another sentence for non-compliance, instead of assisting them, it could exacerbate their drug problem. Giving people jail sentences for non-compliance approaches the whole drugs issue from a punitive rather than a health perspective. I ask the panel to expand on those three areas.

The Deputy Convener: We will go in reverse order this time and start with Mr Hunter.

Neil Hunter: If the overall policy direction of the proposals is to reduce the number of people with drug problems who become immersed in the criminal justice system, we share the member's concerns about the proposed sanctions for people who refuse assessment or testing.

On the way here today, I played out a number of scenarios in my head, particularly regarding people who are not subsequently convicted or against whom charges are not pressed for a trigger offence. They may find themselves in court because they have refused an assessment arising from an offence for which they are not subsequently convicted. A number of different scenarios arise from the mandatory element. We must ensure that the overall policy drive, which I suspect is to get people into treatment and rehabilitation rather than deal with them as part of the criminal justice system, including in prison, can be delivered with the mandatory element.

On the efficacy of drug treatment, as I said earlier, our best evidence is that coercion is at worst neutral in its effect. People are motivated to get treatment and care for many reasons. We must have a twin-track approach. The first track must be open-access services, so that people who are seeking treatment have direct access to services. Such provision is by no means universal in Scotland at the moment. The second track is that when people are processed through the criminal justice system, they should have fast-track access to treatment and care services where those would be considered effective for them. Again, such provision is by no means universal in Scotland.

The other issues that you talked about are valid. The inconsistent nature of treatment and care services in Scotland is a concern. We must ensure that good-quality treatment and care services are available when we target initiatives in order to make them effective. I worry about how we would administer the whole system.

The Deputy Convener: Would one of our colleagues from Aberdeen like to comment?

George Bell: On assessment and forcing into treatment, our experience of the local DTTO scheme is that a thorough and well-carried-out assessment is a good indicator of whether somebody is motivated for further treatment. Our experience is that if someone cannot get through the assessment stage, then there is no wish on their part to go forward into compulsory treatment, even with the likelihood of a non-custodial sentence. That is the important point in relation to the proposal: if the assessment is done well and thoroughly, in itself that will almost overcome the difficulty of the efficacy of the treatment. The two points are very much related. On the other point, on going into prison, I agreed with you in my opening statement.

Chief Superintendent Paterson: We performed a survey over the past 10 days, and calculated that 141 people in Aberdeen would come through the system. You are correct that a good number of those would technically be referred to as recidivists. We would have to make administrative arrangements, because colleagues would have to share information. A lot of information sharing goes on as it is, but we would have to put a process in place for that. I know that you are aware that 70 per cent of cases that are dealt with by Scottish courts fall into the category that we are discussing. The figures are high, albeit that some represent people who are coming through the system again.

The bill refers to using information for the purpose of informing decisions on whether to grant bail, whether to take the case to court, or what the appropriate sentence is. In our service we find that such things can offer an incentive to a number of individuals, such as those who have come into the criminal justice system for the first time and against whom the fiscal has had to take action. They may see that there is an opportunity to do something for themselves.

Finally, some of you may have heard about the tower project in Blackpool, which Strathclyde police has taken on board. Because of the type of people who are being dealt with, if someone is unwilling to attend for treatment, police officers have the power to arrest or detain them and take them for treatment. There is some benefit in physically taking people to their treatment, because they may be individuals who are in difficulty.

16:30

David Liddell: The tower project is an interesting model, because it is about much more targeted intervention, as opposed to the proposals

in the bill, which are spread far too widely. We all agree on the need to treat people as early as possible. The argument is about how best to do that. We need to invest in the full range of services and, as you say, perhaps we need to look at making sure that that provision is available.

The national drug evidence centre at the University of Manchester identified that people who were referred to treatment from criminal justice services were 2.7 times more likely to drop out than those who attended on a voluntary basis. That reinforces my point that there will be only a trickle of people taking this route and it is going to be an expensive investment for that trickle.

Carolyn Leckie: Deputy convener—

The Deputy Convener: We have time constraints, Carolyn. I am sorry.

Mr Maxwell: I will try to roll my two questions into one. Your written evidence shows that you have several concerns about the mandatory testing proposals. If the provisions in the bill stay as they are, or are subject to minor amendment, how could they be improved? Would you like to suggest an alternative to those provisions? That might not even be part of the bill; it might be something else entirely.

David Liddell: A key improvement to the four pilots would be to ensure that the treatment and care provision is available locally and is of a sufficiently high quality so that those who are assessed and progressed into treatment go into services that have the highest retention rates. For example, Scotland has some services that have a retention rate of around 60 per cent, but there are other areas in which that rate is as low as 20 per cent. It is therefore crucial to ensure that the pilots are located in areas in which there are good-quality treatment and care services. If they are not, we are setting people up to fail.

Chief Superintendent Paterson: If there are four pilots, there should be slight variations in the procedures so that at the end of the pilots we can compare and contrast and decide whether some are better than others. I appreciate that the legislation would allow the four sites to be identified, but there are some places that could provide those variations and therefore be of some benefit.

We have a bit of difficulty with the provision on urine samples or swabbing. Professionals in Aberdeen have advised me that some heroin addicts have particular difficulty in providing urine. As you will appreciate, we have often arrested persons who have had difficulty in providing a urine sample for road traffic tests. How fair is it to the individual if they are medically or physically unable to provide a sample? I am not sure that there is an immediate alternative that we can use.

We use swabbing regularly—it is easier. The provision in the bill should be turned around so that swabbing is used in preference. We would then use urine sampling if someone had an ethical reason for not being swabbed. From our point of view, swabbing has fewer health and safety implications. All my colleagues in Scotland have expressed the view that they are happy to support the proposals, but they have to think about the practicalities of the situation.

We are in a peculiar situation in Aberdeen, which might be why you will, or will not, select us for a pilot. Our sheriff court deals with offences and crimes from outwith Aberdeen. For example, individuals from Aberdeenshire might come to the court and we would have to resolve the financial implications of that. That might not be an improvement to the bill, but it is a difficulty that would have to be overcome.

George Bell: I reiterate my earlier point about the proposal being for people who are older than 16. It would be well worth considering an age threshold of 18.

Mr Maxwell: Why would that be an improvement?

George Bell: The people who are known to the children's hearings system are likely to be known anyway. If they are under the supervision of the hearings system, they can remain there until they are 18. As Mr Liddell said, the experience of DTTO is that the older the offender, the more likely we are to have an effect. For those two reasons, I suggest that the limit should be older than 16.

I apologise that my next point might seem a bit airy-fairy at this stage. I have seen various proposals on changing the law on prostitution and soliciting, and I think that those issues must be taken into account in relation to the proposals in the bill. If there is less work for street sex workers, for example, I am fearful that they may find other ways of funding a drug habit. That is unprovable, but we need to think about that consideration when dovetailing the various bits of legislation.

Neil Hunter: I am concerned about the administrative burden that proposals to extend mandatory assessment for drug users would place on both the police service and the treatment agencies. One improvement would be to extend on-site assessments in custody suites, as an extension of our approach to arrest referral. As an alternative to mandatory assessment, we could consider incentivising offenders into treatment by making a connection with their subsequent appearance in court for the trigger offence. Often there is a period of time between arrest, charge and subsequent appearance in court, which would allow treatment agencies and the police to work with drug-related offenders to see whether we

could capture them voluntarily within the treatment and rehabilitation arena. Subsequent compliance with treatment and care could be reported to the court at hearing stage.

Mr Maxwell: Are you suggesting that that would be taken into account in sentencing?

Neil Hunter: It could be.

Maureen Macmillan: From time to time, you mentioned the proposed pilot schemes. You had strong views on how they should be rolled out. I am concerned when I hear you say that there are areas of Scotland in which the schemes would not be appropriate, because resources are not in place there. How many areas in Scotland would be capable of running pilot programmes?

Chief Superintendent Paterson: I anticipate that most headquarters of the eight police forces would be able to deal with them. Without committing Sir William Rae to anything, I note that Strathclyde police has a large number of buildings and so on that could be used. Our force headquarters has sufficient capacity, but that is the only building that takes prisoners that is manned on a 24-hour basis. We must bear that issue in mind. All forces—even the smaller ones—have at least one 24-hour facility. Lothian and Borders police and Strathclyde police have a larger number of such facilities, but I am not sure how many. If it is done on a divisional basis, there would be five or six facilities per force.

Maureen Macmillan: So there are resources spread across Scotland, particularly in force headquarters.

Chief Superintendent Paterson: There are. However, the care and custody of prisoners is paramount. We have a legal responsibility for arrested persons. Our main concern is that we estimate that it would take about 15 minutes to administer a test to a prisoner. The test is straightforward and we are happy to carry it out. Our difficulty is that prisoners do not automatically agree to take the test. Sometimes it can take a long time and two police officers have to be involved. Even on a simple 15-minute calculation, it would take 80 police hours to administer 141 tests in a week. That is a fair amount of time.

Maureen Macmillan: There is also the issue of when assessment happens. You talked about speedy access to treatment. Do we have the necessary resources in place in enough areas of Scotland to allow the pilots to take place now?

Chief Superintendent Paterson: The basic materials are there. The bill refers to "a suitably qualified person". George Bell and I were discussing what is meant by "suitably qualified". There are DTTO assessors who could be used. We have a concern about the bureaucracy—if I

may use that word—of the detail of the procedure. The police officer must give the individual an appointment with the assessor. The assessor must then decide when they can see them. I am not sure whether it would not be better, in terms of capacity, for assessors to be based at police headquarters, so that people could be seen virtually there and then.

There is a difficulty because we have to have a minimum of three assessors to cover 24 hours. In my experience, if we are able to deal with the matter there and then—if the person is arrested and is being kept, we can have them assessed and then have a look at treatment—that will ensure that they are keener to take part than if we leave it for seven days and then have them in. To answer your question specifically, some of the resources are there but I do not think that the resources are there to do all of this and all of what we are already asked to do.

David Liddell: On the treatment side, there are few areas of Scotland that would be able to cope with this in terms of all the issues that I have mentioned—high-quality easy access, good retention rates and so on.

Maureen Macmillan: Are there different models that you would like to see tested in the pilot schemes? If so, what variations would you like to see being tested?

Chief Superintendent Paterson: In relation to the seven days situation, I wonder how having an assessor situated at a pilot site—either the DTTO officer or someone from criminal justice social work—would compare with having an assessor based at a police headquarters. My view is that if those who enter and are retained in the process stay with us, they may be more willing to continue than if they are left for seven days.

I do not know whether it would be fair, legally, to have different types of testing at different sites. I suppose that we must always provide a choice, so I do not know how much variation there could be. However, it might be worth while seeing how the process would operate within—dare I say it—a more forceful system.

Neil Hunter: Within the existing arrest referral pilots, of which Glasgow hosts one, we have on-site assessment. The duty sergeant makes the initial assessment of an individual's suitability to be seen by arrest referral staff. The assessment takes place while the individual is in custody; inevitably, that has an impact on the quality of the assessment. However, we have a model in which there is very quick follow-up, in the one, two or three days subsequent to someone's release—if they are released. Some people who are arrested at the weekend go on to be remanded in custody at the district or sheriff court on Monday morning

or on subsequent days. That creates a problem for us in doing follow-up work.

We would favour contact, testing, assessment and quick follow-up while individuals remain at large in the community. That would allow us to make contact with individuals at the point of arrest and to try to pursue them quickly in their own areas, linked to local services rather than to a centralised model of provision, which we would want to avoid at all costs. In the first year of our experience in Glasgow, arrest referral has been relatively successful. There is a lot of chasing shadows and knocking on doors when people are not there, but our services are increasingly developing the persistence and stamina to pursue people and motivate them to undergo treatment. That kind of mixed model can work.

Jeremy Purvis: Could Mr Hunter provide written information on the arrest referral schemes that he has just outlined? The thrust of the evidence seems to be that there are concerns about capacity rather than about the provisions in the bill, even though they propose mandatory assessment rather than mandatory treatment. I am interested to know how the waiting list in Aberdeen could be almost halved, from 490, under the current voluntary scheme. Do you have information on how a waiting list could be reduced by so much? We are receiving evidence that problems will arise because of lack of capacity, but if I were the minister, I could say, "If Aberdeen can do that, why can't other areas of Scotland do it?"

16:45

Chief Superintendent Paterson: There is a conflict of strategies. In Aberdeen, the JADAT has a strategy for how things should be dealt with. That strategy was laid out and the budget was tied to it. We had a waiting list of nearly 500, so it was clear that something had to be done and that priorities had to change. However, the health service has difficulty with the situation in which someone who commits a crime can get into the system, but someone who does not commit a crime has to go on a waiting list. For some years, the police have identified the need to deal with priorities first, but the health service has been concerned about how fair it is to those who have not committed an offence if we provide treatment to those who have.

There was a change of strategy, guidance was given and, quite rightly, the JADAT moved so that we could take up the slack. However, we are still left with a waiting list. It is estimated that there are 3,000 opiate users in Aberdeen; 10 people a day come into the system in one way or another, although some of them will have been through the system before. What we had is now being used as best we can, but anything extra that comes in

causes the three services—the health service, criminal justice and the JADAT—real difficulties.

Jeremy Purvis: I do not want to put words into your mouth but, as Mr Liddell said, so many people are volunteering for high-quality treatment that if a pilot or a system was set up with the resources behind it, through the mandatory system that is proposed in the bill, there would be such demand that the people who would be able to access that treatment would, in effect, be those who had been arrested for an offence. There would therefore be an incentive to commit an offence to get access to such treatment. However, that would not be the case if the treatments were voluntary. There would be an assessment, but the case would automatically go back into the normal system.

Chief Superintendent Paterson: More treatment is needed, irrespective of whether someone has been arrested. From our point of view, there is value in arrested persons going on to treatment. The criminal justice system ties in to all sorts of areas, and if we can stop people there it means that we can spend our resources on dealing with issues that we want to deal with. We want people to be provided with treatment in any way possible, whether it is through a mandatory testing assessment system or—as we identified in relation to the tower project, in which we have that ability—mandatory treatment.

David Liddell and I agree on my final point. We have evidence about how many drug users there are in Scotland—I am sure that the bill will support that—but the difficulty lies in where we put them to have treatment. There is no point in saying, “Yes, we’ll take 10 every day”—and the waiting list goes up—unless we can do something with them.

David Liddell: We can do that by having specific treatment resource attached to the pilots. The problem that we then have is similar to the drug treatment and testing orders, where the treatment component is funded through the DTTO. However, in various parts of Scotland someone can come to the end of the order and their methadone programme will be terminated because the funding comes through criminal justice. We need to join that up much more effectively and see the whole picture rather than one part in isolation.

The Deputy Convener: On behalf of the committee, I thank Mr Liddell, Chief Superintendent Paterson, Mr Bell and Mr Hunter for forming our second panel of witnesses. Your evidence has been very helpful, and the committee will give it due consideration when it examines all the evidence that it has received at stage 1.

16:49

Meeting continued in private until 16:59.

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