JUSTICE 2 COMMITTEE

Tuesday 14 March 2006

Session 2

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JUSTICE 2 COMMITTEE
7th Meeting 2006, Session 2

CONVENER

*Mr David Davidson (North East 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:

Hugh Henry (Deputy Minister for Justice)
Eamon Murphy (Scottish Executive Environment and Rural Affairs Department)

CLERKS TO THE COMMITTEE

Gillian Baxendine
Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 5

Scottish Parliament

Justice 2 Committee

Tuesday 14 March 2006

[THE CONVENER *opened the meeting at 14:01*]

Item in Private

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen. Welcome to the seventh meeting in 2006 of the Justice 2 Committee. I ask people to have all mobile phones, pagers, BlackBerries and the like—apart from pacemakers—switched off.

Does the committee agree to take in private item 5, which is a discussion of the draft report on the legislative consent memorandum to the Police and Justice Bill?

Members *indicated agreement*.

Police, Public Order and Criminal Justice (Scotland) Bill

14:02

The Convener: Item 2 is the Police, Public Order and Criminal Justice (Scotland) Bill. I welcome Hugh Henry, the Deputy Minister for Justice; Eamon Murphy and Gill Wylie, from the Scottish Executive Environment and Rural Affairs Department; and Alastair Smith, from Scottish Executive Legal And Parliamentary Services.

The purpose of the item is to allow the Deputy Minister for Justice and the officials to brief the committee on the Executive's proposed amendment on the enforcement of fisheries regulating orders in advance of its being formally lodged. Members should have the draft amendment, the analysis of the consultation responses and the Scottish Parliament information centre briefing paper.

Ross Finnie, the Minister for Environment and Rural Development, has written to the Environment and Rural Development Committee to advise it that the amendment is to be lodged. The Deputy Minister for Justice, who is not known as an expert on fisheries, has brought some advisers with him. I invite the minister to speak to the draft amendment. We will then move on to a discussion and questions.

The Deputy Minister for Justice (Hugh Henry): Thank you, convener. Ross Finnie has asked me to explain to the committee the background to the amendment on regulating order enforcement powers. The final summary of the consultation responses has been circulated to committee members. I am happy to answer as best I can any questions on the summary or the consultation process.

The amendment is intended to clarify a particular aspect of the Sea Fisheries (Shellfish) Act 1967. It aims to improve the enforcement of regulating orders. It is not about the principle of regulating orders, nor is it about existing regulating orders or regulating orders that may be applied for in the future. Officials have explained that we think that the Police, Public Order and Criminal Justice (Scotland) Bill is an appropriate legislative vehicle for the amendments because the powers that are being granted are for enforcement purposes.

The crucial factor is timing. Using this bill enables us to have the new provisions in place in time for the first full season of Solway cockle fishing, which starts in the autumn. As the committee knows, we continue to face a difficult situation on the Solway, where hand gatherers of cockles are taking dangerous risks in their efforts

to gather cockles illegally. In taking such risks, they are putting in danger not only their own lives, but the lives of the people who may be called on to rescue them. We need to release some of the pressure on the Solway fishery and to seek to prevent a major incident by opening the fishery under a regulating order. Such an order came into force yesterday and the fishery should open within a few days, provided that the accompanying restrictions and regulations are approved by Ross Finnie, who is the minister responsible for fisheries. More comprehensive enforcement powers are required to enable the fishery to be policed as effectively as possible. The proposed new powers will help to prevent illegal fishing and to maintain the cockle stocks; crucially, they may even help to save lives.

The aim of the amendment is to clarify the enforcement provisions in the 1967 act. A regulating order that is made under section 1 of the 1967 act will contain restrictions and regulations relating to the fishery. The grantee of the order has the power to impose restrictions on, or to make regulations about, the dredging or fishing for, or the taking of, any specified description of shellfish within the limits of the regulated fishery. Section 3(1)(a) enables the grantee to enforce any such restrictions or regulations. The difficulty is that the 1967 act does not go on to confer any specific enforcement powers or to set out how enforcement should take place.

Our aim is to clarify the situation by giving new powers to the Scottish Fisheries Protection Agency to enforce regulating orders. The new powers are closely modelled on powers that the SFPA already uses to enforce other fisheries legislation. The intention is that, when appropriate, their use could be extended to officers of the grantee of a regulating order. That could be done using the powers that ministers have under section 7(2) of the Sea Fisheries Act 1968.

That dual approach goes beyond the partnership agreement commitment, which said that arrangements would be made to allow the SFPA to use its powers in a regulating order area. We have decided to give powers to grantees as well, to enable enforcement to fit in with the particular circumstances of different regulating order areas. In some situations, the SFPA will undertake the task of enforcement, but in others the SFPA and the grantee will enforce a regulating order jointly.

The current inadequate enforcement provision makes it difficult to prevent illegal fishing in a regulating order area and undermines what is a useful fisheries management tool for achieving sustainable and viable fisheries. Improving the enforcement of regulating orders is important if we are to secure better-managed and more sustainable local shellfisheries.

The Convener: In cases in which a grantee wants to undertake enforcement, how will that be funded? Will the funding come directly from the Executive?

Hugh Henry: We have made available some additional funds, but the grantee could still be responsible for the employment of the people identified.

Eamon Murphy (Scottish Executive Environment and Rural Affairs Department): That is correct. In addition, in some cases—the Solway is a good example—the fishery will be so lucrative that it will be possible to generate enough income from it to pay for enforcement. In such circumstances, there will be very little reliance on SFPA resources.

The Convener: Is that the result of a system of imposing a levy on landings?

Eamon Murphy: Yes. There is more than one way in which income can be generated. As well as the levy that is imposed on landings and on the use of cockle bags, a hand gatherer must pay a licence fee of £300 per annum and the owner of a vessel or a tractor must pay a fee of £10,000 per annum. As one can imagine, that will generate quite a large income.

The Convener: I will ask a question that people who are involved in fishing have put to me. If we increase some of the costs, will that not lead to people seeking to minimise their costs by adopting a black fishery approach?

Hugh Henry: We would not expect that to happen because such operations are beyond the pale. Any operator who sought to abandon their legal status and to become an illegal operator would be taking a substantial risk. If our proposed amendment is accepted, there will be greater enforcement powers, which we think will allow us to be more effective in preventing illegal operations. As I have suggested, gaps exist in the current provisions; those gaps are being exploited by unscrupulous individuals and organisations. The amendment is therefore in everyone's best interests. There are substantial amounts of money to be made and it is reasonable that those who gain should make a contribution.

Bill Butler (Glasgow Anniesland) (Lab): We have the usual excellent briefing from SPICe—which is just as well, because there are not many fisheries in Glasgow Anniesland. The briefing says that the SFPA would be able

"to enforce regulating orders in any area."

Why then have you decided to allow the grantee in a specified area to enforce the regulating orders? Why not just leave it to the SFPA?

Eamon Murphy: As legislation stands, the SFPA does not have the power to carry out its duties in a regulating order area. We have to try to fix that. In all sorts of cases, the grantee is unable to enforce a regulating order, and the role will fall to the SFPA—which is as it should be. However, the intention of the original legislation was to allow the grantee to enforce regulating orders, although it did not say how, where or when. We felt that we should abide by the original intention and allow that to happen in cases in which the grantee was inclined to enforce regulating orders itself. There is therefore a two-pronged approach.

Bill Butler: If the grantee is unable to enforce regulating orders, it calls in the SFPA. Is that the procedure?

Eamon Murphy: Yes—under a memorandum of understanding between the two.

Maureen Macmillan (Highlands and Islands) (Lab): How exactly will the grantee enforce regulating orders? Will the grantee be required to appoint a bailiff—for want of a better word? Will there be one named individual?

Hugh Henry: Grantees could employ a number of individuals, who could even work for the SFPA. I will ask Eamon Murphy to clarify that.

Eamon Murphy: Different options are available. The grantee could employ people itself, but it is much more likely that we would seek a kind of secondment arrangement, or an arrangement whereby the people are appointed and, crucially, trained and given the necessary background by the SFPA, and then either seconded or transferred. Some employment arrangement would be put in place so that people work for the grantee but have the benefit of an SFPA background.

Maureen Macmillan: So you envisage that the enforcement officer would be someone from outwith the group of local fishermen.

Eamon Murphy: Yes, but they could have had a fishing background before moving into this type of employment. In some instances, a fishing background would be very useful. However, the people would become proper enforcement officers and would have the right training, background and knowledge to allow them to do the job properly.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Enforcement officers' powers would be considerable—powers to gain access to land and vehicles, powers to seize documents, powers to inspect catches, etc. Would it not be more straightforward for it automatically to fall to SFPA staff to do that work? If there is a different way of raising revenue from the catch, that could just go into the SFPA budget.

Hugh Henry: One solution would be simply to increase staff complements and to levy charges. However, this is all about developing partnerships; it is about the SFPA working alongside local agencies. We must remember that the grantees have a management function: they have an interest in ensuring that the area is properly managed and, in a sense, they are best placed to know the local issues and to carry out local scrutiny.

14:15

Eamon Murphy: The powers are wide, but it is a fact of life that they need to be wide to allow effective enforcement. They are based on the powers that are currently applied throughout the country by the SFPA. All sorts of things can be done under the powers, but a mechanism will be in place to ensure that they are applied properly and by the right people so that there are no problems with people being accused of going beyond the duties and functions that they have.

I should point out that, of the two people who are in place on the Solway Shellfish Management Association, which is the grantee of the Solway Firth Regulated Fishery (Scotland) Order 2006, one is seconded from the Scottish Fisheries Protection Agency and the other is an ex-SFPA employee, so they both have backgrounds in fisheries enforcement.

Jeremy Purvis: I appreciate that. Your point about the powers makes sense, but I note that you propose that officers may

"require any person … to produce any relevant document in the person's custody or possession",

search land, premises or vehicles and

"inspect, take copies of and retain … any relevant document".

In other circumstances, a court would have to grant such powers, perhaps by issuing a warrant. You said that the current members of the SSMA have backgrounds in the SFPA, but I wonder whether the mechanism would be clearer if it was only the SFPA that could exercise those powers.

Hugh Henry: The appointments will be made by the SFPA on behalf of ministers and it will be for ministers to decide what the best structures are. I am sure that Ross Finnie will reflect on the point that Jeremy Purvis makes.

Mr Stewart Maxwell (West of Scotland) (SNP): You said that one member of the SSMA is seconded from the SFPA and that the other is an ex-employee. That does not sound like much of a defence of the proposed way of doing things,

given that that will not necessarily be the case in the future.

Hugh Henry: No, it will not. Positions will be held by those people who are thought to be the most capable of doing the job. At present, it happens that one member of the SSMA has a background in the SFPA and the other is seconded from it, but they could be people with different backgrounds if that was thought to be appropriate.

Mr Maxwell: Does that not reinforce the point that Jeremy Purvis made? For members of the public and those involved, dealing with the SFPA is straightforward. You used that as evidence when you said that the current members of the SSMA will be good because they came from the SFPA. That is perfectly sensible, but the situation might change and future members could have different backgrounds, so it does not seem to be a good argument for supporting the amendment.

Hugh Henry: As I said, I am sure that Ross Finnie will reflect on the point that Jeremy Purvis made. Ultimately, however, the SFPA will be a conduit for a decision made by ministers. The key point is that the responsibility lies with ministers and not with the SFPA. In that sense, the structures are neither here nor there. The important thing is the way in which ministers exercise their responsibility, but if there is something for Ross Finnie to reflect on, I am sure that he will do that.

The Convener: I note that Ross Finnie has written to the Environment and Rural Development Committee on the matter and, no doubt, it will discuss the matter. Through the clerks, we should perhaps liaise with that committee to find out whether any other technical points arise.

Maureen Macmillan: The Environment and Rural Development Committee will discuss the regulations tomorrow.

The Convener: I bow to your knowledge, given that you are a member of that committee.

Maureen Macmillan: Indeed.

The Convener: If we liaise with the committee formally rather than having you as a spy, that will be a better approach.

Maureen Macmillan: Indeed. I just wanted to warn you that that liaison will have to take place soon.

The Convener: On Maureen Macmillan's advice, our clerks might want to speak to speak to the clerks to the Environment and Rural Development Committee tomorrow.

I thank the minister and his colleagues for coming along. I will allow a short pause for the minister's officials to change over.

Police, Public Order and Criminal Justice (Scotland) Bill: Stage 2

14:21

The Convener: Item 3 is our third day of stage 2 proceedings on the Police, Public Order and Criminal Justice (Scotland) Bill. I welcome the Deputy Minister for Justice to this item, together with the team advising and supporting him. Members should have with them a copy of the bill, the marshalled list and the groupings. I can advise the committee that the target for today's meeting is to reach the end of section 68. If we do not reach the end of section 68 today, amendments not considered will be carried forward to the next meeting. We will not proceed beyond section 68 today.

Section 47—Making of order on conviction of a football-related offence

The Convener: Amendment 149, in the name of the minister, is grouped with amendments 150 to 159, 179 and 180.

Hugh Henry: Amendment 149 makes two significant policy changes. First, it removes the requirement that an offence must be committed in the 24 hours either side of a football match for the person to be given a football banning order. Secondly, it enables a court, when not imposing a football banning order, to declare that an offence is related to football.

The time period for football banning orders was the subject of some discussion at stage 1. I listened to the arguments made by the Law Society of Scotland and by the committee, and I agreed that there was no need for an offence to be committed in the 24 hours either side of a football match for it to be considered as football related. I am satisfied that, in deciding whether an offence was related to a football match, a court will take into account the length of time that has elapsed since the match was played without the need for any specific provision requiring it to do so.

The court's power to make a declaration only applies to the criminal courts. We start from the position that courts can impose football banning orders only when they are satisfied that such orders will help to prevent future violence or disorder linked to football. That raises questions of how the court will be satisfied of that. In practice, the court will probably need to see a track record of football-related offending. We do not expect courts to impose FBOs for a first football-related offence, unless it is especially serious.

Courts can of course look at a list of a person's previous convictions, but that would simply list

offences as, for example, breach of peace or assault, and it will not be clear whether those were linked to football. Amendment 149 will enable courts to declare that an offence is related to a football match and that it involved violence or disorder. That declaration will then appear on a person's list of previous convictions, which can be used by the courts to inform subsequent decisions about whether to impose a banning order if the person is convicted of a football-related offence in the future. I recognise that that will take a few years to bed in. However, in a few years' time, that should enable courts to make well-informed decisions on whether to impose football banning orders.

Amendments 150 to 159 make consequential drafting changes as a result of amendment 149. Amendment 179 is also consequential. It provides that a declaration is to be taken as a sentence for the purposes of any appeal.

Under amendment 180, if a banning order is quashed on appeal, the High Court of Judiciary will be able to make a declaration that the original offence was related to a football match and involved violence or disorder.

I move amendment 149.

Amendment 149 agreed to.

Amendments 150 to 159 moved—[Hugh Henry]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Making of order on application to the sheriff

The Convener: Amendment 200, in the name of Colin Fox, is in a group on its own.

Colin Fox (Lothians) (SSP): Amendment 200 seeks to ensure that only people who have been convicted of an offence that involved violence or disorder can be subject to a football banning order and, therefore, the consequent penalties for defying the order. The amendment would change the provisions under which orders can be granted on application to the sheriff.

To put the amendment in context, I point out that I welcome the aim of the orders, which seek to root out the tiny minority who use football as a vehicle for peddling bigotry, sectarianism and racist abuse and who commit wanton acts of violence and disorder at or around football matches. The situation is described in the policy memorandum and has been mentioned in evidence to the committee. As I regularly attend football matches with my young family, I accept the case for banning orders, but the key issue is conviction. There are clear and obvious problems with the use of the civil procedure.

The evidence to the committee from football clubs shows that they now apply their internal rules about fans' behaviour much more stringently than they did in the past. I welcome that, although I, like most people, believe that they could go much further. That applies especially, but not exclusively, to the bigger clubs, which still shy away from acting against behaviour and language that most of us would consider offensive. However, the key point is that it is inappropriate to take action against somebody without a conviction, because persons who have not had a hearing will be found guilty and subjected to penalties.

In evidence, the Glasgow Bar Association, the Scottish Human Rights Centre, the Law Society of Scotland and supporters groups voiced objections to the provision. I share their concerns that a proof-of-violence criterion is missing, that abuses could arise and that the criterion that the person has

"contributed to … violence or disorder"

is not good enough or robust enough. As the Scottish Human Rights Centre suggested, if there is evidence against a person, they should be charged and convicted.

The Scottish Executive admits that it does not expect a large number of banning orders. The minister has just said that they will not be used for a first football-related offence. That is all the more reason to ensure that, when they are used, their use is robust and justified. The minister said at an earlier meeting that two safeguards will exist to prevent the civil route from undermining criminal convictions. First, he pointed to the European convention on human rights. However, the Executive's policy memorandum is at pains to point out that the articles of the ECHR do not confer absolute rights and can be bypassed if concerns about public safety or police concerns exist. It seems to me that the Executive is seeking to compromise those articles still further, after recognising that, when they were drawn up, they were balanced by policing concerns. Therefore, the proposal to convict without evidence is unattractive. The second safeguard that the minister offered is that sheriffs will not act disproportionately or inappropriately. Frankly, that is not sufficient, given the political pressure that sheriffs can come under.

However we consider the issue, there is a lack of scrutinisable proof in civil applications.

I move amendment 200.

14:30

Hugh Henry: I am not sure what Colin Fox meant by the political pressure that sheriffs can be

put under, because our judiciary makes a clear point of operating without political interference. Sheriffs operate independently and take decisions based on the evidence that is put before them, so it is not fair to introduce political pressure as an issue.

I also note that the point about civil orders was considered at stage 1 and the majority of the committee agreed that

"the proposed orders made under the civil procedure are a proportionate response to the problem of football related violence and disorder."

I also point out to Colin Fox that amendment 200 does not remove civil orders; it simply requires that they can be imposed only on those who have a past conviction, which is not necessarily related to football. We and, more important, the police need the legislation on football banning orders to be flexible enough to ensure that a court can impose a banning order on anyone who poses a sufficient threat of future football-related violence or disorder. Amendment 200 would disrupt that crucial ability by restricting banning orders to those who had been convicted of an offence that involved violence or disorder.

Similar provisions in England and Wales have been challenged in court and have been held to be compatible with the ECHR, so I am not persuaded that there is an ECHR problem with the football banning orders, as Colin Fox believes there is.

In many cases, people who are given banning orders will have in their past a conviction for an offence that involved violence or disorder, but what about a person who has not been convicted but whom the police know to be a leading member of a hooligan group and about whom they have good, credible intelligence that he or she is involved in planning violent activities? That can happen, and we have seen some evidence of that not only in the United Kingdom, but throughout Europe. It is a serious concern. Is it right that if the police have suspicions that someone has been involved in such activities in relation to football, have information that that person has been involved and have identified the person as being involved, they should have to wait until the person has committed and been convicted of an offence before they can act to protect the public? Amendment 200 would tie the police's hands. They would be able to target only those members of a group who had relevant previous convictions. Just because one member of a group has a past conviction, it does not necessarily mean that he or she is more of a threat than another member of the group who does not. In many cases, such groups act collectively, plan and have a significant degree of discipline when they set out to engage in violence at football grounds throughout the country.

I am confident that significant safeguards are in place around the proposed legislation. I have already mentioned the ECHR. We would not have included the provision in the bill if the Presiding Officer did not think that it was legislatively competent. Sheriffs must act proportionately in exercising their powers and I do not believe that they would issue football banning orders in the civil or criminal courts lightly or without solid evidential backing. I have the utmost faith that sheriffs would resist any political pressure from whatever quarter.

There is a need for flexibility, which is provided in the bill. I am confident that safeguards are in place and I hope that Colin Fox will reflect on that view, which the committee has also endorsed.

Colin Fox: I welcome the opportunity to reflect on what the minister has said. He will understand that I have read through the evidence that was presented to the committee, albeit that I was unable to be present at those meetings. The minister presses the point that the police need flexibility, as he calls it, and that they have suspicions, have information and know. My point is that they should prove that in court. Let the proof be presented and let a conviction be granted. If the police have suspicions, have information and know, surely the right way forward is to seek a conviction. That is what the groups that I mentioned are stressing to the minister, so I will press the amendment.

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 200 disagreed to.

Section 48 agreed to.

Section 49—Content of order

The Convener: Amendment 160, in the name of the minister, is grouped with amendments 161, 162, 175, 177, 178, 181 to 186, 188, 189, 197 and 198.

Hugh Henry: Amendments 160 to 162 are drafting amendments that will clarify what

information people who are subject to a banning order will have to give the enforcing authority when there is a change of circumstances. For example, when a person who is subject to an FBO moves house, the enforcing authority needs to know that person's new address, so that it knows where to send orders requiring that person to report to a police station. The bill as drafted could be interpreted as requiring the person to divulge the fact that they had changed address but not their new address, so the amendments will make the legislation clear and ensure that the right information is provided.

The other amendments in the group have been lodged in response to concerns that were raised by the Association of Chief Police Officers in Scotland, which said that the name "enforcing authority" is a little unhelpful because it implies that the authority—Strathclyde police—would be responsible for enforcing football banning orders throughout Scotland. In fact, local police forces will be responsible for enforcing banning orders in their areas. Having considered the views of ACPOS, I think that the "football banning orders authority" is a more appropriate name and one that will remove any confusion about the role of the authority.

I move amendment 160.

Amendment 160 agreed to.

Section 49, as amended, agreed to.

Section 50—Section 49: supplementary

Amendment 161 moved—[Hugh Henry]—and agreed to.

Section 50, as amended, agreed to.

After schedule 4

Amendment 162 moved—[Hugh Henry]—and agreed to.

Sections 51 and 52 agreed to.

Section 53—Variation of certain requirements of order

The Convener: Amendment 163, in the name of the minister, is grouped with amendments 164 to 174 and amendment 176.

Hugh Henry: For civil orders, the bill will enable the police or the person who is subject to the order to apply to have it varied: that is to say that the additional requirements, such as bans from certain bars or towns on match days, can be varied. For orders that are imposed on conviction, only the person who is subject to the order can apply to have it waived.

In the policy memorandum, we said that we would, in time for stage 2, consider who else should be able to apply to vary a criminal order. The solution that we have come up with, in conjunction with the Crown Office, is that the police will apply to the court for variation and that procurators fiscal will then make the necessary court appearances to facilitate the application, including taking evidence from witnesses if necessary. The person who is subject to the order will, of course, have the right to object to the variation and to present evidence to the court in support of that objection. The amendments in the group will make the necessary changes to allow for that process.

Amendment 173 is a technical drafting amendment that will ensure that it is clear that, when someone applies for a termination of a banning order and is refused, he or she is prevented from making another application for a termination only for the next six months. The original drafting could have suggested that the person would be prevented for the next six months from making any application relating to their FBO, for example an application to vary the order. That was not our intention.

Amendment 176 is a tidying-up amendment. As drafted, section 55(2) provides that, when a court varies or terminates a football banning order, the court must serve a copy of the varying order on the person against whom the order was made, and send a copy of the varying order to other named persons. Currently, that will apply only to an order that terminates an FBO or which varies its additional requirements. However, a court can also vary a banning order by imposing or omitting the requirement to surrender a person's passport. If it does so, the court should be required to serve and send the varying order in the same way. Amendment 176 will require the court to serve and send a varying order to the necessary people whenever it varies a football banning order.

I move amendment 163.

Amendment 163 agreed to.

Amendments 164 to 172 moved—[Hugh Henry]—and agreed to.

Section 53, as amended, agreed to.

Section 54—Termination of order

Amendments 173 and 174 moved—[Hugh Henry]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Information about making, varying or terminating order etc

Amendments 175 to 178 moved—[Hugh Henry]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Appeals

Amendments 179 and 180 moved—[Hugh Henry]—and agreed to.

Section 56, as amended, agreed to.

Section 57—Foreign matches: reporting and other requirements

Amendments 181 to 183 moved—[Hugh Henry]—and agreed to.

Section 57, as amended, agreed to.

Section 58 agreed to.

Section 59—Sections 57 and 58: guidance

Amendment 184 moved—[Hugh Henry]—and agreed to.

Section 59, as amended, agreed to.

Section 60—Exemption from notice served under section 57(4)

Amendments 185 and 186 moved—[Hugh Henry]—and agreed to.

14:45

The Convener: Amendment 187, in the name of the minister, is grouped with amendments 190 and 191.

Hugh Henry: The amendments in this group are about ensuring that the bill will enable the enforcing authority to act as a central information point for all football banning orders that are imposed in Scotland.

Amendment 187 will require a constable to inform the enforcing authority when he or she grants an exemption under section 60.

Amendments 190 and 191 will ensure that when a person who is subject to a banning order appeals against a refusal to grant him or her an exemption, that person will notify the enforcing authority of that appeal, irrespective of whether it was the enforcing authority or a constable who made the refusal.

I move amendment 187.

Amendment 187 agreed to.

Section 60, as amended, agreed to.

Section 61—Section 60: supplementary

Amendments 188 to 191 moved—[Hugh Henry]—and agreed to.

Section 61, as amended, agreed to.

Sections 62 and 63 agreed to.

Section 64—Offences under this Chapter

The Convener: Amendment 192, in the name of the minister, is grouped with amendments 193 to 196.

Hugh Henry: Following comments from the Law Society of Scotland, there was some discussion at stage 1 about the need for a defence of reasonable excuse where a person breaches the terms of their banning order. The bill as drafted does not provide for that and instead creates absolute offences. As a result, if a person failed to report to a police station when required because, for example, they were in hospital, they would commit an offence. That is not our intention. I am happy through these amendments to provide for a defence of reasonable excuse.

I move amendment 192.

Amendment 192 agreed to.

Amendments 193 to 196 moved—[Hugh Henry]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Interpretation of Chapter 1

Amendments 197 and 198 moved—[Hugh Henry]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Notification of public processions

The Convener: Amendment 201, in the name of Colin Fox, is grouped with amendments 1 and 199.

Colin Fox: I am happy to give the convener a short breather from his routine. I have lodged amendment 201 largely to seek clarification from the minister about the proposed guidelines that were promised. As someone who routinely organises protest marches, public processions and political rallies, I am concerned about the restrictions that the bill could impose on us in pursuit of our legitimate right to protest. I am entirely sympathetic to the aim of section 66, which is to inform communities and to afford them the opportunity to express concerns, fear and anxiety about sectarian and other parades and their impacts.

However, I am worried that non-threatening protest parades could get caught in the net. If people are asked to give notification of a procession or march 28 days in advance, they run the risk of not getting permission. That could force the protestors' hand and they might end up doing it anyway without permission. That seems to be a recipe for mayhem that none of us wants.

As the minister and others know, many protest marches are spontaneous—that is certainly true of

the marches with which I and people who gave evidence to the committee have been involved. In the past few weeks, I have been involved in organising a public rally to mark the death of the 100th British soldier killed in Iraq. That had to be organised spontaneously, given the events that inspired it—it was not possible to give notice 28 days in advance. The bill proposes to curtail that right.

It has been said before in committee that as things stand, local authorities have the discretion to waive the current seven-day notification period. It is interesting that local authorities' discretion is not the same as my right to protest. Nonetheless, will the minister clarify whether that discretion is to be scrapped from the guidelines? Will the minister introduce a statutory instrument to specify a wider list of exemptions other than just funeral directors? Currently, if the reasons for the procession or march cannot be foreseen, will local authorities have the flexibility to waive the rules that are currently in the bill?

Any attempt to compromise article 11 of the ECHR, which provides for the human right to assemble, protest and combine—a right that is already balanced by the rights of others and the state's security or policing demands—is to be regretted.

I ask for assurances and hope that the minister will answer my questions. I move amendment 201.

Mr Maxwell: My amendment 1 is relatively straightforward and has been lodged following evidence that the committee heard at stage 1. One of the committee's recommendations in its stage 1 report is at paragraph 219, which says:

"in light of the increased notice period for local authorities, it would be reasonable for local authorities to advise march organisers of their decision 7 days in advance of any proposed event."

As members are aware, the current situation is that local authorities must give two days' notice of an event and organisers must give seven days' notice. As the bill stands, however, the organisers of marches or processions will have their notice period increased from seven to 28 days—a measure that most of the committee supported at stage 1. That is four times as long as the current notice period, but no increase is proposed in the notice period that local authorities must provide to marchers of their decision. It is unfair that the notice period for organisers is very much increased, but they could still wait to hear from local authorities about an event until a mere 48 hours before it is due to take place. We received evidence at stage 1 from a number of organisations that said that they had experienced decisions from local authorities coming very late in the day. All the organisations felt that an increased notification period from local authorities is reasonable.

There seems to be a quid pro quo here. Given that local authorities are to have an extra 21 days' notice from march organisers, it seems only reasonable that march organisers should have an extra five days' notice from local authorities. That is roughly in proportion to the increase in the notification period that march organisers are expected to provide. It is entirely reasonable that if there is a change at one end of the scale, there should be a change at the other end to increase the notification period from local authorities from two to seven days.

Even with that change, on some occasions local authorities will, instead of a maximum of five days, have 21 days in which to make their decision, which is the difference between 28 and seven days. That will give them much longer to consider their decision. It would not cause them any problems in making their decision, given the extended period that they have anyway.

Hugh Henry: I will address the issues that Colin Fox raised before I consider Stewart Maxwell's amendment.

Sections 66(2) and 66(3) are intended to fulfil recommendation 1 of Sir John Orr's report, "Review of Marches and Parades in Scotland", which suggested:

"Organisers should give 28 days notice to local authorities and the police of their intention to hold a procession."

That key change in the law will give local authorities and the police not only much more time to consider each notification of a march, so that they can make a more informed decision, but more time to give notice of forthcoming events to community bodies and businesses in the areas that will be affected. The purpose of the extension of the notification period is simply to improve the efficiency of and increase the openness of the notification process. The intention is not to restrict or impede political demonstrations, as Colin Fox fears, nor is the intention to deny people the right to have a procession if a good case can be made for exemption of the march from the notification process, perhaps on the ground of urgency.

Colin Fox asked whether the discretion that currently exists to exempt marches from the notification process will be removed. It will not be removed. The flexibility that currently exists to waive the notification period if necessary will not be changed. Under the current arrangements, if a sudden announcement is made, such as an announcement of a decision to close a factory or of unexpected redundancies—Colin Fox gave other examples—and people want to organise a march in a few days, the local authority can consider a request and waive the seven-day notification period. Under the arrangements that are proposed in the bill, organisations and

processions that seek automatic exemption from the notification process are entitled to ask the local authority to submit a request to the Scottish ministers for inclusion in the order that ministers lay before Parliament under what will be new section 62(11B)(b) of the Civic Government (Scotland) Act 1982. The law will be changed to allow local authorities to create lists of exempted bodies.

The proposed extension to the notification period will not alter the current position and local authorities will continue to have the power to waive the 28-day notice period, when that is required. It is right to leave such matters to local discretion. Local authorities must have regard to all the circumstances, including the urgency of the need to demonstrate or march, community safety and health and safety issues. After consideration of such matters, local authorities will be able to use their discretion to dispense with the 28-day notification period to allow a procession to go ahead at shorter notice.

I appreciate the points that Stewart Maxwell made; the matter that he raises is less straightforward than that which Colin Fox raised. I have sympathy with Stewart Maxwell's wish to achieve a compromise between what the Orange order wants from legislation and the current arrangements. Amendment 1 might superficially appear to achieve a sensible compromise, but in practice it would not improve the process. Our view, which is shared by ACPOS and the Convention of Scottish Local Authorities, is that the effect of amendment 1 would be to make it harder to reach sensible decisions in sensible timescales, because the timescale for dialogue and decision making would be reduced from 26 days to 21 days. We took time to ascertain whether there is a problem with the current arrangements: our findings suggest that there is not and that in the vast majority of cases local authorities give notice in good time to march organisers about whether an order will be made about their procession. For example, officials asked the Associated Clubs of the Apprentice Boys of Derry whether the two-day minimum notice period posed difficulties for the organisation. The organisation responded that conditions had been imposed in relation to 12 marches but that all march organisers had been notified in good time.

Similarly, the evidence that was taken from the Orange order showed that local authorities provided organisers with just a few days' notice of their proposal to ban a march in the case of only five processions, the most recent of which dated to as far back as 2002.

15:00

Secondly, local authorities already have an obligation under section 63(4)(a) of the Civic Government (Scotland) Act 1982 to notify march organisers of their decision—I want to emphasise the phrase that I am about to use—"as early as possible", where

"it is reasonably practicable for them to do so."

I want the local authorities to be clear on the issue: we will ensure that the guidance that we will issue will emphasise that duty and the importance of their reaching a decision as soon as practicable.

Thirdly, we must not assume that local authorities should take sole responsibility for delays in reaching a decision; the actions of a march organiser can contribute equally to a delay. For example, an organiser may wish to request a last-minute change to the time of the event or ask for an increase in the number of marchers on the procession. If the provisions in amendment 201 were to be included in the bill, their ability to do so would be restricted. Finally, and most importantly, the requirement for a seven-day notification period could create difficulties of its own.

I want to make it clear that one of the key things that we are trying to achieve through the bill, and in the guidance to local authorities, is to ensure that there is open and transparent dialogue between councils and march organisers. The more discussion there is between march organisers, councils and communities that are affected by marches, and the more they understand one another's point of view, the better. We expect to see more precursory meetings and—as notifications progress—more regular dialogue between the organiser, community groups, the local authority and the police. If that happens, we should see the emergence of a process in which all parties are better and more regularly informed. Our ultimate aim is that the final decision should come as no surprise to the organiser.

However, the bill must also allow for situations in which complications arise shortly before the procession is due to take place. If it does not, what will happen if unforeseen incidents arise? I am thinking of incidents such as emergency road works, a gas escape or a house fire, all of which can affect the regular movement of traffic. In such instances, changes may need to be made to the routes and times that the march organiser has proposed.

More generally, cases will arise that pose difficult problems that can be resolved only by protracted discussions between the local authority, police and organiser. If we were to require the local authority to take a firm decision seven days before the proposed date of the march, it would not be possible for the authority to continue its

dialogue with the organiser into the final week before the procession is to take place.

If there is less time to reach agreement, the decisions that local authorities take on proposed processions may be appealed more often. The dispute between the parties would continue, but in the courts. It is not in anyone's interest for that to happen. I therefore believe—as do COSLA and ACPOS—that the best way to proceed is to allow the maximum flexibility for constructive discussions between the parties, as the bill currently allows. To set an earlier deadline for a decision would work against that aim and that of giving a local authority longer to plan and prepare for events. I hope that Stewart Maxwell is persuaded by these arguments.

Amendment 199 is a minor amendment to section 67. It seeks to remove the unintended effect that the provision currently has of placing a duty on the local authority to notify a funeral director—or any other body that is by order made exempt from the notification process—that it will not impose any conditions on an event. It seems unnecessary to place an onus on a local authority to write in every instance to advise the organiser that no order is to be made.

The Convener: I remind members that Colin Fox will have an opportunity to wind up the debate on this group of amendments; I am therefore prepared to take comments from any member of the committee.

Bill Butler: On amendment 201, everybody here would be four-square behind complying with article 11 of the ECHR, on assembly protests and the right to combine. I am substantially reassured by the minister, who made it clear that discretion remains, that flexibility is built in and that the notification period can be waived for spontaneous demonstrations. That was always in the bill—as I remember, Mr Moxham, the representative from the Scottish Trades Union Congress, was content with that.

We explored the position of spontaneous demos, redundancy announcements and so on at our meeting in Glasgow City Chambers. I hope that Colin Fox is reassured by what the minister has said and by what I believe is in the bill anyway. I hope that Colin does not feel the need to press amendment 201, because I could not support it. The points that he raised have been answered.

On amendment 1, Stewart Maxwell correctly made the point that the committee's stage 1 report said that it was reasonable that march organisers should be advised of a decision seven days in advance. I have listened to carefully to the minister and I will listen to what other members say, but my main concern is that perhaps we did not fully consider in the stage 1 report the point that the minister made, which was that the effect of changing the timescale from 26 days to 21 days would be to reduce the time available for dialogue and decision making from 26 days to 21 days.

One of the most important aspects of the bill is that it will enable the community to be directly involved in consultation for the first time—we heard evidence about that from Bridgeton and Govan community councils in Glasgow. I understand where Stewart Maxwell is coming from, but if we agreed to what he is proposing, we would build in an unintended inflexibility, which would diminish the amount of time available to the community to be consulted in a positive way and to work with the local authority and the march organisers. That is an important part of the reforms that the committee is considering and that the Parliament will consider at stage 3. I await other comments on that point with interest, because we should not build in an unintended inflexibility.

Mr Maxwell: I listened with interest and some disappointment to the minister's comments. I would like to take up one or two of the points that he and Bill Butler made.

I am a bit confused about the idea that we would reduce the amount of time available to a council to consider its decision from 26 days to 21 days, when in fact the amount of time available would still increase from the present five days to 21 days. There may be an argument about whether the period should be 21 days or 26 days, but, overall, there would still be an increase. At the moment, the period is five days. If amendment 1 is agreed to, the period will increase to 21 days; if it is disagreed to, the period will be 26 days. Either way, there will be an overall increase in the amount of time for the discussions and community involvement that we all welcomed at stage 1. Therefore, I do not accept the argument that changing the period from five days to 21 days represents a reduction.

A balance must be struck between all those involved—not only local authorities and the police, but organisers and communities. Although community involvement is central to the change in ethos that we are trying to achieve, communities would like certainty in the process. Leaving a decision as late as possible—perhaps 48 hours before a march—provides communities with no certainty. In fact, the change to seven days would provide communities with more certainty, while still providing an increased period for discussion and debate between all those involved.

The minister said that COSLA and ACPOS were opposed to the change proposed in amendment 1. To be honest, I would expect nothing less; COSLA opposed any change when it gave evidence at

stage 1, so I am not surprised by that. It is a question of balance. Those who organise marches and processions are very much in favour of the change. In fact, they suggested a change to 14 days, which I felt was too long and would restrict the amount of time available for discussion and debate. I thought that seven days was a reasonable compromise.

I might have misunderstood the minister, but he said that having a seven-day period would create difficulties with unexpected events such as gas leaks, fires and changes in traffic routes because of road traffic accidents, for example. What happens now when any such events happen within the two-day period? Surely gas leaks, fires, RTAs and other unexpected events occur within that period, so having a seven-day period would not change anything. I thought that the minister's argument was rather strange and did not understand it; I am not sure where he was going with it. Unexpected events are unexpected events. The way that we deal with them now is the way that we will deal with them in future. The change from two to seven days would not impinge on that at all.

I intend to move amendment 1.

The Convener: Before I invite Colin Fox to speak, does the minister want to respond to any of the questions that Bill Butler and Stewart Maxwell have raised?

Hugh Henry: I will respond to Stewart Maxwell's final point. If there are health and safety issues relating to an event's impact on a procession, steps can be taken to protect those involved. Roadworks can pop up all over the place—I do not know what things are like in the area that Stewart Maxwell represents, but I know that, on my patch, things often happen at short notice that cause severe discomfort to communities, and people sometimes do not understand why they have happened.

The point that I am trying to get at, which I am perhaps emphasising by exaggeration, is that Stewart Maxwell's amendment 1 would provide less time for manoeuvre to correct errors and to be flexible. Sometimes decisions have to be taken at the last minute for good reason—we cannot always anticipate what might happen. Irrespective of whether amendment 1 would improve on the current situation, it would reduce the period for consultation that we have always envisaged would be available under the bill.

Colin Fox: On Stewart Maxwell's amendment 1, it seems to me that we are in danger of not seeing the wood for the trees, because it would provide a clear extension of the time available. We will come on to that later.

I listened to the minister's remarks with interest. The point that he is making is that local authorities can consider waiving the seven-day notice period on the grounds of common sense, discretion and flexibility. I am heartened that that remains the case under the bill. It is also fair to say that local authorities can choose not to waive the period. Should an authority decide not to waive the period, we would be left with the more difficult question of the 28-day period.

I am comforted by the fact that local discretion will still be used when a protest, procession or rally has to be held urgently—following the announcement of a factory closure, for example. That makes sense and I am comforted that the minister wants that to remain in the bill.

Like everybody else on the committee, I await the guidance that will be produced and I hope that the points that the minister made clear will be included in it. To solve the mystery for Bill Butler, I will not press amendment 201.

Amendment 201, by agreement, withdrawn.

Section 66 agreed to.

Section 67—Powers and duties of local authorities

Amendment 1 moved—[Mr Stewart Maxwell].

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 1 disagreed to.

Amendment 199 moved—[Hugh Henry]—and agreed to.

Section 67, as amended, agreed to.

Section 68 agreed to.

The Convener: That is the end of today's stage 2 proceedings. I suggest that we take a short break.

15:16

Meeting suspended.

15:23

On resuming—

The Convener: At next week's meeting, we do not propose to consider amendments to the bill—we have covered the sections that we intended to cover today—but, as previously agreed, the committee will hear evidence on Paul Martin's DNA amendment before we consider it formally at a later meeting.

Subordinate Legislation

Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 (draft)

15:24

The Convener: Under agenda item 4, the committee has a draft order to consider under the affirmative procedure. I invite the minister to speak to the draft order.

Hugh Henry: The scheme that is set out in the draft order marks an important step towards finalising the arrangements that were introduced by the Criminal Justice (Scotland) Act 2003 for dealing with serious violent and sexual offenders. The act provided for a new sentence—the order for lifelong restriction—to deal with very high-risk offenders. The act also enabled the establishment of the Risk Management Authority as a centre of expertise on the assessment and management of risk. Within its broad remit, the RMA has roles in policy, research and developing guidelines and standards. It is important that assessors and the methods and practices that they will use meet agreed quality standards.

The 2003 act gives the Scottish ministers the power to make an order to introduce the accreditation scheme for individuals who are involved in assessing and minimising the risk that offenders pose and for the methods and practices that are to be used to assess and minimise that risk. The act also provides that the RMA will administer that scheme. Working within the statutory scheme, the RMA will accredit individuals and manners for any type of risk assessment and minimisation. The RMA will also be able to deal with applications for accreditation, the removal of accreditation and appeals against those decisions. The scheme also provides for complaints and the maintenance of a register of accredited persons and manners by the RMA.

The accreditation scheme will have a practical effect on the process to support orders for lifelong restriction, which we intend to bring into force this summer. The 2003 act requires that if an offender meets the statutory risk criteria, the court must impose an OLR, but before that stage is reached, the offender must undergo a risk assessment under a risk assessment order. The court must also appoint an assessor to undertake the risk assessment. That assessor must be accredited and the assessment must be in accordance with an accredited manner.

The Executive has worked with the Risk Management Authority to set up the day-to-day working arrangements, so that things can be set in

motion as quickly as possible, to ensure that accredited risk assessors and accredited manners are in place to support the OLR. The RMA has consulted stakeholders on the application process, criteria and methods of evaluation that will be the scheme's building blocks. The responses to that consultation will be published in April in the form of standards and guidelines for risk assessors and will cover the administrative procedures for the accreditation process.

The draft order that is before the committee provides the proper structure to enable the RMA to proceed with that important work, and I hope that the committee will recommend approval of the draft order.

I note the Subordinate Legislation Committee's view that the fact that the Executive has—for good reason—been more prescriptive in some articles about requiring reasons for decisions to be given amounts to inconsistent drafting and failure to follow proper legislative practice, but I disagree profoundly with that view. As the SLC notes, the Executive explained why it adopted its approach. Indeed, the SLC's report concedes that

"specific provision on the giving of reasons is not strictly necessary".

We have made specific provision when it was considered that, in particular circumstances, that would provide useful reassurance or be of obvious significance, for example.

Otherwise, we have relied on the basic principle that it is good administrative practice that how the RMA and its committees exercise the powers that are delegated to them should be clear and transparent. It follows that, as a matter of best practice, the authority would give reasons for its decisions. The nature of the decisions means that they require explanation. It is inconceivable that the RMA would respond with simply a yes or no. I confirm that, in its information pack for applicants, the RMA makes it clear that all relevant reasons for decisions will be disclosed. The RMA's committees will be advised of that process and reminded that they will have to provide reasons for their decisions to successful and unsuccessful applicants.

The point is fundamentally about different views on style and not about whether we have departed from consistent legislative practice. We are content that the draft order, which takes account of helpful comments from the SLC's legal advisers, the practice guidelines and the information that the RMA has issued will achieve exactly the same outcome as would an order that was revised along the lines proposed by the SLC.

The Convener: I thank the minister for clarifying the Executive's response to the SLC. Do members have questions?

Jeremy Purvis: I have two brief questions. Will the criteria that are used be closer to international criteria? I understand that, in recent years, moves to achieve more consistency in risk management have been made. For example, the risk matrix 2000 tool for risk management has been used, which is a step towards a European and international standard. What consideration has been given to that?

My second point probably results from my not understanding article 4 of the draft order, which is about the accreditation committee that is to be formed. How many members is that committee expected to have? Forgive me if the answer is in the draft order. The article says:

"The Authority shall appoint a minimum of two of its members to form the accreditation committee"

but does not say what the committee's size will be. If the committee has a minimum of two members, I suppose that it could have a maximum of two members. There could be the curious situation in which the authority

"shall not so appoint the convener"

but

"shall appoint one of those members to chair the committee."

There could be a two-member committee without a convener but with a chair.

15:30

Hugh Henry: On Jeremy Purvis's first point, the RMA is aware of international practices; indeed, one of the purposes of establishing it was to bring best practice from elsewhere and apply it here. We aspire to meet the best possible standards; indeed, I hope that our ultimate aspiration is to set practices that others will want to follow.

On Jeremy Purvis's second point, the figure for the number of members that he is seeking is, in fact, three.

Bill Butler: I put on record the fact that the Executive has reassured us today. The Subordinate Legislation Committee said that it

"recognises that specific provision on the giving of reasons is not strictly necessary and that guidance being considered will assist the reader."

I am afraid that that committee then contradicted itself by saying that there is "inconsistent drafting" in the draft order. I do not think that there is. The issue is whether cases and decisions are dealt with sensibly. The Executive has stated that having to give reasons for every decision would

"render the Order unduly cumbersome".

I agree.

The Executive has also said that general reasons for a decision will be given with that decision, which is only common sense. The SLC has pointed out potential improvements, as it always does, and the Executive has taken on board what it has said, but its main criticism does not hold water. I do not think that there has been inconsistent drafting. We should accept what the Executive has said. As the minister said, decisions on the accreditation of those who assess risk are important. Things have been done correctly.

Mr Maxwell: I rise to the defence of the Subordinate Legislation Committee, given that it has been unfairly attacked by the minister and this committee's deputy convener. The Subordinate Legislation Committee's view was that the drafting of the draft order should be "helpful to the reader". That was the single thought behind the reasons for bringing the draft order to the attention of the Justice 2 Committee and for the Subordinate Legislation Committee's recommendation. It seems to me that we should always attempt to make subordinate legislation clear and consistent for people who must use it and that therefore we should make the draft order that we are discussing clear and consistent. That is not an unreasonable suggestion.

The Executive's view is that having to give reasons for every decision may make the draft order "unduly cumbersome", although it may not do so. The Subordinate Legislation Committee cannot foresee how decisions will be published in the future—we do not have an example of that. The intention that all decisions should be explained may be common sense; however, given that the draft order says that certain decisions will be explained, a doubt is raised that other decisions may not be explained. It was not unreasonable for the Subordinate Legislation Committee to point out the matter even if only for the benefit of this committee so that we could raise the matter with the minister. Pointing out such things is one of the duties of the Subordinate Legislation Committee. I supported—and still support—the decision that there was inconsistent drafting.

The Convener: As members have no other comments to make or questions for the minister, I invite the minister to move motion S2M-4003.

Motion moved,

That the Justice 2 Committee recommends that the draft Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 be approved.—[*Hugh Henry*.]

Motion agreed to.

The Convener: I thank the minister and members of his staff for attending the meeting. We now move into private session.

15:34

Meeting continued in private until 15:56.

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