JUSTICE 2 COMMITTEE

Tuesday 28 March 2006

Session 2

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JUSTICE 2 COMMITTEE
9th 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 ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)
Paul Martin (Glasgow Springburn) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Alastair Merrill (Scottish Executive Justice Department)
Callum Percy (Scottish Executive Justice Department)

CLERKS TO THE COMMITTEE

Gillian Baxendine
Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 6

Scottish Parliament

Justice 2 Committee

Tuesday 28 March 2006

[THE CONVENER *opened the meeting at 14:04*]

Police, Public Order and Criminal Justice (Scotland) Bill

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen, and welcome to the ninth meeting in 2006 of the Justice 2 Committee. The only apology that I have received is from Colin Fox, who will be late.

Before we continue, I draw attention to the fact that this is our clerk Gillian Baxendine's last meeting because she will leave soon to have a child. On behalf of the committee, I wish her every success with that. I thank her—I also thank her colleagues—for her time here and the support that she has given to the committee. I gather that she has been involved with the committee for five years, quite apart from the support that I have received from her. We wish her well for the future.

I remind members that we have agreed to consider agenda item 5 in private—it is an unfinished private session that has been carried forward from last week.

Agenda item 1 is the Police, Public Order and Criminal Justice (Scotland) Bill. We are joined today by Alastair Merrill and Callum Percy of the Scottish Executive Justice Department, who will give evidence on the draft Scottish Executive guidance on marches and parades. Welcome, gentlemen.

Alastair Merrill (Scottish Executive Justice Department): Thank you, convener. We are pleased to be here today to answer the committee's questions on the draft guidance. As you are aware, the guidance is to be issued to local authorities under what will be, if enacted, section 65A of the Civic Government (Scotland) Act 1982.

Since last autumn, I have been the chair of the Executive's working group on marches and parades. I am accompanied today by Callum Percy from the police division in the Justice Department. He provides the secretariat for the working group.

With the convener's permission, I will outline briefly the role of the working group, and then draw out a few points from the latest guidance document, which I submitted to the committee on 17 March. Finally, I will touch on the second document that we sent to the committee on that date—the overall report of the working group—and explain its relationship to the guidance.

The working group was first convened in March last year. It has 15 members and draws together the interests of various key public bodies; the Convention of Scottish Local Authorities, the Society of Local Authority Lawyers and Administrators in Scotland, the Society of Local Authority Chief Executives and Senior Managers, the Association of Chief Police Officers in Scotland, the Scottish Police Federation and the Association of Scottish Police Superintendents are all members. Some of the members double up as representatives of their local authorities—in particular, Glasgow City Council, the City of Edinburgh Council, Scottish Borders Council and North Lanarkshire Council. The group's main task has been to support the implementation of the non-legislative recommendations of Sir John Orr's "Review of Marches and Parades in Scotland", but it has also had a role in informing development of the provisions in the Police, Public Order and Criminal Justice (Scotland) Bill.

The group meets formally and informally. It has held four formal meetings and has established a series of sub-groups that focus on developing specific parts of the guidance. Much of the group's correspondence has been conducted through e-mail as the draft guidance has taken shape.

We have recognised the importance of keeping the key marching organisations informed of the working group's progress as well as the progress of the bill, although they are not formally represented in the group. We have met separately with the Orange order, the Apprentice Boys of Derry, Cairde na hÉireann and the West of Scotland Band Alliance.

The group is due to convene again in the second half of April when we hope to be in a position to sign off the draft guidance and the report. We then plan to circulate both documents to a wider audience for formal comment, including all 32 local authorities, all eight police forces and the marching organisations, before the final version is approved by ministers.

The purpose of the guidance is twofold. First, it spells out the main legislative changes for local authorities and where their responsibilities lie. Secondly, it sets out the good practice that authorities should consider under the new rules when assessing notifications to march. Those areas of good practice flow directly from Sir John Orr's recommendations.

Our overall aim throughout has been to produce a clear, practical and effective tool that will be of genuine benefit to local authorities and march organisers alike.

As the committee will already be more than familiar with the legislative changes that make up the first section of the guidance, I will outline some areas of good practice that do not feature in the bill. The guidance includes sections on how local authorities might create opt-in lists, introduce codes of conduct, develop how-to guides, hold precursory and debriefing meetings, attempt to assess risks and encourage organisers to attend risk assessments. Those issues are not enshrined in statute because we accept that some marches will cause more difficulties than others and that local authorities and the police are best placed to decide the detail of what will best suit their specific needs in the particular circumstances.

The committee will note that the bill makes no provision for community consultation on each notified procession. The Deputy Minister for Justice wrote to the convener on 13 March to explain his thinking behind that decision. In essence, it would be extremely difficult to distinguish in legislation between those processions for which consultation should automatically take place and those for which it would not always be necessary. Moreover, as the vast majority of local authorities deal with relatively small numbers of processions, we took the view that to place all authorities under a statutory duty to obtain the views of communities on each procession would introduce a disproportionate bureaucratic burden, which we are keen to avoid.

The guidance goes into some detail about various ways of achieving community engagement. It explains how existing legislation in the Local Government in Scotland Act 2003 might play a part in the planning of marches and parades and how section 67 of the bill, which will amend the 1982 act, will require local authorities to provide communities with more information on processions. Taken together, those duties will give community members sufficient information to make representations about particular marches if they so wish. The draft guidance also emphasises that good practice can play a valuable part in the seeking of community views and in keeping communities informed of what is happening; for example, community bodies could be invited to attend the opt-in lists and the precursory and debriefing meetings.

A key part of the new procedures will be about monitoring how successfully local authorities and the police put the new processes into practice. Sir John Orr made it clear in his report that he does not believe that that will be an onerous task, so although discussions on monitoring are at an early stage, we are working on that basis. We are also mindful of the reform agenda, so we hope that it will be possible to incorporate monitoring of marches and parades into the existing returns that are provided by local authorities. We are in discussion with the Convention of Scottish Local Authorities to see how we might do that without placing additional undue burdens on local authorities.

We have included in the annexes to the guidance a number of standard templates to provide a standard notification form for organisers, a standard letter that authorities can send to bodies on their opt-in lists and a standard risk assessment form. Authorities will be under no statutory requirement to use those templates, which they will be able to adapt to suit their purposes. However, members of the working group felt that it would be helpful to provide templates from which local authorities could work. Over and above that, we have provided at the end of the draft guidance a step-by-step guide and a flow chart to show how the processes would work. Those are intended to allow practitioners to see at a glance how the new processes should operate in practice.

To summarise, the principal aim in creating the guidance was to produce a useful practitioner's guide to the new processes. The guidance also aims to carry a clear message to local authorities about the importance of implementing Sir John Orr's recommendations and how those recommendations—statutory and non-statutory—can be achieved without our needing to implement bureaucratic or overly complicated procedures.

14:15

The second document, which is the report of the working group on marches and parades, has been provided to the committee to set the guidance document in context. Its purpose is quite different from that of the guidance. Whereas the guidance is intended to be a working tool for practitioners, the report sets out for the record how each of Sir John Orr's 38 recommendations is being implemented. Although the report complements the guidance, it serves a fundamentally different purpose and therefore delves into a number of areas that are not covered by the guidance, although there is some overlap and duplication of text between the documents.

Both documents still require some tidying up, not least to ensure that they are fully consistent with one another. However, as members will probably have gathered from reading the documents, our efforts have been focused on ensuring that the guidance is fit for purpose. I am happy to take questions on the guidance and to hear committee members' suggestions on how we could improve it.

The Convener: I am grateful to Mr Merrill for the clarity of his preliminary comments. Committee members will have received copies of the

minister's letter, which has been circulated. I presume that members also have copies of the COSLA letter.

I understand from Mr Merrill's opening statement and from my reading of the documents that the working group had no wish to be overly prescriptive. However, given that authorities will be able to choose to use different templates and so on, did the working group give any thought to what might happen if someone challenges the way in which guidance has been applied? I presume that the minister will be the ultimate arbiter on the final guidance, but what would happen in the event of a challenge in the early stages? Obviously, if the draft guidance document is being circulated for further consultation, the document may need to be clarified again. I trust that the committee will be in the loop on all of that.

Alastair Merrill: It will, indeed.

The Convener: How did the working group approach the matter? I appreciate that an overly prescriptive approach would cause difficulties because of the identified differences among authorities, but what will ultimately happen if someone wishes to object to the way in which a process has been handled?

Alastair Merrill: I think that that will come out during the monitoring and evaluation process. As the draft guidance has now been agreed by COSLA, the draft document will be put to the full working group for its agreement at the next formal meeting. The guidance document that will then be sent out will have been agreed and endorsed as a statement of good practice by all the key public bodies that deal with marches and parades. Therefore, if an authority wishes to diverge from the guidance, we will expect it to have good reason for doing so.

We hope that any such issues will become evident during the consultation process. If a good reason emerges, we will amend the final published version of the guidance accordingly. If it does not, we will watch how the guidance works in practice. As I said, we are keen not to be overly prescriptive. We want the guidance to help to turn the bill into a measure that will achieve the Scottish ministers' desired outcomes of better control and management of marches and parades, better information and better involvement of communities. We will follow closely how the guidance is implemented and then take stock if evidence emerges of vastly diverging practices.

The Convener: You said that you have met marching organisations and various groups that will, as marchers and processors, have an interest in the guidance. Will such groups have an opportunity to feed back into the process before the guidance reaches its final stages?

Alastair Merrill: Yes—they will be formally consulted after the working group's next meeting. Informally, we have also met them separately. Only last week, I met representatives of the Orange order and gave them a copy of the guidance and invited their comments on it. I will meet representatives of Cairde na hÉireann next week to talk them through the guidance and to seek their feedback.

Bill Butler (Glasgow Anniesland) (Lab): When we took evidence at stage 1 in Glasgow city chambers, it was obvious that consultation of communities is an important part of the bill. It is important that communities be able to interact positively to influence events when that is considered appropriate.

You said that some of the draft guidance will facilitate community consultation. Will you elaborate a little on how the community planning process can help communities to become involved in consultation on marches and parades? You also said that community representatives would be allowed to attend the precursory and debriefing meetings—I think I quote you correctly—which is good, but how will they have a direct influence on those meetings? Obviously, it is for the police and local authorities to assess risk, so will the community have an input?

Alastair Merrill: That will depend very much on the circumstances of the march. I think that I said that community representatives could be invited to attend, rather than that they would have an automatic right to attend. I apologise if I gave that impression.

Bill Butler: I quite liked that impression. What you have just said worries me slightly.

Alastair Merrill: We are trying to set out a framework for what constitutes good practice. It should be something that local authorities believe can and will work and that they are prepared to make work. The aim is to strike a balance. Community planning is one process that creates a framework. We have identified some of the other processes and means by which communities could get involved. We have made it clear in the guidance that ministers expect communities to be involved and consulted proactively. We stopped short of legislating for that, for the reasons that Hugh Henry outlined in his letter to the committee.

Bill Butler: I accept what the minister said, but there is an opportunity to change the guidance so that it says that community representatives will have the right to attend meetings, rather than that they may or may not be asked to attend. That is important, if they are to have any influence, which is essential. The change of words is not simply semantic.

Alastair Merrill: I can certainly put the suggestion to the working group.

Bill Butler: I would like you to do that, if the committee agrees.

Alastair Merrill: The concern that some members of the working group would have is that the suggested wording would imply that any community representative would have the absolute right to attend a meeting, rather than that they would have the right to request to attend.

Bill Butler: Again, you are worrying me slightly, after starting so well. I would like my suggestion to be put into the process, regardless of whether it is acceptable. That would be a much more positive approach.

Callum Percy (Scottish Executive Justice Department): Community representatives will not attend meetings as observers. They will be invited to have their say and to offer input at, rather than just to watch, proceedings.

Bill Butler: I take your point, but that can happen only if they have been invited to attend in the first place. If they have not been invited to attend, they will not be able to take part. That is my point in a nutshell.

Alastair Merrill: We will certainly take the suggestion back to the working group and hear members' views on it.

The Convener: In some councils, the matter will be dealt with by only a small number of councillors. I presume that COSLA has argued that where a march or parade is likely to have an impact on a community, all elected members will have the right to be involved at an early stage.

Callum Percy: Elected members will be involved through the opt-in lists.

Bill Butler: Mr Merrill, you missed out one small point. Can you say in a little more detail how the community planning process will help communities to be more involved?

Alastair Merrill: I apologise, Mr Butler. Community planning partnerships have discretion to set priorities for a particular area. It could be decided that one priority for the area was marches, parades and processions. If that were to happen, community bodies would have the option to participate in planning public services around such events.

Bill Butler: I am obliged. That seems sensible.

Jackie Baillie (Dumbarton) (Lab): I associate myself with Bill Butler's remarks on communities being notified and invited to meetings. Those are critical points.

I point out one inadvertent error that has not been captured: the spelling of the minister's name on page 2 of the draft guidance. I am sure that that will be rectified following this meeting.

There is a helpful comment on dispensations in paragraph 16. It is particularly helpful that you spell out the flexibility that exists to allow the notice period to be waived if there has been a factory closure or unexpected redundancy announcement, for example. You go on to make suggestions for the advertising of processions that are entirely reasonable in cases in which 28 days' notice has been given, but what is your guidance or expectation for emergency situations in which a dispensation has been granted?

Alastair Merrill: Again, it would depend on the circumstances. We do not want to be overly prescriptive about how authorities should advertise marches. If a march is a major event that will attract a lot of publicity and media coverage, opportunities will be associated with that. Council websites and libraries could also be used. Only in exceptional circumstances would we envisage authorities taking out newspaper adverts to publicise a particular march. You will recall from earlier discussions the concerns that COSLA expressed that authorities might be obliged to take out particular forms of advertisement for each and every march. To try to allay those fears, we set out a range of options for publicising marches. Depending on the circumstances, those or other means could be used.

Jackie Baillie: So it is conceivable that, if the timescale was tight, none of those suggestions might necessarily apply.

Alastair Merrill: Indeed. We are not saying that those are the only means that local authorities could use; they are only some of the means.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Yesterday evening, I had the pleasure of meeting the members of the committees of all the common ridings and festivals in my constituency. I hope that you agree that the organisation of those festivals and common ridings provides an example of existing best practice. Of course, the organisers in those cases are the communities, so it should be stressed that there are many instances in which organisers and the community are not the same.

Will you go into more detail as to how marches, parades and processions that exhibit best practice on insurance, organisation and their relationship with the police—such as the common ridings and festivals, which already have close relationships with the police, even though the marches begin at the end of May and continue throughout the summer—could be exempted from the regulations after the bill has been passed? If marches exhibit

best practice beyond that which is in the draft guidance, they should not be burdened by overly complex and bureaucratic local authority procedures.

Alastair Merrill: That is absolutely right. I hope that the guidance—particularly the flow chart at the end of the guidance, which shows how the process would work—will reassure organisations such as the common ridings that, even if they were not exempted, the full process would not apply to them. We envisage a relatively small number of exemptions, because exemption means exemption from the notification process, which is simply to inform the council that a march is intended to take place. Where that is already happening, where it is long-established good practice and where all the links and management arrangements are in place, everything that we propose undoubtedly already happens. The only difference would be the use of a standard notification form that would give the local authority formal notification that the common riding was to take place on such and such a date.

14:30

Equally, if the local authority considers that there is a case for exempting an organisation even from that notification process, it is invited in the guidance to write to the Scottish ministers. The ministers might then decide to make an order at the Scottish Parliament.

I stress that we have gone to considerable lengths to try to move the guidance away from being what someone described as a jobsworth's charter that would impose a bureaucratic process on each and every march to being a tool that will ease the progress of marches through the approval process and provide local authorities with the appropriate tools to focus on the contentious and difficult marches for which there might not be tried and tested processes.

Jeremy Purvis: I understand that there is no specific mention of armistice gatherings, parades and marches in the guidance, other than the expectation that funeral parades will be exempted. However, armistice day marches have a different position than most. Has the working group given any consideration to such marches?

Alastair Merrill: There has been no specific consideration of armistice day marches, although their organisation involves road closures, diversions and the co-ordinated efforts of different parts of the local authority and the police. Although one could make a case for exempting them, the procedures for such marches are tried and tested and the only difference that the guidance would make would be that the organisers would be notified and added to the list of processions that take place in a particular area.

Jeremy Purvis: You mentioned road closures, which many marches involve, either on trunk or local roads. Apart from only a couple of the common ridings, the rest require road closures. As you will be aware, separate guidance on road closures has been discussed in the transport department. Have you considered that guidance, which has not been implemented throughout Scotland, but is nevertheless live?

Would not it be better to tear up that other guidance and have overall guidance so that any organiser or community may consult best practice on marches and parades notification as well as information about road closures? Few marches or parades do not involve them both, so it seems burdensome to have two separate sets of guidance from two Executive departments with their different timescales and formats.

Callum Percy: The guidance to which you refer has been around for some time—since 1984, I think. We will have a word with our colleagues and see where we can go with that.

Jeremy Purvis: Just for clarification, the guidance is a bit more up to date than that. Dumfries and Galloway proposed guidance—

Callum Percy: Yes, the guidance was re-issued recently. We will certainly work with our colleagues on that.

Jeremy Purvis: I would be grateful for that.

Alastair Merrill: We will ensure that we look at that matter before the next iteration of the guidance.

The Convener: In the minister's letter to us, he said that he was happy to refer back to existing guidance and that he sought only to add provisions to the bill to deal with potential difficulties in communities.

COSLA is somewhat exercised about costs. Are you in a position to make any comment about that?

Alastair Merrill: All I can say is that we have seen no evidence to suggest that there is a need to revisit the costings that we produced in the financial memorandum. I accept fully that those costings were based on a number of assumptions that are open to debate and dispute, but we have not seen concrete evidence from COSLA on what councils would have to do over and above current requirements and current good practice as a result of the bill.

The Convener: Have you seen a copy of the letter from COSLA to the committee? Perhaps it has not been circulated.

Alastair Merrill: Yes—I have it somewhere in my enormous bundle of papers. I do not attempt to dispute the estimated costs from the bloody Sunday march, but the letter demonstrates what is going on already. It is not clear what COSLA claims it would have to do additionally to police and organise a march after the bill has been passed that it is not already doing. COSLA refers to one of the most difficult and contentious marches. We sent observers along to that march to discuss its handling and policing.

The Convener: I appreciate your evidence, but will you go back to the working group and request a letter from it to the committee outlining the costings arguments? COSLA has written to me, so I would like to be able to respond, having had something in writing from your good selves.

Alastair Merrill: I will certainly send something in writing, but it will not be from the working group because members of the group have to agree to differ on the costings. As you are aware, COSLA representatives are key members of the group.

The Convener: I take your point. In the absence of any other questions, I thank you both for making yourselves available this afternoon.

We will have a five-minute suspension while we assemble the minister.

14:36

Meeting suspended.

14:40

On resuming—

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

The Convener: The next item is day 4 of stage 2 consideration of the Police, Public Order and Criminal Justice (Scotland) Bill. Today the committee will not go further than section 82. If we do not reach that section, consideration of amendments will be carried forward to our next meeting, which is on 18 April. I welcome the minister and his team. I am grateful to the minister for attending, as I gather that he has had a little episode of health difficulty. Paul Martin has indicated that he expects to attend for those amendments that concern him directly. Colin Fox has apologised for the delay in his attending this afternoon's meeting. He intends to join us as soon as he can. I remind members that, because of the recess, the final lodging date for amendments to be considered at our next meeting is tomorrow, 29 March, at noon.

Section 69—Increase in maximum term of imprisonment for certain offences

The Convener: Amendment 2, in the name of Stewart Maxwell, is grouped with amendments 2A, 233, 3, 3A, 234, 202, 203 and 235. I will put the questions on amendments 2A and 3A before the questions on amendments 2 and 3, respectively.

Mr Stewart Maxwell (West of Scotland) (SNP): Amendments 2 and 3 are relatively straightforward. They follow the same logic that the Executive has used in sections 69(1), (2) and (3). Sections 69(2) and (3) in effect double the sentence for possession of a sharp implement—a blade or knife—in a public place from two to four years for those who are convicted on indictment. Although I welcome that provision, why should we double the sentence for convictions on indictment but not for convictions in summary cases? As the Executive is aware, the latest available figures show that there were approximately 2,800 convictions for the offence, of which 42—approximately 2 per cent—were on indictment. Two of those convicted on indictment received the maximum sentence. The other 98 per cent of convictions would be left untouched by the bill.

I am aware that the Executive has said publicly that it supports extension of the sentence for summary convictions. This is the perfect opportunity to do that. If the Executive believes that it is right to use the bill to double the sentence for convictions on indictment, it is logical for it to do the same for summary convictions. The Executive is using the bill to amend section 49(1)(b) of the Criminal Law (Consolidation)

(Scotland) Act 1995; I suggest that we also amend section 49(1)(a). The bill amends section 49A(5)(a)(ii); I suggest that we also amend section 49A(5)(a)(i). The effect of those two simple amendments would be to double the sentence for summary convictions from six months to one year.

I doubt that I will be persuaded to support amendments 2A and 3A, as I think that doubling the sentence from six months to a year probably strikes the correct balance, but I will wait to hear Jeremy Purvis's arguments. I will also be interested to hear what other members and the minister have to say.

I move amendment 2.

14:45

Jeremy Purvis: No one can be in any doubt about the scale of the problem of knife crime in Scotland. All committee members were struck by the presentation that was given to us by Dr Michael Sheridan and Dr Jean Moller. It is worth repeating the statistics from their research. In 2003, 72 murders with sharp implements took place in Scotland and 193 attempted murders involving a knife took place in Strathclyde alone. Those are the bare statistics. Underlying those statistics are many individuals with deep problems, chaotic lifestyles or just an inability to go out on a Friday night without an extremely dangerous weapon. Therefore, not only the criminal element but the societal problem needs to be dealt with.

The suite of amendments in my name, which are connected, aims to shift the debate towards using our criminal justice system flexibly. Amendment 2A would amend amendment 2, in the name of Stewart Maxwell, by increasing the maximum term of imprisonment to 18 months. Amendment 233 would increase the maximum sentence on indictment to seven years.

Far from seeking to become involved in a bidding game in which individuals or parties try to appear to be tougher than others are on sentencing, I have linked those amendments to amendment 235, which introduces a new concept in sentencing. That new concept is the custody and behavioural order, which is essentially consistent with the recommendations of the Sentencing Commission for Scotland. The commission recommended that we move away from simple custodial sentences to which no conditions for release or other conditions are attached when the sentence is handed down by the sheriff. Those conditions could include, for example, a community sentence model that is attached to a custodial sentence.

Within the window of seven years that amendments 233 and 234 propose for possession of a knife or sharp implement in a public place or school, both a custodial and a community sentence could be imposed that would be shaped around the individual's offending behaviour. Amendment 235 would allow the court flexibility in deciding whether a custody and behavioural order was appropriate for an individual and what conditions should be required to rehabilitate the individual in the community. Such a flexible option would allow sheriffs to hand down, for example, a two-year custodial sentence and a five-year community sentence the latter of which included attendance on a programme. The programmes might deal with anger management or with other aspects of the offending behaviour for individuals with chaotic lifestyles. For example, training or housing interviews could be required.

I hope that the minister will accept that I have lodged my amendments in good faith as a way of moving the debate beyond simply stating what the maximum sentence should be. As Stewart Maxwell said in an intervention during the stage 1 debate, the issue is not just about increasing sentences. I want to move the debate on.

If the minister can respond positively by confirming that such criminal justice measures will be considered as a way of taking forward the Sentencing Commission's recommendations, I will not press my amendments at this stage. However, I will reserve the right to lodge them again so that it can be established whether Parliament considers that simply extending sentences is the right way forward or whether there is a cross-party consensus in the Parliament on the need for sentences with additional measures attached that will help individuals, make communities safer and ultimately be more effective.

I move amendment 2A.

Bill Butler: I welcome the opportunity to debate these serious matters. We all realise the seriousness of the subject that we are discussing.

Amendments 2A and 3A, in the name of Jeremy Purvis, would increase the maximum sentence for possession of a knife from the 12 months that is proposed by Stewart Maxwell to 18 months. I understand Jeremy Purvis's good intentions in lodging the amendments, but I have two problems with them. If an offence is worthy of an 18-month sentence, should it not be moved up? Why is it to be subject to a summary trial? If we agree to amendment 2A, will that not create a variety of maximum summary sentences? That is a consequence that we would not want, although I am sure that it is unintended.

A few things strike me on amendment 235, which concerns custody and behavioural orders. One is that there might be a problem with the process, because there has been no consultation on the proposal, which in effect would introduce a

new sentence. Because we have not consulted on it, there is no indication of the cost of setting up and supervising the rehabilitation programme that Jeremy Purvis outlines. If an offender who is subject to a custody and behavioural order is not eligible for early release, what incentive is there for them to engage in the rehab programme?

That said, we should reflect on some of the issues that Jeremy Purvis has ingeniously brought before the committee. However, there are too many unanswered questions for me to be able to support the amendments in his name.

Jackie Baillie: I concur with those remarks. Provisions on knife crime deserve substantial consideration, but no evidence was presented on Jeremy Purvis's proposals at stage 1. Although I acknowledge his intentions to move the debate on, I am concerned that one of the unintended consequences of extending the penalty on indictment for possessing a knife to seven years would be to signal that we treat knife crime and gun crime in exactly the same way. The difficulty with doing that is that it might have the undesirable effect of causing young men to decide to run around with guns instead of knives because the penalty is identical. I do not think that that is the intention, so we need to reflect further on the proposal.

There is a degree of logic to amendments 2 and 3, in the name of Stewart Maxwell, in that they mirror the bill's provisions on knife crime that is dealt with on indictment. We look forward to hearing what the minister has to say about that.

Maureen Macmillan (Highlands and Islands) (Lab): I have a question for Jeremy Purvis on amendment 235. We already have rehab services in prisons and the Management of Offenders etc (Scotland) Act 2005 is meant to roll those services out into the community once a prisoner has been released. What difference does Jeremy Purvis see between his proposals and those in the act, which will soon be implemented?

I will comment on amendments 2 and 3. We like to have our legislative proposals neat, tidy and waiting for the most suitable bill to put them in. In the past, I have persuaded the Executive to put into a bill something that it was holding for another day, so I am interested to hear what Stewart Maxwell has to say and whether he can persuade me to vote for amendments 2 and 3.

The Convener: I had some concerns about the fact that the costings of custody and behavioural orders were not presented up front for us to debate and test. Some interesting ideas are being floated, but the practicality of legislative proposals is always in my mind because, once something is on the statute books, unintended consequences might arise. That point would have been ironed out, I hope, had we had an opportunity to consider the proposal a little more clearly.

The Deputy Minister for Justice (Hugh Henry): Clearly, committee members have raised a number of issues and I sympathise with most of what has been said. I think that we all agree that we should strengthen the law on knife crime where possible. However, to echo a comment that the convener made about unintended consequences, we also want the law to be effective in practice. Stewart Maxwell asked why we are acting on indictment cases but not on summary cases. The answer is, of course, that we are also acting on summary cases. We are doing so in our summary justice bill—the Criminal Proceedings etc (Reform) (Scotland) Bill—which is intended to come into force only a few months after this bill.

Our logic is that the best way to address the issues is by looking at them not just neatly but coherently. We might have been tempted to jump in for the sake of getting a couple of months ahead of our summary justice bill, but I think that we might have been accused of opportunism had we chosen to do that. We are not opposed at all to what Stewart Maxwell proposes; it is a matter of how best to deal with the issue. If Parliament decides to accept what Stewart Maxwell proposes, we might need to do some tidying up of language and coherence in our next bill, but that would not be an insurmountable problem.

I will be guided on this by the committee's thoughts. Does it prefer to take the coherent and logical approach and deal with the sentencing issue in our summary justice bill? Alternatively, would the committee rather deal with the issue now and have sentencing changes implemented in this bill some months ahead of the summary justice bill? If the choice is the latter, we will make whatever adjustments are necessary.

I move on to Jeremy Purvis's amendments. I understand his position and, indeed, I would agree with him on most of the issues that he raises. However, I am not sure that I agree with him on how we should address the inconsistencies to which other members have referred. That is not to trivialise or minimise the implications of knife crime or, indeed, the extent of it, but I worry that we might send out a message that those carrying a gun will be dealt with in the same way as those carrying a knife. I would not want Scotland to develop the same culture, bad habits or outrageous activities that we see in other parts of the United Kingdom.

I spoke yesterday to police officers in Greenock whose view is that if the proposed sentencing changes were made, there would be the potential at least for people to start looking at the carrying of guns and knives in the same way. That is not something that we can be definitive about—we

would find out only after the event—but I am not sure that it is worth the risk. It is right that we give out a serious message that carrying guns, whether pistols or semi-automatics, is not acceptable. Serious sentences are already available for gun use.

I think that Bill Butler is right about trying people on indictment. If the Crown Office thought that an offence was sufficiently serious to merit a sentence that went beyond the 12 months that is available to a summary court, I would have thought that the logic would be to try the person on indictment and, indeed, in a court where the penalty might be more than 18 months. I worry that if the amendments were agreed to, potentially serious offences might go to the wrong court and thereby attract sentences that might not be justified in the circumstances. Bill Butler is correct to suggest that our summary proceedings would contain a stark anomaly, because the only offence that would attract a sentence of 18 months would be that of possessing a knife. That would significantly change the nature of our summary courts.

15:00

We are not being complacent or disagreeing on the extent of sentences. Most people agree that tougher sentences are needed but, if we agreed to the amendments in the name of Jeremy Purvis, some issues would need to be teased out carefully. The matter that Maureen Macmillan raised would also have to be reflected on. We are not disposed to accept what Jeremy Purvis proposes, although we share his view on the signals that the Parliament needs to send and on how we deal with serious crime, which knife crime is. However, we have a duty to deal with it coherently.

Further work needs to be done on probation and custody orders. Who has responsibility might have been misunderstood. Once an individual is in prison, it is not the court but the Scottish Prison Service that is responsible. If we agreed to the relevant amendments, we would create confusion about who should be responsible for varying something. I am also not persuaded that varying a sentence after it has been imposed is necessarily the right thing to do.

Convener, I do not know whether to deal with Colin Fox's amendments.

The Convener: Colin Fox gave apologies, which I tendered on his behalf. However, he has now appeared in time, so I will allow him to speak to the amendments in his name, after which other committee members and your good self will be able to speak to them.

Hugh Henry: In that case, I will leave my comments at that.

The Convener: I ask Colin Fox to speak to amendments 202 and 203 and to the other amendments in the group. I remind committee members that we will treat these remarks as if they had been made at the appropriate time.

Colin Fox (Lothians) (SSP): Thank you for accommodating me, convener. I apologise to the committee and the minister for not being present earlier.

The purpose of amendments 202 and 203, like that of the other amendments in the group and of the bill, is to address the incidence of knife crime, the carrying of knives and sentencing policy thereon. The approach that I have taken is to suggest that sentencing policy alone will not solve the problem, which is deep-seated, cultural and habitual.

Amendment 203 takes the alternative view that we are dealing with a deep-seated cultural problem that has been with us for a long time. One aspect of the debate is that the problem is far greater in the west of Scotland, although it is not exclusive to that area. I am mindful that in the Lothians, for example, incidents of aggression and violence occur and people often resort to violent measures. However, I am struck by the difference between the incidence of knife crime on Lothian Road in Edinburgh on Friday and Saturday nights and its incidence in the centre of Glasgow or in the west of Scotland. That makes it clear that the problem is cultural, habitual and deep-seated throughout the country, but particularly in the west of Scotland.

Amendments 202 and 203 reflect my view that sentencing policy will not change that. Measures such as doubling the sentence are not the answer. I have tried to suggest that we address the problem by persuading young men that to carry a knife does not make them hard and that, in fact, the opposite is true. We must break such habits. Amendment 203 seeks to provide a disposal that will address what makes young men carry knives and resort to doing the things that they do. It offers the court an alternative to sending them to jail because, once they are in the penal system, they are like hamsters on a wheel—they go round and round and have little opportunity to change. The disposal that I have proposed is the imposition of an order that would allow men in that situation—it is men whom we are talking about—to be sent for counselling that addresses why they carry knives and seeks to break that cultural habit.

The Convener: Do you wish to say anything about any of the other amendments in the group?

Colin Fox: For some of the reasons that I have just given, I am not attracted to the proposal to

increase the sentence that can be imposed. I do not think that doubling the sentence in summary courts is the direction in which we should go because I am not sympathetic to the idea that that will change people's behaviour. It is clear from the evidence that the committee received that the sentence that can be imposed does not register in the mentality of young men in Scotland who go out carrying a knife. For those reasons, I oppose the plans to increase sentences.

Bill Butler: I have listened with interest to what Colin Fox has said and believe that it contains a great deal of good sense. His proposal addresses a side of the equation that I think we would all agree needs to be addressed. The chilling evidence that we took from Chief Superintendent Carnochan at the Strathclyde police violence reduction unit will stay with me and, I am sure, all the members who listened to him. He told us that, especially in west central Scotland, some young men have no idea of social skills such as compromise, are not able to walk away and do not know how to iron out problems other than by resorting to violence. We can all agree that if we are to find a solution to the problem, that side of the equation definitely needs to be addressed.

However, I part company from Colin Fox on account of his failure to tackle the other side of the equation, which we must do through condign punishment. By that, I do not mean punishment that is unnecessarily severe or inappropriate; I simply mean appropriate punishment. The imposition of such punishment is part of the process of thinking about the victims of crime. To leave out that element by simply emphasising rehabilitation is lopsided and, although Colin Fox's proposal is well intentioned, I just could not support it. We must deal with both sides of the equation.

The Convener: As no other member wishes to comment on the amendments in the name of Colin Fox, we will hear from the minister.

Hugh Henry: Colin Fox made a number of interesting points and identified several matters on which there is quite stark debate. He talked about cultural issues, but there are people who say that there are no cultural issues and that the problem should be described in a different way. However we describe it, it is serious.

Colin Fox said that a change in sentencing policy would not affect people's behaviour, but I would argue that sentencing policy must have a part to play in resolving what is happening. I do not suggest for a minute that a more severe sentencing policy alone will be sufficient. That is why we have created a national violence reduction unit and why we had a major conference in Glasgow yesterday to facilitate engagement with the wider public and with organisations throughout Scotland on what all of us can do to change the culture—or whatever we want to call it.

Colin Fox suggested that the sentence that can be imposed does not register when a young man goes out with a knife but, frankly, it should. It would be remiss of us to say that our approach to sentencing is that if a crime does not register as serious, we will not bother with it at all. Society needs to know that we are taking the issue seriously; the message might get through eventually. There is much more debate to be had about how we tackle knife crime. What can we do about behavioural and societal interests and issues? What can we do through the use of the legislation? What can we do to make the public feel not only that they are being protected but that they can influence what should be done?

On the one hand, there will be those who argue that we should go much further and that carrying a knife should carry a mandatory sentence. There are those who suggest that there should be longer sentences. Whatever we do, we need to reflect on the interests of those whom we represent and on what we as legislators can do to make improvements so that Scotland is a much safer place. We also need to try and engage the wider society that has an interest in the issue, whether it be a victim or the family of a victim; the family of someone who foolishly carried a knife and is now having to pay the penalty; or the organisations that seek to help to rehabilitate offenders and turn them away from their violent actions. Each and every one of us has some degree of responsibility to contribute to that.

My final point is about amendment 203, which would cause some problems. As it stands, the bill deals with the type of situation that Colin Fox describes, but I am not sure that it is right to make it mandatory. That could cause some confusion about appropriate sentences and I would not want something that is effective to be used inappropriately.

Mr Maxwell: I will not keep the committee very long. On Jeremy Purvis's amendment 235, Bill Butler, Maureen Macmillan and Jackie Baillie raised entirely appropriate points about evidence, consultation, costs and the fact that there is a new sentence on which we did not take any evidence at stage 1. Amendment 235 contains interesting ideas, and perhaps it should come back to the committee later. If we had had more time to discuss it at an earlier stage, we might have come to a different conclusion, but I will not support amendment 235.

On amendment 202, we heard evidence about balancing the stuff that Colin Fox talked about on one hand, and appropriate sentencing for those who carry knives in public and use them on the other. It is entirely appropriate that we consider

sentencing. Jeremy Purvis's comment that it is not all about sentencing was also appropriate. That is why amendments 4 and 7, to which we will come, and the things that we do outwith legislation are extremely important. We are talking about the balance between the bill and the amendments that deal with sentencing and giving information to the police—we will talk about that in a moment—and trying to change the culture.

The structure of legislation, the rules that we put in place and the acceptability or otherwise of certain types of behaviour help to change the culture. Society must speak with a single voice, using legislation and sentencing.

I am greatly concerned about Jeremy Purvis's proposal to change the indictment maximum from four to seven years, not just because of the gun element that the minister and Jackie Baillie mentioned, but because other serious crimes would effectively be downgraded in the public's mind. I do not want to pick out particular sentences, but I will mention one. Often, people who rape women receive sentences of approximately seven years, or sometimes shorter. Although carrying a knife in public is very serious, it is not as serious as rape, so I would be concerned about bringing the sentences for the two offences into the same ballpark. I could not accept that.

15:15

Maureen Macmillan and the minister asked why we should insert my proposed provisions into the bill now. I will break down the figures, some of which Jeremy Purvis mentioned earlier: there are approximately four attempted murders with a knife in Strathclyde every single week and 72 murders a year, which is more than one a week.

Although I accept the minister's point that legislation to change sentencing powers in summary cases will follow just a couple of months after enactment of the bill, the logic of including provisions to change sentencing in indictment cases in the bill suggests that we could also include provision for summary sentencing. If that would deal with some of those who carry knives and commit crimes in the intervening eight or nine weeks—or however long it is—we should act sooner rather than later, assuming that it would not cause inordinate problems in the forthcoming legislation, as the minister suggested.

I think that the minister said that he was open-minded about making slight changes to the Criminal Proceedings etc (Reform) (Scotland) Bill to accommodate my proposals. I hope that the committee will support amendments 2 and 3.

Jeremy Purvis: I will respond in order to members' comments, which I appreciate. The first questioned whether my amendments would create a variety of maximum sentences in summary cases. In advance of seeing the Criminal Proceedings etc (Reform) (Scotland) Bill, the short answer is yes, they would. Maximum sentences would be defendable in knife cases, in terms of both summary justice and having a maximum—not a mandatory—sentence of seven years in cases of indictment. If there are to be four attempted murders this week in Strathclyde, it would be a good message for this Parliament to send out that not only is knife crime on a par with gun crime, but it is a greater danger to society.

The bill proposes that the maximum sentence for possession of a knife should be one year less than the mandatory sentence for possession of a gun. There has been little comment about how that maximum sentence, which is very similar to the sentence for possession of a gun, would send out a signal that we are effectively downgrading the seriousness of carrying a gun. I do not accept that.

As regards cost, my proposed new section 245JA(4)(b) states that appropriate rehabilitation programme arrangements would have to exist before a court could make a custody and behavioural order. The cost implications would be minimal, because an order would be made by a sheriff only if they were satisfied that the arrangements for a rehabilitation programme already existed in their area. That comes down to the choice of the sheriff.

The minister asked whether it would be right to allow a sheriff to attach conditions to someone's sentence. We need to have that debate. Given the Audit Scotland report on rehabilitation programmes in jail and our consideration of the Management of Offenders etc (Scotland) Bill, I would like to see greater consistency in sentences passed by courts and imposed by the Scottish Prison Service and criminal justice social workers in the community. That is the thrust of the Management of Offenders etc (Scotland) Act 2005.

Members will recall from debates in the chamber and our consideration of the Management of Offenders etc (Scotland) Bill that I argued consistently for greater use of conditions on release for prisoners.

Amendment 235 is consistent with drug treatment and testing orders as well as with supervised attendance orders for individuals. It would send out a message and be the right way forward. I would have liked to hear the minister say that increased sentences and custody and behavioural orders would be taken forward, but I did not. I would like to test the committee on all my amendments, on the basis that they are consistent

with what I have been arguing for for more than a year.

Notwithstanding the minister's comments about the detail of amendment 235, I would like to test the view of the committee. Ultimately, amendment 235 would put into the sentencing regime what Bill Butler has asked for—individuals would understand that learning to compromise and to walk away, as well as anger management education and specific drugs and alcohol programmes, should be part of our criminal justice sentencing regime.

I press amendment 2A.

The Convener: The question is, that amendment 2A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

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

Amendment 2A disagreed to.

Amendment 2 agreed to.

Amendment 233 moved—[Jeremy Purvis].

The Convener: The question is, that amendment 233, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

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

Amendment 233 disagreed to.

Amendment 3 moved—[Stewart Maxwell].

Amendment 3A moved—[Jeremy Purvis].

The Convener: The question is, that amendment 3A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

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

Amendment 3A disagreed to.

Amendment 3 agreed to.

Amendment 234 moved—[Jeremy Purvis].

The Convener: The question is, that amendment 234 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

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

Amendment 234 disagreed to.

Amendment 202 moved—[Colin Fox].

The Convener: The question is, that amendment 202 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 202 disagreed to.

Section 6, as amended, agreed to.

After Section 69

Amendment 203 moved—[Colin Fox].

The Convener: The question is, that amendment 203 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 203 disagreed to.

Sections 70 and 71 agreed to.

After section 71

The Convener: Amendment 4, in the name of Stewart Maxwell, is grouped with amendment 7.

Mr Maxwell: The comment was made on the previous grouping that the bill is not about just sentencing. I could not agree more. Amendment 4 is not a sentencing measure, but would have an impact on how we deal with knife crime in our society.

One of the most enlightening pieces of evidence that the committee heard was the presentation by Dr Michael Sheridan and Dr Jean Moller, who graphically illustrated the problem of violence and knife crime, especially in the west of Scotland. Some of the statistics that they shared with us have been mentioned already. There were 137 murders in 2005, 72 of which were carried out with a sharp implement. In Scotland, there are approximately 22 victims per million people, but in Glasgow there are 55 victims per million people. Clearly, there is a problem in the west of Scotland and in Glasgow. Dr Sheridan's research from 2004 showed that the police were informed only 53 per cent of the time—in other words, effectively, they were aware of only half of the non-accidental knife injuries that were known to medical staff. One of the conclusions of the presentation was that

"data that have been collected from emergency departments can provide valuable and accurate information about violent crime and give an insight into how to implement effective change."—[*Official Report*, *Justice 2 Committee*, 17 January 2006; c 1937.]

It is extremely important for the committee to remember that when considering amendment 4.

Over and above that, there have been other pieces of research. Dr Rudy Crawford of the Glasgow royal infirmary has stated that although in 2003 the staff at that hospital treated between 700 and 1,100 patients who were the victims of knife assaults, police statistics for the same year recorded only 404 incidents of knife crime. According to Dr Crawford, the "true prevalence" of knife crime is

"two to three times what the reported statistics show".

Clearly, there is a discrepancy between what we know and the reality of the situation. When Detective Chief Superintendent John Carnochan gave evidence to the committee, he told us that, in his view, only one third of crime-related injuries at accident and emergency departments are ever reported to the police. He also told the committee that it remains difficult for the police to combat crime—specifically knife crime—when they do not know the true extent of the crimes that have been committed.

As committee members are aware, I did some research on the issue last year and earlier this year. A survey of accident and emergency department doctors showed that they reported non-accidental knife injuries that they came across directly to the police on only 21 per cent of occasions. There is a big variation. However, we have evidence from other parts of the world of what happens when a mandatory reporting system is introduced, including specific evidence from Cardiff. When a system such as I am suggesting was introduced in Cardiff, the number of injuries that were reported to hospitals there was cut by approximately a quarter. The system had quite a significant impact on the number of knife injuries in Cardiff simply because the police were fully aware of what was going on and could effectively and efficiently target their resources at dealing with the knife crime and knife carrying that was happening.

The Scottish Police Federation supports amendment 4. In reply to a letter from me, the SPF's general secretary wrote:

"I have consulted police officer representatives throughout Scotland on the practical merits of your proposal and am now able to say that such an amendment would be supported by the Scottish Police Federation."

He went on to say:

"The practical aspects of having and acting on this type of information would assist the aim of violence reduction and is therefore supported by police officers."

Amendment 4 is not prescriptive: it does not force the registering of non-accidental knife injuries on those areas in which there is no problem. In other words, it provides flexibility. It does not make registering such crimes mandatory in parts of the Highlands and Islands, where I imagine that there is less of a problem, but it

allows ministers—after full consultation—to introduce a system and target that system at where the problem lies. We all accept that the main problem is in Glasgow, the west of Scotland and parts of central Scotland. Nevertheless, in other areas—some of the larger cities, perhaps—the introduction of such a system would be relevant.

Given that we know how little we know, in terms of statistics and research, about knife crime, the injuries that are caused by it and the impact that it has on our society, and in light of police support for amendment 4 and the impact that a system such as the one that I propose has had in Cardiff, I ask the committee to support the amendment. Amendment 7 is a consequential amendment.

I move amendment 4.

15:30

Colin Fox: Attached to the minister's letter to the committee of 16 March is an example of an assault survey sheet. It is designed to be filled in anonymously, which is important. I would have a problem if health workers were to become embroiled in the detection and reporting of crime and I would like Stewart Maxwell to reassure me in that regard in relation to his amendment.

I would also like Stewart to say whether he thinks that there is a case for waiting until the details of the pilots in Cardiff and elsewhere are studied before we press ahead with the proposal in the amendment. Nobody on this committee doubts that the incidence of knife crime is way higher than the reported level. However, I have some concerns about drawing health workers into the situation by making them supply names, addresses and so on. I think that that is a role for the police.

Hugh Henry: I understand Stewart Maxwell's motivation and what he is trying to achieve, but I cannot support amendment 4.

I agree that the underreporting of violent crime needs to be addressed. I know that the violence reduction unit in Glasgow is working closely with officials in the Executive and colleagues in the national health service and local government to develop effective ways to increase the number of violent crimes that are reported.

Stewart Maxwell spoke about the Cardiff pilot being mandatory. However, I understand that it is not statutory, which the scheme proposed by amendment 4 would be. I also understand that the police generally support the collection of information and I am not sure that, following adequate consultation, they would support the amendment.

Colin Fox suggested that we might wait until the conclusion of the Cardiff study before making a decision. However, we already have two pilot studies on this issue—one in Glasgow and one in Paisley, at the Royal Alexandria hospital. So far, those studies have thrown up some interesting information. They have shown that tremendous care would have to be taken about how data are collected. At the start of the Paisley pilot, clinical staff tried to collect data by means of a questionnaire, which patients were asked to complete voluntarily. The decision as to whether a patient fell into the category to which the questionnaire would apply was, necessarily, made by the patient, not the practitioner. However, that approach did not work and very few, if any, patients were willing to fill in the questionnaire. Now, a survey-based approach has been adopted, similar to the one that is in use at Glasgow royal infirmary, which involves medical staff providing data on a patient to the best of their ability. Clearly, not all the relevant data will be available to medical staff but, given the current concerns about the lack of information, any data that can be collected would be useful.

We are fully behind attempts to collect information that would be helpful not only to the police but to local authorities when they are trying to work out strategies to reduce or eliminate violence in certain areas. Once we have seen the results from the pilots in Scotland, we might be better placed to consider how we can develop the approach. There is support for it in principle but there are questions about the way in which such work can be done.

We must also reflect on other practical factors involved in underpinning the system by statute. How would such a system affect the responsibilities of accident and emergency staff and how might they be perceived by potentially violent or abusive patients? We would not want to set up an onerous system that diverted staff away from their main responsibilities, which are to save lives and deal with injuries. Whatever we do as a result of the pilots, a commonsense approach is needed. We would also have the peculiar situation that the reporting of gun crime would not be underpinned in statute—that is done voluntarily at present—but the reporting of knife crime would be. To some extent, the situation is the reverse of the one that we discussed in the debate on the previous group of amendments.

We should by all means get as much information as we can and consider how best that can be done. However, we should be aware of the sensitivities for the staff who work in accident and emergency units. Let us find out what the collection of information on a voluntary basis, as happens for gun crime, can achieve. We will evaluate the outcome of the pilots. We support the

measure in principle, so we do not reject Stewart Maxwell's proposals out of hand; we merely suggest that amendment 4 is not necessarily the best way in which to achieve our aims and that we should reflect carefully on the results of the pilots that are being undertaken.

Mr Maxwell: To answer Colin Fox's question, as I probably should have said in my opening remarks, the intention is to have an anonymised survey system. The power to make regulations would lie with the Executive. All our discussions and all the information from ministers have been based on having an anonymised survey system, treating the issue sensitively and not putting staff in a difficult or dangerous situation. The aim is to provide information to the police about where and when crimes take place and what groups of people are involved. The information would be anonymised, but it would give the police intelligence to allow them to take appropriate action. I am sure that that is the intention of the present pilots at the RAH and in Glasgow. The minister is right that the Cardiff pilot is not on a statutory footing, but that does not necessarily mean that ours should not be.

I understand the point about the slightly strange anomaly that the reporting of gun injury would not be statutory, but I have two points on that. First, I am sure that we could amend the bill at stage 3 to sort that problem. Secondly, the reason why I did not include such a measure in amendment 4 is that neither the police nor the doctors who gave evidence at stage 1 thought that there is any problem with the reporting of gun crime. They were asked specifically about the difference between knife and gun injuries, but they saw no problem with the reporting of gun injuries. It therefore did not seem particularly appropriate or useful to include in the amendment injuries from guns or other firearms. However, I accept that there would be a slight variation in our approach.

I consulted the Scottish Police Federation. As it claims to represent 98 per cent of police officers in Scotland, it seemed fairly reasonable to ask whether it agrees with amendment 4. The SPF saw the amendment and took several weeks to consider how it would fit in the bill and how the system would operate. The organisation has no problem whatever with the measure and has made it clear in writing that it supports amendment 4.

The intention is not to make the system onerous for staff. Instead, the amendment gives the ministers flexibility to make, after consultation with everyone involved, regulations establishing an anonymised system that would fit in with the jobs that hospital staff carry out without making things onerous for them or putting them in danger and which would provide information that the police require.

The minister has made it clear that the Executive does not support amendment 4. However, am I right in thinking that he at least supports the intention behind it and that, although my suggested route might not be appropriate, he believes that at some point medical staff in hospitals will have a means of reporting information to the police?

Hugh Henry: We accept the principle of providing such information, as it can be useful. However, we would prefer to wait for the results of the pilots, after which the Executive and Parliament can discuss the matter again and reach a considered view.

Mr Maxwell: Given the minister's assurances that the Executive will press ahead with this matter on the basis of the information from the pilots—which I am confident will be positive—I will withdraw amendment 4.

Amendment 4, by agreement, withdrawn.

Amendment 235 moved—[Jeremy Purvis].

The Convener: The question is, that amendment 235 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

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

Amendment 235 disagreed to.

Section 72 agreed to.

After section 72

The Convener: Amendment 205, in the name of the minister, is grouped with amendments 205A, 205B and 232. I remind members that I will put the question on amendments 205A and 205B before I put the question on amendment 205.

Hugh Henry: Amendment 205 seeks to take forward the suggestion in Professor Irving's report that the effectiveness of the sex offenders notification requirements would be improved if the police were provided with the necessary statutory powers to take DNA data and samples from sex offenders who are subject to those requirements if such samples had not already been taken after their arrest or detention in connection with an

offence, after their conviction, or in the event that the data had been lost or destroyed.

The new section proposed in amendment 205 will exist alongside the police powers in the Criminal Procedure (Scotland) Act 1995 to take prints and samples. Under the powers set out in the amendment, the police will be able to require a registered sex offender to attend a police station to enable prints and samples to be taken and, moreover, will be able to take that information from those in prison or in hospital. The new powers will enable the police to obtain further prints and samples if information is lost or destroyed. The new power, which is consistent with existing powers, will enable the police to arrest without warrant a sex offender who failed to comply with the new provisions and will permit the police to use, if necessary, reasonable force to take the data.

Amendment 205 also seeks to replace sections 87(4) and (5) of the Sexual Offences Act 2003 to enable the police to take DNA samples from relevant sex offenders who attend a police station for notification purposes in accordance with part 2 of that act. A person who does not comply with that requirement will commit an offence.

There are a number of people in Scotland who, although subject to the notification requirements of the 2003 act, did not have suitable prints or samples taken under the existing law. On some occasions, DNA samples of convicted sex offenders have not been taken before those offenders have returned to the community. In addition, although some British citizens and foreign nationals residing in Scotland have been convicted of a sexual offence in another jurisdiction and might be subject to notification requirements in this country, their DNA samples and fingerprints have not been retained on the national databases in Scotland. It is important to address that anomaly.

15:45

We have considered European convention on human rights issues relating to the taking of DNA samples and fingerprints from registered sex offenders. The key issue is whether the additional powers would interfere with the right to private life in a way that could not be justified. We are satisfied that the provisions are compatible with the ECHR in that respect and that they are proportionate. Although the new powers might raise issues of privacy for registered sex offenders, we do not think that they are any different in principle from the police's existing powers to take DNA samples.

DNA has proven to be a useful tool in helping the police to investigate and detect crimes of a sexual nature. Studies show that those who have committed a sexual offence are at risk of reoffending, even many years after their initial offence. The powers will act as a deterrent by making offenders realise that any future crimes could be detected more easily. They will also be effective in seeking to establish and verify the identity of registered sex offenders.

I believe that the powers are proportionate to their aims. An offender will be arrested under proposed new section 19AA of the 2003 act, or will commit an offence under the 2003 act, if they do not comply with the request to have their prints and samples taken. There is the safeguard that the police can use reasonable force in certain instances only with the authority of a senior officer. The powers will be exercised only against those who are subject to the sex offenders notification requirements—in other words, individuals who are subject to those requirements because of the increased risk that they pose to the public.

It is important to balance any interference with the private life of the offenders that the new requirements introduce against the information's importance in preventing and detecting crime and the gravity of the harm that sexual offences cause victims.

Amendment 232 makes a consequential change to section 19A(3) of the Criminal Procedure (Scotland) Act 1995, so that the subsection refers to the correct provision in section 19 of that act, which confers the power to take fingerprints and samples. Currently, the subsection refers to section 19(1)(a), when it should refer to section 19(2).

I turn to amendments 205A and 205B. I note and agree with much of what Bill Butler has said about this issue. It is vital that we do all that we can to close loopholes and make as robust as we can the safeguards that we put in place to protect the public from sex offenders and individuals who are suspected of being a danger to children. I understand why Bill Butler wants the police to have additional powers to take DNA from people who are suspected of being a danger to children. He has raised an important issue. However, whatever legislation we put in place has to work with the existing law on taking fingerprints and DNA samples and on restriction of sexual harm orders.

Amendments 205A and 205B take the proposal forward. However, they would need to be adjusted to ensure that the powers catch everything that needs to be caught and that they are proportionate. The Executive's amendment 205 gives the police the power to take data and samples from sex offenders from England, Wales and Northern Ireland who move to Scotland. Bill Butler's amendments would enable the police to

take DNA samples and fingerprints only from those who are subject to risk of sexual harm orders in Scotland. We think that it is important that consideration is given to empowering the police to take DNA samples from those who receive an RSHO in another part of the United Kingdom and who then move to Scotland. If we provide for that for people who are resident in Scotland, we should ensure that there is consistency.

Taking and retaining DNA from those who are subject to a risk of sexual harm order undoubtedly raises ECHR issues. The proposal could be justified as being necessary for crime prevention and the protection of others, particularly children, given that the court has assessed the individuals in question as posing a risk to society. However, it is important that further consideration is given to ensuring that any measures that are introduced are proportionate to the aims of taking and retaining DNA. A number of detailed operational issues will have to be considered before we put Bill Butler's amendments on to the statute book. I hope that he will reflect on that and agree not to press the amendments.

I move amendment 205.

Bill Butler: I move amendment 205A.

I was interested to hear what the minister had to say about both amendments 205A and 205B, the purpose of which is to allow samples to be taken from those who are subject to a risk of sexual harm order. The amendments could be made ECHR compliant. I do not think that the taking of samples interferes with article 8 of the ECHR, which states that any proposed interference with private life should be proportionate. Taking samples is a proportionate measure, especially when we consider that it is a way of trying to add further protection, especially of children. It could be argued that the taking of a sample would either deter persons from committing certain offences or causing harm or that it may assist in the detection of offences once they have been committed. I take the point that there has to be a balance with regard to intrusion into an individual's private life but the determining factor for me is the serious harm that is to be avoided.

I take the minister's point that amendment 205A needs more work. I would not want to press an amendment that would not work, even if I could get it through the committee. The minister has said that the way in which amendment 205A is worded would mean that it would be operable only in relation to persons subject to RSHOs in Scotland. That is not my intention, but if that is the unintended consequence, I would take serious note of it. I am grateful to the minister for pointing that out. I wish to take up the minister's offer of considering ways in which amendment 205A could be further refined and made to work. With the committee's permission, I wish to withdraw amendment 205A, to reflect on it and perhaps to lodge it again at stage 3.

Amendment 205A, by agreement, withdrawn.

Amendment 205B not moved.

The Convener: I bring the rest of the committee into the discussion. I am conscious of the pressure not to rush anything, in order to ensure that the legislation is correct.

Jeremy Purvis: I will speak to amendment 205 and to amendments 205A and 205B in reverse order. I very much support the intention behind amendment 205A. Bill Butler should be commended for the questions he asked in earlier committee meetings, for raising the issue and for introducing what I thought was a good amendment. However, I accept entirely his view that more work will need to be done on the amendment in order to address the minister's points.

I wish to ask the minister a couple of questions on amendment 205. Forgive me if the answer to the first question is in the amendment, but I cannot see it. For how long would a sample be retained? The minister clarified a point about sex offenders who were convicted in England but were now resident in Scotland. Does that also apply to European Union nationals? Finally, will a profile be derived from a sample taken from an individual, and if so, will the profile be given to the Scottish DNA database and the United Kingdom DNA database?

Mr Maxwell: I was going to support Bill Butler's amendment. He made a good case for it before and he did so again today. What it proposes is reasonable, but given what the minister said, it is entirely reasonable to wait and see where we are at stage 3. It may be that we will have the discussion then.

For clarification, will the power in amendment 205 be retrospective? Will it be possible to take samples from those who have been convicted previously, or will the power start from when the bill comes into force? I assume that it will be retrospective, but I want to clarify that.

Hugh Henry: I will respond to Stewart Maxwell's question first. The power will be retrospective. It will apply to anyone who is on the register.

In response to the questions from Jeremy Purvis, samples can be retained indefinitely; the power will apply to any European Union national; and the profile will be kept on both the Scottish database and the national database.

Amendment 205 agreed to.

The Convener: Amendment 206, in the name of the minister, is grouped with amendments 207, 208 and 231.

Hugh Henry: I suspect that the amendments will not be contentious, but I ask for the committee's indulgence because I want to put a number of things on the record for future reference.

Amendment 206 takes forward some of the suggestions that Professor Irving made in his report, "Registering the Risk". He believes that the effectiveness of the sex offenders register would be improved if the police could see registered sex offenders' passports and details of their financial affairs. He noted that the current requirement on sex offenders to furnish their name and address, date of birth and national insurance number is basic and inadequate. We agree. Part of the justification for the new requirement is that passports are useful to the police because they help to verify a person's identity. They can also be helpful in monitoring compliance with the regulations that we put in place in 2001, which require registered sex offenders to notify the police of their intention to travel abroad and to provide certain information about their trip. We are therefore amending the Sexual Offences Act 2003 to impose that requirement on them.

If the police can see an individual's passport, they will know the person's name, date of birth and passport number, the issuing authority, and the dates of issue and expiry. They will also have a photograph of the individual, which might assist with the immediate identification of the individual and help the police to see any marked changes in the individual's appearance. If the offender loses or ceases to have a passport, they will be required to notify the police of the circumstances.

Professor Irving also recommended that offenders should notify other personal details, such as leisure activities, main associates and telephone numbers. However, it was considered that, at this stage, it is difficult to justify a provision that sex offenders must provide the police with the further information that Professor Irving recommended.

The second important measure is the creation of the power for the Scottish ministers to make regulations under the affirmative procedure to extend the information that sex offenders are required to provide to the police under the notification regime. The power will be used to implement Professor Irving's recommendation that bank account details and credit card information should be notified. Bank details were an important element in operation ore, which targeted individuals accessing and downloading images of child pornography on the internet. Accessing and downloading such material carries a cost and the transactions were often confirmed by gaining access to bank accounts. Also, bank account details are generally considered to be a reasonable proof of identity.

Given the complex and detailed nature of those aspects of an individual's financial affairs, we think that it is more suitable to set out the provision in subordinate legislation. Accordingly, if amendment 206 is agreed to, we will move quickly to frame an appropriate set of regulations following royal assent. The regulation-making power will also allow Scottish ministers to extend the notification requirements to include other personal information. At present, there is no intention to add to the notification requirements in the 2003 act and the two recommendations from Professor Irving. In future, however, other information that sex offenders hold might help the police in the context of the general crime prevention purposes of the scheme.

16:00

We have considered the ECHR issues around notification requirements carefully. The key issues are whether the additional requirements could be regarded as burdensome enough to amount to a penalty, and whether they would interfere with the right to private life in a way that could not be justified. We are satisfied that the provisions are ECHR compatible in those respects.

Although the proposals will result in a greater burden being imposed on registered sex offenders, we do not think that the proposals are any different in principle from the current requirements—in particular, because of their relative lack of severity for registered sex offenders, and because they are directed at public protection and the prevention of reoffending. Passport information will be used to assist the police in verifying identity and monitoring compliance with travel notification. Bank account details will be of some material use to the police in preventing or detecting sexual offences.

It is important to balance the relatively slight interference with the private life of the offender that these new requirements introduce against the gravity of the harm that can be caused to victims of a sexual offence. We consider that the provisions strike that balance.

Amendment 207 amends section 96 of the Sexual Offences Act 2003. It will enable regulations made under section 96 to set out what information a person responsible for a sex offender can notify to the police and other relevant persons about that offender, and that a photograph of the offender can be provided.

Amendment 207 will help the police to identify sex offenders who have been transferred and

released and will help them to enforce the notification requirements, and it should further ensure that sex offenders who are released into the community cannot evade the arrangements that have been introduced to protect the public.

Amendment 208 will enable the police to apply for a warrant to enter and search an address that has been notified to them by a registered sex offender in Scotland. The amendment implements recommendation 19 of Professor Irving's report. It also goes some way towards implementing recommendation 48 of the expert panel on sex offending chaired by Lady Cosgrove.

The police currently carry out risk assessments on registered sex offenders to ascertain how likely it is that they will reoffend. The police endeavour to carry out those assessments in the home of the offenders in order to observe their surroundings. There is no statutory obligation on the offenders to comply with a request to carry out such a risk assessment. Although the compliance rate is high—and we acknowledge that—the police continue to be frustrated by a small, hard-core group of offenders who adopt an obstructive attitude and refuse to co-operate. This frustrates the risk assessment process and impedes the proper monitoring and supervision of those offenders.

Both the Irving and the Cosgrove reports have emphasised the value of visiting sex offenders at home to gather information for conducting a risk assessment. The reports said that the inability to do so was an impediment to the proper monitoring, assessment and supervision of offenders.

Amendment 208 does not give the police carte blanche to enter and search the premises of every registered sex offender in Scotland. An integral part of the powers is that the police will have to apply to a sheriff for a warrant to enter such premises. Before a warrant is granted, the police will have to satisfy the sheriff that it will assist the risk assessment process for them to gain entry and conduct a search of the house of an offender for the purpose of conducting a risk assessment.

The police will also have to confirm to the sheriff that they have tried on more than one occasion to gain entry to the relevant premises with the co-operation of the registered sex offender in order to carry out a risk assessment, but have not been able to do so.

We have considered the ECHR issues around giving the police the powers to enter and search the homes of registered sex offenders. Any power to enter and search the home of a registered sex offender raises issues of interference with privacy. However, we consider that the provisions are justified as they have the purpose of preventing crime and protecting the public by identifying the risks that an offender may pose. The police will be able to exercise the powers only if a court considers that they are necessary and justified for the purpose of carrying out a risk assessment.

The provisions are proportionate to the aims that they seek to achieve. A court will grant a warrant only if it is satisfied that the police have exhausted other methods of conducting a risk assessment, and that they have made attempts to gain entry to and search the premises for this purpose.

Amendment 231 makes a consequential amendment to the bill. It makes it clear that references to "the 2003 Act" mean the Sexual Offences Act 2003.

I move amendment 206.

Mr Maxwell: New section 83(5)(i) of the Sexual Offences Act 2003, which would be inserted by amendment 206, would require a relevant offender to notify to the police

"such other information, about him or his personal affairs, as the Scottish Ministers may prescribe in regulations."

The provision will give the Scottish ministers an extremely wide power. When the committee considered the recommendations about the information that should be provided, a requirement for information to do with passports and bank accounts was generally accepted as reasonable, but there was much debate about whether information on leisure activities and acquaintances, for example, should be required. Will safeguards be in place to ensure that regulations that would make changes to the information required of a sex offender will come before the Parliament for full discussion, given the sensitive nature of such regulations and the problems that might be associated with information of the sort that I described?

Jeremy Purvis: I appreciate the minister's comments on amendment 208, which makes provision for sheriffs to grant warrants to allow police officers to enter and search premises. He is aware that I expressed concerns about the issue and I would be grateful if he could expand on two matters. First, an offender who had refused entry to the police on previous occasions would have had the right to do so, given that the police would not have had a warrant to enter the premises. Secondly, new section 96A(6) will provide that

"A warrant under subsection (1) does not confer power to seize anything in the premises to which it relates."

If the purpose of the search is to assess the risk of a sexual offence being committed by the offender, would it make more sense to provide that a sheriff could grant a warrant to enter premises and seize material that might be used for evidential purposes?

Proposed new section 96A(7) states:

"A warrant under subsection (1) must be executed at a reasonable hour."

What is the rationale behind that? I would have thought that the police should be able to access premises when the individual is present. Will the warrant allow police officers to access and search premises when no one is in the property? The property might not be owned by the sex offender.

Hugh Henry: Stewart Maxwell set out scenarios that might cause concern, which I also mentioned. I share his concern, which is why we have said that any change to the kind of information that is required would be subject to the consent of the Parliament. We would seek the permission of the Parliament for any such change. However, that will not be the only safeguard; the sheriff can exercise safeguards on behalf of the individual when an application for a warrant is made.

On the matters that Jeremy Purvis raised, someone could legitimately refuse to grant entry to officers. However, we want the police to be able to carry out a risk assessment of people who are potentially dangerous. The vast majority of people co-operate with the police, but we are talking about a minority of people who refuse to co-operate, for whatever reason, which means that no proper risk assessment can be made. We should consider the consequences that might flow from that.

We think that it is reasonable to go to the sheriff to seek that power if, for whatever reason, the person is persistent in refusing to allow a risk assessment to be carried out in their own home. It needs to be carried out "at a reasonable hour." That would have to be demonstrated to the court. We recognise that there may be others in the property, but I would not want a sex offender to be able, because they have chosen to become a lodger with somebody or to have a sub-tenancy, to hide the fact that they are planning something.

We must consider carefully how the power is used and we must ensure that the rights of the individual are protected in relation to the other people in the house. A degree of sensitivity is required, but a point that came out clearly from Professor Irving's work is that there is a loophole in the way that we try to compile risk assessments on certain individuals.

Was there anything else?

Jeremy Purvis: The power to seize.

Hugh Henry: If the police believe that an offence is being committed when they enter a premise, they can use the normal powers that are available in those circumstances. If they do not believe that an offence is being committed, they have no right to seize any information. It is for the police to justify the use of the power if they choose to exercise it. The Crown Office and, ultimately, the court would consider the issue if the case got to that stage.

Amendment 206 agreed to.

Amendments 207 and 208 moved—[Hugh Henry]—and agreed to.

Section 73—Power to require giving of certain information in addition to name and address

The Convener: Amendment 209, in the name of the minister, is grouped with amendments 210 to 216.

Hugh Henry: Section 73 of the bill, as currently drafted, enables the police to ask a suspect for their date of birth and to require additional information about their place of birth and nationality.

We think that to entitle a police officer to require such information from a suspect about their place of birth and nationality is not sufficiently tight wording. We do not want to create a situation where the police can require a person to provide unnecessary information about the place they were born or about their nationality. We just want the police to be able to get the information that they need to identify the person accurately. Amendments 210 to 212 and 214 to 216 restrict the information that the police can request to a statement of the person's nationality and sufficient details of their place of birth to enable them to be identified.

One of the recommendations made by the summary justice review committee—the McInnes committee—was that the police should be entitled to collect more information than they currently can from suspects and from witnesses to a criminal case in order to facilitate contact with, and identification of, those associated with a case. Amendments 209 and 213 will ensure that suspects and potential witnesses can be effectively cited and easily contacted in order to minimise delay in cases and ensure that everyone turns up for court hearings. The changes proposed to section 13 of the Criminal Procedure (Scotland) Act 1995 already achieve that objective in respect of suspects. Amendments 209 and 213 further extend those provisions to allow a police officer to require a potential witness to an offence to provide their date of birth, place of birth and nationality in addition to their name and address. It will be an offence for a witness to fail to provide the required information without reasonable excuse, as is currently the case if they fail to provide their name or address.

The amendments in this group are particularly important, given the judgments in recent cases in the Privy Council that now place the Crown under

a duty to disclose certain material to the defence. In some situations, that will include the previous convictions of witnesses. Having someone's date of birth will make it possible to obtain criminal records without delay and with accuracy.

I move amendment 209.

Amendment 209 agreed to.

Amendments 210 to 216 moved—[Hugh Henry]—and agreed to.

Section 73, as amended, agreed to.

16:15

Section 74—Power to take fingerprints to establish identity

The Convener: Amendment 5, in the name of Stewart Maxwell, is grouped with amendments 6 and 204.

Mr Maxwell: Amendment 5, which is relatively straightforward, follows on from the debate at stage 1 and our evidence taking, during which concerns were raised about when and if samples are destroyed. We have confirmation that samples are destroyed, but the evidence continues to be rather vague with regard to the detail of when that happens.

The bill says that a sample should be destroyed "as soon as possible" after it has fulfilled the

"purpose for which it was taken."

I have no problem either with fingerprints being taken or with their being destroyed after they have fulfilled their purpose, but I am concerned that the situation appears to have been left open ended. If a sample has fulfilled the purpose for which it was taken, it should be destroyed not "as soon as possible"—which could be interpreted as whenever someone sees fit to get round to it—but within a prescribed time period.

In amendment 5, I suggest that a sample should be destroyed

"no later than 24 hours"

after it has fulfilled the purpose for which it was taken. It is entirely reasonable for samples to be destroyed immediately. The 24-hour timescale gives enough time for the manual or electronic record to be destroyed, and the proposal should cause no problem. I ask members to support amendment 5.

Amendment 6 addresses a different, albeit related, issue. The amendment seeks to remove section 74(6), which—in effect—makes it an offence for someone to refuse to allow a police officer out in the field to take their fingerprint. If someone disagrees with the officer that they were acting suspiciously or doing something that merited such a request and they refuse the request, they commit an offence simply by protesting their innocence. The measure is not reasonable. It is entirely reasonable for someone to refuse to give a fingerprint sample out in the field and they should retain that right. The police will still be able to act by taking the person to a police station and progressing things under the current rules.

Amendment 6 would not make the situation any less flexible for the police; their ability to act, in the street or wherever, would not be affected. If someone has been taken to a police station and, having protested their innocence, has been cleared, it is unreasonable that they should then be charged with the offence of failing to provide a fingerprint in the field or wherever.

If someone says that they are innocent—and it is proved that they are innocent and that the police officer was mistaken in his original belief—why is it possible for them to be charged with protesting their innocence? Frankly, that is neither reasonable nor fair. The police should be able to do their work in the field and to take fingerprints, but people must retain the right to protest their innocence, without being charged for so doing. I ask members to support amendment 6.

I move amendment 5.

Colin Fox: Amendment 204 seeks to delete section 74. I have a problem with fingerprints being used to establish identity. At present, suspects are asked to give their name and address, but they are to be asked to give fingerprints as well. I do not have any problem with the provision of fingerprints when evidence is sought, but it is over the top to ask people to provide fingerprints to establish their identity.

From the evidence that was given to the committee, I note that two concerns arise. First, the Scottish Human Rights Centre raised the question—which has some currency—whether fingerprint identification can conclusively determine identity. The second and more important concern is that the committee was presented with evidence to chew over about whether reasonable grounds for suspicion by a police officer would be supported on the basis of objective intelligence and information about the behaviour of individuals, rather than on the basis of personal characteristics such as age, race and sex. In that context, I am sure that nobody on the committee could help but think of the scenes that we saw on our television screens last night, from a police station in Hull, which clearly showed the dangers that exist when decisions are made on that basis.

The purpose of amendment 204 is to remove section 74. I have sympathy with Stewart Maxwell's smaller amendments, but they do not go anywhere near far enough, as far as I am concerned.

Jeremy Purvis: Amendment 5, in the name of Stewart Maxwell, is too prescriptive. I understand why he lodged it, but I cannot support it. Nor can I support Colin Fox's proposal to leave out the whole of section 74.

I know that the minister will sum up, but I wonder whether it is in order for me to ask him to consider some amendment to section 74 at stage 3. We recently heard evidence from the Scottish Criminal Record Office about the move towards taking palm prints as well as fingerprints. The IDENT1 project will cover palm impressions for identification purposes, but my understanding is that the powers in section 74 relate purely to the taking of fingerprints. Will the Executive reflect on that as a means of future proofing the bill, so that we do not have to amend it subsequently to be consistent with the use of IDENT1 for identification?

Hugh Henry: We shall reflect on the point about future proofing, and if anything needs to be done we shall certainly consider it.

We need to remember the context in which the issue is being discussed. The route that we are suggesting is not unreasonable; it will simply enable the police to have a reasonable sanction when exercising specific powers. The police must have reasonable grounds for believing that an offence has been committed before they can take fingerprints; they cannot just identify somebody and ask to see their fingerprints. If there is no suspicion of an offence, the print could be taken only voluntarily, and any police officer who took a print when there were no reasonable grounds to suspect that an offence had been committed would be acting beyond their powers, with all the consequences that that entails.

On the length of the retention period, we believe that what we are proposing enables police officers to establish quickly that someone is who they say they are and whether they are wanted for another offence. The bill states that fingerprints

"and all record of such fingerprints … shall be destroyed as soon as possible after they have fulfilled"

the purposes for which they were taken.

We should remember that that requires the police to delete the print as soon as practically possible after it has been checked against the central police database. Not only would the police not be able to retain such fingerprints, but they would not be able to use the prints for any other purpose. I do not think that having a short time period and requiring the fingerprint or record to be

"destroyed as soon as possible"

is extreme. If there was a 24-hour time limit, as Stewart Maxwell's amendment 5 suggests, and somebody was arrested on a Friday or Saturday night, would additional police officers need to be brought in simply to delete the fingerprint or record before the Monday morning? Would that be the best use of scarce police resources? I receive persistent complaints—as, I am sure, do other MSPs—about the absence of police on the streets at certain times. I do not know that it would be wise to pull police off the streets in the way that is being suggested, or indeed to invest in other staff to destroy the record or print.

Section 74 is all about giving the police the power to require a person to provide a fingerprint image. The police can already ask a person to provide a fingerprint voluntarily. However, in order for them to require a person to co-operate, there must be an offence if the person fails to do so. Amendment 6 would make the powers ineffective by removing the element of compulsion upon a person. If we accepted the amendment, the police would in many cases still have to take suspects down to the station for identification purposes. We need to enable police forces to use new technology to best effect for the purposes of preventing and solving crimes. They will not be able to do that if fingerprinting can be carried out only on a voluntary basis.

Section 74 will give police the powers to make a quicker identification of suspects than is possible at present and to find out whether those individuals are suspected of committing any other offences. The powers will allow the police to make best use of available technology and enable them to be even more effective; less time will be spent on the identification process, which will free up officers to focus on more urgent tasks. Removing section 74 from the bill, as amendment 204 seeks to do, would not be in the interests of effective and efficient policing.

I hope that Stewart Maxwell will reflect on the assurances that I have given and the context of this discussion and withdraw amendment 5. I ask the committee to reject Colin Fox's amendment 204 if he moves it.

As I said, we will reflect on future proofing and the taking of palm prints. We need to bear in mind the provisions and context of section 74. It is about not the taking of palm prints using mobile readers, but the taking of fingerprints. If we wanted to record palm prints in a similar way, we would need to look much more widely than the provisions that are before us.

Colin Fox: I intend to move amendment 204. The minister says that the police currently have the power to request a fingerprint, provided that it

is voluntarily given. In effect, the bill seeks to make that mandatory. The issue comes back to prints being provided for identification purposes as opposed to evidence purposes. I am afraid that the minister has not persuaded me not to move my amendment.

16:30

Mr Maxwell: The minister suggested—unintentionally, I am sure—that I had said that it would be necessary to pull police officers off the street. That is rather disingenuous on his part. I suggested no such thing—the minister suggested it. That might simply be his interpretation of the potential effect of amendment 5.

However, I accept the minister's point about timing over weekends. It is a question not of exactly when the fingerprint is taken, but when it has fulfilled its purposes. It is not unreasonable for prints to be destroyed within a very short time, and I think that 24 hours would not be an unreasonable period. Certainly it is not my intention to divert vital staff from other tasks that are deemed more important.

Given the minister's reassurance that "as soon as possible" means as quickly as possible or a short period, and given the fact that prints could not be used even if they were retained beyond that reasonable period, I will seek the committee's permission to withdraw amendment 5.

I will press amendment 6, however. Under amendment 6, if an individual disagreed with a police officer's interpretation of their actions, the current rules would apply. The person could be taken to a police station and other current procedures could be used. The issue is about balance. For those who are willing to give their print voluntarily to save time, that is fine. However, for those who disagree entirely with the police's interpretation of their actions and who say that there should be no suspicion of an offence being committed, it seems reasonable that they should be allowed to carry on with that protestation. If it proves correct that no offence was committed, the person should not run the risk of being charged with the offence of not giving a fingerprint. That seems unreasonable, so I will move amendment 6.

Amendment 5, by agreement, withdrawn.

Amendment 6 moved—[Mr Stewart Maxwell].

The Convener: The question is, that amendment 6 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 6 disagreed to.

The Convener: Amendment 204, in the name of Colin Fox, has been debated with amendment 5. I ask Mr Cox, sorry, Mr Fox, whether he wishes to move the amendment.

Colin Fox: Do Mr Cox and Mr Fox both get a vote?

Amendment 204 moved—[Colin Fox].

The Convener: Taking the mickey out of the convener is the prerogative of the convener.

The question is, that amendment 204 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 204 disagreed to.

Section 74 agreed to.

After section 74

The Convener: I welcome Paul Martin and thank him for giving us notice that he wanted to come to the meeting.

Amendment 148, in the name of Paul Martin, is in a group on its own.

Paul Martin (Glasgow Springburn) (Lab): I thank the committee for last week's constructive evidence session, during which we covered several issues, which means that I do not need to go into too much detail on amendment 148. However, I want to clarify some issues. As members will be aware, under current legislation, if DNA samples are retained following arrest but

no further proceedings are taken, the samples must be destroyed. Complying with that requirement costs £500,000 per annum. Amendment 148 seeks to bring our legislation in line with that in England and Wales under which the authorities can retain the DNA samples of any arrested or detained person for the prevention of crime or the investigation of an offence.

Contrary to some of the evidence that the committee received last week, my amendment would provide clarity on the purposes of the DNA database and the terms on which it could be interrogated. Those can be found in paragraphs (a) to (d) of proposed new section 18(6B) of the Criminal Procedure (Scotland) Act 1995, which mention

"the prevention or detection of crime … the investigation of an offence … the conduct of a prosecution; or … the identification of a deceased person or of the person from whom the sample came."

The committee received evidence about possible abuses of the database, but my amendment deals with that point.

I had three motivations for lodging amendment 148. First, the scheme in England and Wales has been a success. The evidence of Dr Wallace, of GeneWatch UK, was interesting and helpful on some points, but I do not believe that she produced evidence that conclusively contradicted the evidence in the Home Office report "DNA Expansion Programme 2000-2005: Reporting achievement". I refer particularly to the section in that report that refers to 250 DNA profiles that would not have been retained had it not been for the provisions in the Criminal Justice Act 2003. The outcome of that retention was that the police were able to solve four murders and manslaughters, three rapes, six robberies, four sexual offences, five offences of supplying controlled drugs and 98 burglary offences.

There has been comment about the requirement for independent assessment, but I think that the Home Office evidence to which I referred is conclusive. We also received evidence recently from ACPOS that clearly sets out a number of scenarios that could be prevented by retaining DNA profiles for all who are arrested or detained.

The second motivation for my proposal, for which I make no apology, is to ensure that the victim's point of view is considered in the argument about DNA profiles. For me, the balance to be struck is that between the rights of those who are detained and the human rights of victims' families and communities throughout Scotland. Lord Steyn made a powerful point in a judgment on this issue:

"Looking at the matter in the round I incline to the view that in respect of retained fingerprints and samples article 8(1) is not engaged. If I am wrong in this view, I would say any interference is very modest indeed."

My final motivation is to do with the best use of modern technology. I think that we must move with the times. We had a similar discussion when we talked about police officers on the beat. The websites of the three main political parties talk a good game about the release of police officers for beat duty, the best use of resources and investing in technology. I believe that DNA profiling provides a good example of the use of technology, allowing officers to be released for beat duty because of early detection. If we want to do more than just talk a good game, we must ensure that we deliver the most modern technology to allow that release of police officers. We must take on board what I believe is the powerful evidence that we received from Victim Support Scotland, ACPOS and many other organisations that support my amendment.

I move amendment 148.

Jeremy Purvis: I am grateful to Paul Martin for lodging amendment 148 because it has allowed the committee to have a good and worthwhile debate on an important subject. However, in comments earlier on Bill Butler's amendment, the minister referred to seeking what is proportional. I do not consider that it would be proportional to go down the same route as England and Wales on this issue. The Executive will have to come back in detail on the exact position of Scots law on DNA samples, as opposed to fingerprints. Perhaps the minister will comment on that, having regard to previous correspondence and the information that we have received from the Scottish Parliament information centre.

I do not believe that the statistical case has been made. There has been confusion about cold hits with regard to those who have had DNA samples taken on arrest that were subsequently matched against historic offences. The ballooning of the database in England and Wales has not produced a comparable increase in the detection and prevention of crime. What it has meant is that 32 per cent of all black men in England and Wales have their DNA sample and profile on a police database. That has an impact on community trust and faith in our justice system.

I do not think that the provision is necessary on ground of cost. As much as those who oppose weeding think that it would be an expensive option, I think that if the number of entries on the national DNA database increased, that would cost considerably more, as the Scottish Executive pays per entry on the database. That cost would easily outweigh the current cost of weeding and it would not necessarily mean a proportionate increase in the number of crimes that are detected.

Paul Martin would limit the scope for use of the database. I appreciate the rationale behind not allowing use for research purposes, but that would not be workable. When Scottish profiles are added to the national DNA database, they become the property of the database, which the Executive does not control. Limiting and scrutinising the use of the database would be problematic.

We are proud that Scotland has a much better clear-up rate for serious and other offences, which is good for victims of crime. However, there is no correlation between the retention of DNA samples on the database and the convictions that are sought. GeneWatch gave us evidence that 49 per cent of DNA matches lead to detection and that only half of those detections lead to a conviction, but the Executive has said that ascertaining the number of convictions that have been secured because of the new law on DNA retention in England and Wales is not possible.

The rationale behind Paul Martin's amendment would take us down a path that will end in every child being sampled at birth and that sample being retained on the national DNA database. I appreciate his aim of limiting the scope, but the scope was limited when the English and Welsh introduced their law in 2001 and it was subsequently extended. Unless a sunset clause is added to the amendment, we cannot say that the scope will be limited. I appreciate the debate, but I oppose the amendment.

Mr Maxwell: I concur with everything that Jeremy Purvis has said about amendment 148. Paul Martin mentioned a cost of £500,000 per annum for destruction, but he did not mention the cost of retention. The failure to balance the two costs is an attempt to skew the argument.

I reiterate one point that Jeremy Purvis made: the logic of the amendment is that we will end up with a database of everybody's DNA. The logic of the argument is that the more people are added, the more society is protected. If that is Paul Martin's argument, which it seems to be, everybody should be on the database. When Paul Martin was asked about that on "Newsnight Scotland", he did not say yes or no. He said that a step-by-step process was involved and that this was the first step. That was the most worrying response that I have heard, because it tells me that he accepts the logic of the argument, that he is happy that we will end up with a database of everybody and that he accepts that the amendment is the first step towards such a database. I vehemently disagree with such a process.

Jackie Baillie: Unlike the two previous members, I do not think that it is implicit or explicit in the amendment that we will end up with a database that covers everybody, but we can agree to disagree on that.

I have considerable sympathy with the amendment if it helps to clear up crime and improves detection—that is critical. The police say that they would like to use such a tool.

I am not sure who can clarify it, but my sense from the evidence that we heard is that less concern is felt about the retention of DNA profiles than is felt about the retention of DNA samples. If simply profiles were retained, all the concern about DNA samples and their possible use in the way that Jeremy Purvis outlined would be negated.

I understand that under the current provision, which Paul Martin's amendment would not change, the police retain DNA samples, but they are not part of the national database, so Jeremy Purvis got one thing slightly wrong—the police retain samples. However, I am keen to understand from the minister or Paul Martin the rationale behind retaining samples. Would simply retaining profiles not have the same crime prevention effect?

16:45

Colin Fox: Amendment 148 seeks to prevent samples from being destroyed if no convictions or proceedings are brought. In response to Jackie Baillie's point, it seems to me that the central driver for the amendment—and for keeping samples—is crime reduction. Everything else is secondary. However, the evidence that the provision would lead to a reduction in crime is paltry. The claims that X and Y would be achieved have not been substantiated.

Paul Martin, understandably, contends that the amendment's purpose is to standardise things between England and Wales and Scotland, but we heard in evidence the contention that the best way to standardise things is for England and Wales to emulate what we do in Scotland, where samples are destroyed if no proceedings or convictions are brought. That argument is worthy of consideration.

Paul Martin makes the point that the rights of victims are always important, and we all agree with that. However, the amendment is perfunctory in addressing the rights of those who are arrested but not charged or convicted. That is my problem with it. We need to strike the right balance between the rights of victims and the rights of those who are arrested. Under the amendment there would be an imbalance, so I cannot support it.

Maureen Macmillan: I am firmly sitting on the fence. I would like to have further discussions about the amendment. I can see the benefits for

the future solving of crimes and I note that GeneWatch said that it would be happy for certain crimes to be included in such a provision. It did not say which ones, but I suspect that it was referring to sexual crimes, violent crimes and perhaps crimes related to drugs. People who are picked up by the police around those areas of criminality might be included, but people who are picked up for a breach of the peace on a Saturday night should not be included. If we take the approach that is suggested in the amendment, is there a way to decide that DNA samples will be retained only for certain crimes and not every time someone is picked up by the police?

Bill Butler: The debate that Paul Martin has brought to the committee is worth while. We are wrestling with a serious issue. I am not persuaded by the amendment at the moment, but I am persuadable. If that is another way of saying that I am sitting on the fence, so be it.

Jackie Baillie's point about further investigation of the difference between DNA profiles and DNA samples is worth exploring. I am glad that Maureen Macmillan made her point. I too remember GeneWatch saying—in response to a question that I asked, I think—that it might be appropriate to retain DNA samples indefinitely in relation to some crimes. We should explore that. I am grateful to Paul Martin for making clear the aims and scope of his amendment. That was helpful. I do not agree that the amendment would lead inexorably to everybody's DNA being held in a database, but Stewart Maxwell, Jeremy Purvis and I will have to agree to disagree on that.

I do not think that the case has been proven on either side. I do not believe that the evidence for a reduction in crime is paltry, as Colin Fox said, and I do not believe that there is no correlation between retention and convictions, as Jeremy Purvis said. Those are sincerely held views but they are value-loaded judgments that are not backed up by statistical data. Neither can we be certain about the converse argument, which Paul Martin makes. If we can get more evidence on the two positions, it would be easier to be persuaded of the validity of one side or the other.

If we can get evidence that retention would provide a greater level of convictions, I could be persuaded. It is worth exploring.

The Convener: I have an instinctive fear of the retention of samples from people who have not been found guilty. A major principle is involved. I appreciate Paul Martin's arguments and I have every sympathy with the victims of any crime, but I am concerned that we are beginning to go down the route of obligatory retention of samples from people who have not been convicted of crime.

There is also a risk, which I heard about last week when we took evidence, in relation to samples that people in a community give voluntarily to assist in the detection of a crime. That is a huge area and I am not certain that the committee has enough knowledge of it.

We can all use statistics as and when we wish. There are weaknesses in the evidence on retention in general rather than only in the one piece of written evidence that we have received for today's meeting.

I do not doubt that retention is worthy of debate in future, but I have an instinctive dislike of the idea of retaining samples from innocent people.

The minister now has the opportunity to comment on the full input from committee members.

Hugh Henry: It has been a good discussion, but last week's wide-ranging discussion was equally good and brought to light a number of issues. Some people, such as the convener, instinctively have concerns about retaining DNA information. Some people would rule it out absolutely whatever the circumstances, some would want the information to be retained in the way that Paul Martin suggests and there is a range of views—surprisingly, GeneWatch UK is in that range—among people who would contemplate such information being kept in certain circumstances. The problem is that there is a lack of clarity: we probably do not have sufficient information to make a decision on amendment 148.

We need to consider the comments that were made last week and which have been repeated today about the statistics that are used to prove the argument for one side or another. Paul Martin made the point that there is evidence that, in a number of cases, an investigation has been concluded successfully as a result of retaining DNA information. We need to reflect on what was said last week to determine whether we can achieve more clarity.

Over the course of the past week or so, serious issues—similar to the concerns that Bill Butler has raised previously—about risk of sexual harm orders have been aired. A number of police officers have made the point to me that there is a case for not retaining such information on some 15-year-olds who come before children's hearings accused of serious offences, including sexual offences, even though it is accepted that that person was responsible for the crime. We need to reflect on that, too. All sorts of issues on which there is no clarity are still swirling about.

A number of specific questions were asked. Jeremy Purvis asked about the current law on DNA. I repeat what I said last week: we need to clarify that at stage 3. To some extent, it will

depend on what Parliament decides, but if it decides not to move in the direction in which Paul Martin suggests, we will lodge an amendment to rectify any unintended consequences of the bill. We do not want authorities to be able to retain such information simply because of an oversight or an error; there must be a conscious decision by Parliament on that.

People have said that the increase in the number of cases that are solved does not compare with the increase in the number of people in the database. The principal question for Parliament is whether the numbers have to be pro rata or whether any absolute increase can justify the change. That is a political decision for Parliament.

Would the change lead to everybody's DNA being kept on record? The amendment that I have read would not do that. It would empower neither the Executive nor the police to start encouraging that. Any decision in that regard would be for Parliament to make in the future. I have faith in Parliament and I believe that, if that issue were to be raised, there would be a mature and responsible debate and that such an initiative could not be sneaked in through the back door.

Questions have been asked about the cost of retention. The authority to take DNA samples currently exists, but the police do not take a sample in every case, so it is arguable that there would be no increased cost. Why would the police take samples when they do not do so at the moment although they are able to? We would need to get more information on that.

Who would control the information on the national database? The information would be the property of the Scottish database and could not be used in a way that was not authorised by Scotland.

Jackie Baillie asked about the difference between samples and profiles. There is an argument for retaining profiles, which contain less definitive information than do samples, but the question that is posed by people who argue for retention of samples is that that would enable the database to be updated as technology improves, because reference could be made to the original sample. It would also enable checks to be made if there was any concern about mistakes. If members are concerned about the difference between samples and profiles, I point out that there are issues in the current system that would need to be bottomed out as well, if Parliament were so minded.

We have had an excellent debate, but I am not sure that we have satisfied the arguments on either side. I hope that Paul Martin will allow time not only for Parliament to reflect on the issue but, more important, for further research and clarification of some of the claims that have been made. We should find out whether there are positions between Paul Martin's position and the position that we are in today. As a minister, I am duty bound to reflect on all such arguments. With all due respect to Paul Martin, I do not think that making the decision today would be right.

17:00

Paul Martin: The minister has dealt comprehensively with a number of the points that have been raised in debate, but I would like to touch on a couple of issues.

Jeremy Purvis asked whether the system that amendment 148 proposes would be proportional. I refer him to the correspondence from ACPOS, which says that the potential seriousness of a single incident could, in itself, merit change. That makes the powerful case that there are serious instances that cause families suffering. The potential to prevent one particular crime supports the argument that the system does not necessarily have to be proportional in the way that Jeremy Purvis suggests it should be.

On the cost of retention, the feedback from police authorities throughout the UK has been that the introduction of DNA evidence has led to a significant reduction in the time they spend solving crime. The potential to expand the database speaks for itself in that regard. We cannot have it both ways and call for more police officers in the street while denying them the opportunity to use DNA samples.

On community impact, there have been some tragic incidents in my constituency that have had dreadful impacts. That is an issue that the committee must take into account when making a judgment on the issue of balance.

On profiles, there is evidence that England and Wales are looking to retain profiles rather than samples. However, that raises issues concerning the potential of the database.

At this point, I do not think that there is significant support for amendment 148. However, as the minister has said, Parliament will have the opportunity to consider the matter. Therefore, I seek the committee's permission to withdraw amendment 148.

Amendment 148, by agreement, withdrawn.

The Convener: I thank Paul Martin for attending this afternoon.

We have had a good opportunity to discuss matters relating to the bill and the minister kindly gave us an extra half hour to discuss amendment

148. I am minded to draw this section of the agenda to a close at this point.

I thank the minister and his team for their input. I hope that the minister is fully recovered and refreshed when he comes back to do business with us at the next meeting.

We will have a short break—using Mr Maxwell's definition of short.

17:02

Meeting suspended.

17:07

On resuming—

Subordinate Legislation

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2006 (SSI 2006/108)

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2006 (SSI 2006/110)

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment (No 2) Order 2006 (SSI 2006/130)

Diligence Against Earnings (Variation) (Scotland) Regulations 2006 (SSI 2006/116)

The Convener: I welcome everyone back for item 3 on the agenda, which is subordinate legislation. There are four instruments that are subject to the negative procedure to consider.

Are members content with SSI 2006/108, SSI 2006/110, SSI 2006/130 and SSI 2006/116?

Members *indicated agreement*.

Accountability and Governance Inquiry

17:09

The Convener: Item 4 is the Finance Committee's inquiry into accountability and governance. Following last week's discussion, a draft response was circulated for members' views and, I hope, their agreement. Shall we go through the response section by section, or are members content to make general comments?

Bill Butler: Can we go through it page by page?

The Convener: Do members have any comments on page 1?

Members: No.

The Convener: Do members have any comments on page 2 or page 3?

Members: No.

The Convener: We are asked to provide a volunteer to attend the informal seminar on the afternoon of Monday 24 April, here in the Parliament building. Do we have a volunteer?

Members *indicated disagreement.*

The Convener: In that case, we will notify the Finance Committee that we are unable to send a representative on that day. We now move into private session.

17:10

Meeting continued in private until 17:15.

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