JUSTICE 2 COMMITTEE

Tuesday 28 November 2006

Session 2

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JUSTICE 2 COMMITTEE
33rd 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)
*Michael Matheson (Central Scotland) (SNP)
*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Mr Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Adam Ingram (South of Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Tony Cameron (Scottish Prison Service)
Charles Garland (Scottish Executive Legal and Parliamentary Services)
Ian Gunn (Scottish Prison Service)
Chris Hawkes (Lothian and Borders Community Justice Authority)
Mark Hodgkinson (Northern Community Justice Authority)
Johann Lamont (Deputy Minister for Justice)
Valerie Macniven (Scottish Executive Justice Department)
Bill McKinlay (Scottish Prison Service)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 28 November 2006

[THE CONVENER *opened the meeting at 14:09*]

Civil Appeals (Scotland) Bill: Stage 1

The Convener (Mr David Davidson): Good afternoon and welcome to the 33rd meeting of the Justice 2 Committee in 2006. I ask everybody present to ensure that all mobile phones, pagers, BlackBerrys and other such devices are switched off, please. We have received apologies from Fergus McNeill and Susan Wiltshire, the advisers to the committee, who are unable to attend today's meeting.

I welcome Adam Ingram MSP, who is here for item 1, which is the Civil Appeals (Scotland) Bill—a member's bill that he has introduced. Members have the approach paper in my name. Adam will say a few words before we go any further.

Mr Adam Ingram (South of Scotland) (SNP): As members will be aware, I first proposed the bill back in September 2003. As you can see, it is a simple and straightforward bill—in my view, it has taken an inordinate length of time to reach the committee and it seems that members' bills are not getting a fair crack at the whip in Parliament. I believe that it is in all members' interests to try to redress that situation.

I take issue specifically with the convener's paper and its recommendation. The paper focuses on the legal competence of the bill—a question that has never been raised with me over the three years of the bill's gestation. Until a couple of months ago, there had been no suggestion that there were problems: nothing arose from the consultation responses and I had no indication whatever from the Scottish Executive—at any point, including during the Sewel motion debate on the Constitutional Reform Act 2005—that anything was amiss in respect of the bill's legal competence. It is, therefore, extraordinary that the kibosh is being applied to the bill in this way. I appeal to the committee not to take at face value the legal advice from the Presiding Officer on the competence of the bill. I hope that the committee will at least scrutinise that advice and hear external legal opinion on the bill's legislative competence.

The convener's paper states categorically:

> "The parliament of the United Kingdom, including the judicial functions of the House of Lords, is reserved under paragraph 1(c) of Schedule 5 to the Scotland Act 1998."

That is inaccurate and misleading. Paragraph 1 of schedule 5 to the Scotland Act 1998 provides only that certain aspects of the constitution are reserved matters. In line with the rule of statutory interpretation of schedule 5, a matter that is not mentioned as a reserved matter is therefore devolved.

As is noted in the Scottish Parliament information centre briefing paper, paragraph 1(c) of schedule 5 states that

> "the Parliament of the United Kingdom"

is a reserved matter. However, it makes no reference whatever to the judicial functions of the House of Lords. At the very least, we are dealing with a grey area of schedule 5 to the Scotland Act 1998, but the convener's paper does not reflect that. The presentation of the convener's views in such a categorical manner is misleading and wholly unsatisfactory as the basis for a decision on the legislative competence of the bill.

The system of courts in Scotland and their treatment under schedule 5 of the Scotland Act 1998 reflects the position that the Scottish courts system is a devolved matter. There are examples in other legislation of the judicial committee of the House of Lords being defined not as part of the UK Parliament, but as a court. Section 6(3) of the Human Rights Act 1998 states that the term "public authority"

> "does not include either House of Parliament".

Subsequently, section 6(4) of that act states:

> "'Parliament' does not include the House of Lords in its judicial capacity."

Therefore, the House of Lords acting in its judicial capacity is defined as a court but not as a Parliament. Why should the Scottish Parliament treat the House of Lords acting in its judicial capacity any differently from the way in which the UK Parliament treated it in respect of the Human Rights Act 1998?

Even if it were proved on further scrutiny that the position of the judicial committee of the House of Lords in relation to Scottish civil appeals were to encroach on reserved areas, the convener's paper gives no consideration to section 29(3) of the Scotland Act 1998, which states that

> "the question whether a provision of an Act of the Scottish Parliament relates to a reserved matter is to be determined … by reference to the purpose of the provision".

14:15

In the academic session 2001-02, first-year undergraduates at the University of Edinburgh

were asked in their public law class to imagine that they were legal advisers to the Presiding Officer in the Scottish Parliament and that a bill was introduced to abolish appeals to the House of Lords. What advice would they give? The answer that the tutors gave the students was that schedule 5 to the Scotland Act 1998 appears to provide that such a bill would be within the legislative competence of the Scottish Parliament.

The Civil Appeals (Scotland) Bill relates to the provisions in Scots law for dealing with appeals on Scots civil matters. In so far as it impacts on a body that draws its membership from a house of the UK Parliament, that impact appears to be incidental to the bill's primary purpose.

Himsworth and Munro, who are both professors of law at the University of Edinburgh, quote Lord Sewel, who said:

"it is intended that any question as to whether a provision … 'relates to' a reserved matter should be determined by reference to its 'pith and substance' or its purpose and if its purpose is a devolved one then it is not outside legislative competence merely because 'incidentally it affects' a reserved matter. A degree of trespass into reserved areas is inevitable because reserved and other areas are not divided into neat watertight compartments."—[*Official Report*, *House of Lords*, 21 Jul 1998; Vol 592, c 819.]

We can see from the treatment of other bills in the Scottish Parliament—such as the Christmas Day and New Year's Day Trading (Scotland) Bill—that although that principle appears to have been accepted, it has not been accepted in relation to the Civil Appeals (Scotland) Bill. Why not? In so far as the Civil Appeals (Scotland) Bill encroaches upon reserved areas—I do not accept that it does—why is the bill being treated differently to other bills? Is it merely due to time pressures on the Justice 2 Committee?

My final criticism of the legal advice is on the incomprehensible statement that the bill would breach article 6(1) of the European convention on human rights. The right to a hearing before an independent and impartial tribunal has been established by law and would be unaffected by the bill, and the explicit right to a fair and public hearing within a reasonable time would be enhanced by the repatriation to Scotland of the final appeals process.

The committee should be aware that I am urgently seeking a meeting with the Presiding Officer—I understand that he is in Canada this week—to discuss my concerns about his legal advice. I therefore urge the committee not to make irrevocable decisions today but to call for clear, accurate and transparent legal advice on legal competence.

Thank you for your forbearance in listening to my arguments.

The Convener: Thank you for giving your views so concisely. You will appreciate that the committee did not consider time pressures in the way that you suggested. If you have looked at our work programme, you will know that we take on everything that is given to us. We hope to give everything a fair and tidy hearing within the competence of the committee.

I note Adam Ingram's references to section 29(3) of the Scotland Act 1998 and I note that he is seeking a meeting with the Presiding Officer. It is a tradition in Parliament that committees pay attention to the advice that is given to the Presiding Officer, who acts on behalf of Parliament. The committee is only a small part of the parliamentary process, so I hope that he appreciates our position.

Adam Ingram has raised a number of matters and I am sure that members will want to make points or ask questions. I open the meeting for such points or questions, and also for comments on the paper that I circulated.

Jackie Baillie (Dumbarton) (Lab): I hope that Adam Ingram is not inviting us to consider the bill—which may or may not be competent—simply because it is a member's bill. I have a high regard for members' bills, but I would not want Parliament to pass anything that was inappropriate.

When a member wants to introduce a bill, there is a process to go through. I am curious to find out whether at any stage of that process you asked any of the officials in the non-Executive bills unit or, indeed, anyone else whether the bill that you sought to introduce was legislatively competent. I would also like to know, just for my information, what part of the Christmas Day and New Year's Day Trading (Scotland) Bill you believe touches on reserved matters. As a member of the committee that scrutinised the detail of that bill, I cannot recall which part of it you might be referring to.

Mr Ingram: The Christmas Day and New Year's Day Trading (Scotland) Bill seeks to regulate the operation of certain businesses in Scotland as regards their opening hours, but head C1 in part II of schedule 5 to the Scotland Act 1998 specifically reserves all matters relating to regulation of companies and business organisations. The reservation specifically includes

"The creation, operation, regulation and dissolution of types of business association."

Jackie Baillie asked whether I ever asked about the legal competence of my bill. My main concern in seeking to repatriate the final appeals process in civil cases was that I would not stray into reserved matters. I was well aware that the judicial committee of the House of Lords also deals with devolved matters. At no time was I advised that repatriation of the final appeals process in civil

cases to the Court of Session or to another body in Scotland was not competent. It came as a great surprise—indeed, a shock—to me when that advice emerged.

Jackie Baillie: Sure. As the member in charge of a member's bill, I went through a similar exercise and the first question out of my mouth was whether my bill would be competent. I find it curious that you did not ask that question. I understand your explanation that you were not provided with any advice about that, but my starting point is whether you asked the question.

The Convener: Do you want to respond, Mr Ingram?

Mr Ingram: I was aware of that question at all times because I did not want to stray into reserved matters and have the bill knocked out as a result. I was sensitive to the issue.

The Convener: When you commented on the Christmas Day and New Year's Day Trading (Scotland) Bill, you seemed to refer to the law on formation of companies, but the bill is about trading. It is not about employment and it has nothing to do with formation or dissolution of companies or the rules on how company directors are registered. I point that out in passing.

Colin Fox (Lothians) (SSP): I think that wider issues have been raised. I am grateful for the paper that the convener circulated to us in advance. It is surely a matter of concern to all MSPs that although Adam Ingram's member's bill was laid in September 2003, it is only now, in the twilight of this session of Parliament, that a ruling has been made not to allow it to proceed. That might lead people to think that members' bills are not being treated with the respect that they deserve.

I lodged a member's bill, so I am familiar with the process that the member has gone through. I hope that every member of Parliament has respect for the member's bill as an important legislative route. After I lodged my member's bill, I was presented with all sorts of rule changes and hurdles—I am sure that the same applies to all the other members' bills that have been lodged. We start off playing football, the game is changed to rugby and we end up playing golf.

I say to Jackie Baillie that I presume that the non-Executive bills unit's advice to Adam Ingram was that its initial view was that his bill was legally competent. That was certainly the initial advice that I received on my bill. We must bear in mind that there are only one and a half civil servants in NEBU to deal with the legislative proposals of all MSPs, which is a ludicrously small resource. In effect, the Civil Appeals (Scotland) Bill has been culled, along with four or five other members' bills that were lodged at the same time as Adam Ingram's. It has been decided that they, too, should not be considered further by Parliament.

Against that background, the committee knows well that we have spent a great deal of time considering Executive bills. We have just finished considering an Executive bill, we are considering one at the moment and there will be another one for us to consider soon. It is in the nature of things that the impact and effectiveness of those bills is always questioned.

I read the convener's paper respectfully. I am well aware of the committee's workload and the questions that the Presiding Officer has highlighted. The paper says—quite fairly—that the committee is able to proceed if it so wishes: I would like to proceed with the bill.

The Convener: Parliament's support for the non-Executive bills unit is outwith the committee's competence, but I note your points, Mr Fox. I have been in a similar situation.

Michael Matheson (Central Scotland) (SNP): I have read the convener's recommendations and have heard the case that Adam Ingram advanced and the points that Colin Fox made. Having had a bill proposal go through the member's bill system, I know that it is an important part of Parliament's workings. Considerable work goes into members' bills, so I am concerned that when a member has been pursuing a bill for three years, the legal advice to the Presiding Officer that it is not competent pulls the rug out from under it just when it might be going to a committee, despite the fact that the member in charge has received legal opinion that challenges the Presiding Officer's view. I would be concerned if a committee of the Parliament were just to accept that view and kick the bill into touch, which is what the convener's recommendation would do. That would be a disservice to the member's bill process.

The Presiding Officer should be able to give a reasonable answer to the questions that Adam Ingram, the member in charge, has raised. Before the committee considers whether to kick the bill into touch or to proceed with it, it should have sight of responses to the points that Adam Ingram makes in his challenge to the advice that the Presiding Officer has been given. That is not to say that we should disregard the Presiding Officer's view, but that we should try to get clarity on it to ensure that we also protect the integrity of the member's bill process. It is reasonable to try to achieve clarity before we make a decision that would bring about an end to the bill.

The Convener: Thank you for your comments. As I said, the matters of competence are not for us to consider now; we must decide what to do with the bill, taking on board the advice that the committee has received.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I would like guidance. Is it the case that, even if we recommend that the general principles not be agreed to, there will be an opportunity for Parliament to decide? If there is a stage 1 debate, with our report advising what we wish the Parliament to do, all the issues can be highlighted and Parliament will have an opportunity to decide. I made a proposal for a member's bill: there were questions about its competence and I got written clarification on a number of areas. I am content with the convener's advice, but the matter is still ultimately for Parliament to decide.

The Convener: I am advised that there will be an opportunity for Parliament to debate the bill. If others wish to bring the broader principles that we have discussed to bear in that debate—not in the committee—that could happen.

Michael Matheson: Why, then, do you state clearly in your report that we should not agree to the general principles of the bill, based on the advice that the Presiding Officer has provided? Is there not scope for Adam Ingram to get clarification before the committee makes such a final recommendation?

The Convener: I would have thought that all that would have been dealt with before the bill was laid before the committee to deal with. We receive what we receive in good faith and assume that the parliamentary processes have been conducted correctly. There is no other basis on which a committee can operate when it has been allocated a bill.

Committee members have had an opportunity to discuss the matter. Does anybody wish to make a final comment?

14:30

Colin Fox: Can I just say—

The Convener: Sorry. I was going to say that Bill Butler would speak first.

Bill Butler (Glasgow Anniesland) (Lab): As a member in charge of a member's bill that is proceeding, I know that members in charge feel real ownership because of the amount of hard work that they have put in as the bill goes through the detailed and sometimes elongated procedure to which Colin Fox referred. However, Mr Ingram urges us not to take the legal advice from the Presiding Officer into account, but we do not have that luxury. That is not an option for us—we must take it into account.

I have a question for Mr Ingram. He said in his presentation—I think he was quoting someone but I forget the source, although I think I am quoting correctly—that

"A degree of trespass into reserved areas"

is permissible. However, paragraph 6 of the convener's report to the committee indicates that the Presiding Officer's view is that only one part of the putative bill seems to stray into devolved areas—everything else is outwith such areas. What do you have to say to that?

Mr Ingram: The key question is whether the House of Lords is regarded in this case as a court or a house of Parliament. The substance of the bill is to transfer back to Scotland powers that the House of Lords currently has, which is why the bill is littered with references to such matters.

I was making the point that the Presiding Officer's advice landed on me very late in the process. I had been going along on the assumption that everything was okay as far as the legal competence of the bill was concerned. I have sought and found alternative legal advice, which is contradictory to the Presiding Officer's legal advice. I would like to get the situation clarified before the committee decides not to consider the principles of the bill. I would like to put my case to the Presiding Officer for him to consider in the light of the new material that I am giving him. I ask the committee to put the matter on the back burner and to perhaps return to it at a future meeting, rather than make a final decision today on whether to consider the general principles of the bill.

Bill Butler: With respect, all that we would do today if the committee were to agree with the recommendation in the convener's report is make a recommendation to Parliament. By the time that it came to Parliament, Mr Ingram would have had time to talk with the Presiding Officer and we could hear what he and the Presiding Officer had to say. I suggest to the convener and colleagues that we must at this stage deal with what the Presiding Officer has said clearly with regard to so many sections and so many paragraphs of the bill, which clearly—if I may use Mr Ingram's words—"trespass into reserved areas". We do not have any option, but it is ultimately up to Parliament to decide.

Colin Fox: I would like clarification on what the convener said earlier. My question covers the same territory that Bill Butler has taken us on to. Are you suggesting that the bill should go forward to a stage 1 debate with a recommendation from the committee that it should not proceed, or are you and Bill Butler suggesting that Mr Ingram's only recourse is to challenge the ruling in what will in effect be a ruling debate in Parliament?

The Convener: It will be the latter.

Colin Fox: So there would be no debate on the bill in Parliament.

The Convener: We have been asked whether the committee can competently progress the bill in the light of the advice that has been presented to us. If there is an issue with the Presiding Officer's advice—Mr Ingram feels that there is and some members of the committee seem to have sympathy with that view—that is outwith the remit of the committee.

We can certainly refer the bill back to Parliament—we have to anyway, one way or another. Then, it is for the Presiding Officer and Parliament to decide on the competence of the bill. I have sympathy on the matter of the late notice from the Presiding Officer's office, but it is not within the power of the committee to vary that. It is his decision.

If Mr Ingram seeks to change the situation, I point out that the matter will not, I imagine, be raised in Parliament this week even if we decide that it must go back to Parliament because we are not content. I say that based on the advice that we have had. That means that Mr Ingram would have some time. I presume that whatever we decide today, members want me to report not just to Parliament but to the Presiding Officer's office on what the committee has discussed today, regardless of the Presiding Officer's current absence.

Maureen Macmillan (Highlands and Islands) (Lab): The Presiding Officer's ruling was made a week before the bill was introduced. Adam Ingram went ahead and introduced his bill, knowing what the Presiding Officer's view was. I presume—he has said that he did—that he has looked for contrary opinions. I wonder whether he has held any meetings with the Presiding Officer in the two months since he made his ruling. This is not something that just happened last week. It happened two months ago, before the bill's introduction.

Mr Ingram: The member might be aware that it takes some time to acquire legal opinions. It cannot necessarily be obtained in a short time. That does not alter the fact that I am challenging the legal advice that has been given. Now that I have legal advice of my own, I can proceed with a meeting with the Presiding Officer, and I have notified his office to that effect.

You are in effect saying, convener, that I may challenge the Presiding Officer—the Presiding Officer may, in due course, reconsider his legal opinion. You are saying that, by that time, the bill could not come back to the committee. Is that correct?

The Convener: If Parliament decides that the bill should come back, it would be after a very short debate, not a full stage 1 debate. If my recommendation is carried by the committee, that would result in a minutely short debate, which would be an opportunity for you briefly to argue your case. I presume that you would have a chance before then to deal with the Presiding Officer. I cannot recommend to him what he should do—the matter will be dealt with appropriately, as he sees fit and in accordance with the presentation that you make to him. However, that is not the business of this committee.

I wish to move on. In my view, it would not be advisable at this time for the committee to proceed to consider the bill at stage 1 in the normal way because it appears to be outwith Parliament's legislative competence, it appears to be unlikely that it can be brought back within legislative competence and, if the judicial committee were to decide that the bill was not competent, the Presiding Officer could not submit the bill for royal assent.

On the basis of the paper that we have discussed, I recommend first that the committee recommend to Parliament that the general principles of the bill not be agreed to on the grounds that, in the opinion of the committee, having regard to the terms of the Presiding Officer's statement on legislative competence under rule 9.3.1, the bill appears to be clearly outwith Parliament's legislative competence and it is unlikely to be possible to amend it at stages 2 and 3 to bring it within legislative competence; and secondly, that the committee agrees that I should lodge the appropriate motion under rule 9.14.18.

Does the committee agree with that course of action, or does the committee instead wish to proceed with consideration of the bill and to request that the clerks prepare a further paper on handling the bill and the committee's approach? I put the question to the committee. Does the committee agree with my recommendation in both respects?

Members: No.

The Convener: There will be a division.

FOR

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)

AGAINST

Fox, Colin (Lothians) (SSP)
Matheson, Michael (Central Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0. The recommendations in the paper are agreed to

I thank Mr Ingram. I hope that he appreciates that the matter is outwith the general competence

of the committee, and that it must be dealt with by the Presiding Officer and Parliament. I wish him godspeed in his deliberations with the Presiding Officer and I thank him very much for attending.

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:40

The Convener: Item 2 is consideration of the Custodial Sentences and Weapons (Scotland) Bill. This is the fifth and final evidence session that has been scheduled for the bill at stage 1. I welcome Graham Ross and Frazer McCallum from the Scottish Parliament information centre; Ian Gunn, the governor of HM Prison and Young Offenders Institution Cornton Vale, and Bill McKinlay, the governor of HM Prison Barlinnie. Good afternoon, gentlemen.

The prison population in Scotland is at an all-time high. How does that affect the day-to-day running of prisons? The Executive has estimated that the proposals in the bill will lead to an increase in the prison population of between 700 and 1,100. Does that give you cause for concern? Would an increase in accommodation be required to prevent overcrowding? Those are fairly broad questions to start with.

Ian Gunn (Scottish Prison Service): As the convener said, I am the governor of HMP and YOI Cornton Vale—I have been in that post for eight weeks and two days, so I ask members to bear with me, please. Any comments that I make about Cornton Vale are based only on that period.

Overcrowding causes a problem for Cornton Vale. We are around or above our contracted number of places. The high number of remand cases and the high number of prisoners with mental health or self-harm problems who come to us can have a significant effect on the management of the establishment.

In terms of the future, I have not really had the opportunity to look at the bill, and it would be pure speculation—which I do not think the committee would be particularly interested in—for me to speak about what might happen in the future. Governors work to a performance contract, which is negotiated each year by directorates at Scottish Prison Service headquarters. It is my job to deliver that contract, on behalf of the prisons directorate, for Cornton Vale. I am quite prepared to talk about what happens in the prison now but, as I said, it would be pure speculation for me to talk about anything in the future.

Bill McKinlay (Scottish Prison Service): At present, Barlinnie prison is overcrowded. It is above its design capacity by 46 per cent and 23 per cent over capacity in terms of the contracted number. Obviously, overcrowding is not to be condoned, but it is not for me to determine what happens in the courts. We have to deal with

overcrowding, which impinges on every part of the establishment. We try to mitigate it as best we can in how we run the establishment.

I cannot predict the future either, and I have superficial knowledge of the bill. I am confident, however, about the work that has been carried out by the SPS directorates. Their people have experience, knowledge and competence that can inform the bill. I read the explanatory notes, and I cannot add to or subtract from the predictions that are made in them. I think that they have been made by operationally experienced people as well as by people with experience on the administration side. The work that was carried out involved a number of the directorates, so I would have to stand by what they have predicted.

I do not have a view on the future. Whatever happens with regard to numbers, I would be expected to meet the director of prisons and to determine, in relation to the business plan, what would be required to deliver the business for any year. That would include dealing with numbers, additional demands and the required resources and finances.

14:45

The Convener: We are not questioning either of you about policy; we are talking about what things are like on the ground as you try to manage the prisons for which you are responsible. How would you deal with the increased prison population that is predicted? I presume that you would both have to deal with a percentage of the increase.

Bill McKinlay: That would not necessarily be the case. I do not know about the finances for additional prisoner places in new prisons, but two new prisons are planned. Barlinnie prison has a capacity beyond which my board and I would put up our hands and say that we could not take any more prisoners, because if we did so we would not be able to meet the required standards. I expect that the predicted increase will be taken account of and that consideration will be given to available spaces and what might be done to reduce or cope with demand.

Ian Gunn: Cornton Vale prison also has a contracted number of prisoners, and additional places that we make available. We can also increase the contracted number if we have to do so. If I was concerned that the prison population was reaching a number that was not manageable, I would approach the deputy director of prisons, who is my line manager. No doubt the population management group in the prisons directorate would take the matter on and consider how numbers might be distributed.

Given that Cornton Vale is the only establishment that deals exclusively with female prisoners, there would be the opportunity for more accommodation to be provided at the prison—as happened last year. However, such a decision would not be made by me and would be the subject of long discussions.

Bill Butler: I hope that the witnesses can give me more expansive answers than they gave the convener. You both hold senior positions and I think that all committee members are keen to hear what you have to say. We are not asking you to expound on policy matters or to speculate wildly—as Mr Gunn suggested—outwith your experience; we are asking you to give us the benefit of your experience and judgment. We want to hear what you think and we hope that you can say what you think, because that is why we invited you to give evidence.

As you know, a policy objective of the bill is to reduce reoffending. What rehabilitative programmes for offenders are currently carried out in prisons? Mr Gunn, will you speculate on, or rather, tell us about that?

Ian Gunn: A number of programmes are going on in Cornton Vale, on cognitive skills and anger management. We are developing a violence programme for female offenders, but I do not know much about that programme yet. Many resources are directed into drug education and awareness, to try to get offenders off drugs or at least to keep them stable. We do a lot of work on mental health and much resource goes into trying to reduce self-harm in the prison. In addition, we run a full education programme and recreational regimes, to keep prisoners active during the day.

Bill McKinlay: Similar programmes at Barlinnie teach cognitive, coping and anger management skills. The first steps initiative is for drug users and the lifeline programme tries to prevent relapse in drug-free prisoners. A new life-coaching initiative, which involves the Wise Group, prepares people for employment. We have partnership arrangements with Jobcentre Plus, the Benefits Agency and church groups. A significant number of initiatives for prisoners are on the go.

Ian Gunn: My newness at Cornton Vale means that I sometimes forget the work that Bill McKinlay described, such as our work with Phoenix House or the routes out of prison project. We also work with Jobcentre Plus and housing departments. There are a host of opportunities for women offenders, for example through Open Secret and Cruse Bereavement Care, to try to reduce reoffending or deal with issues that might have contributed to their offending.

Bill Butler: I am grateful to both witnesses for delineating and being expansive on the number of programmes that aid the rehabilitation of offenders. What are the difficulties in providing

such programmes for offenders when prison numbers are high and many prisoners serve very short sentences?

Bill McKinlay: The committee already knows about our assessment process, which is called community integration planning. Every prisoner who comes through the door is assessed on a needs basis. Their needs can cover anything—housing, drugs or mental health, for example—and we try to facilitate work on those areas.

For prisoners with short sentences of under 31 days, we signpost and push them towards relevant agencies. Prisoners with sentences of 31 days or more come into the community integration plan, and those with sentences of more than four years come into the integrated case management system. First, we assess the needs that are identified by prisoners and ensure that those are actual needs and, secondly, we establish the length of time required for someone to get to the end of a course. At times, we can be fishing in the same pool for the same people.

The committee will be aware of community justice authorities—CJA chief executives will give evidence after us—and the possibility, through the Management of Offenders etc (Scotland) Act 2005, of joining up the work so that the courses and programmes delivered in prison are similar to those in the community. That means that if someone starts a course in prison, they may be able to finish it in the community, which is a step forward. Part of the issue with programmes is throughput and ensuring a consistent approach, which we are moving towards.

Ian Gunn: The population of Cornton Vale runs from prisoners on remand through to prisoners on life sentences, so we have just about every type of offender. We structure the prison on the basis that specific parts of the prison deal with specific types of prisoner. This morning, we had 338 prisoners in custody, 102 of whom were on remand.

The remand population can be volatile and fluctuates greatly, and many of the prisoners on remand are the most vulnerable and require a lot of attention. Particular resources are attached to remand work in two of the blocks in Cornton Vale, and we try to tailor interventions for short-term prisoners according to their sentence length. Basically, we ask how long we have to deal with an individual. For example, if a female offender comes in with a particular drug problem, we ask ourselves which issues we can address if she is doing just a couple of weeks. If she is doing a couple of months, we can do more, and if she is doing a couple of years, we can do more again. It is very much a case of trying to do something for the individual based on how long they are with us.

Bill McKinlay: I have a breakdown of assessment referrals, which may give an indication of the situation. Of the prisoners assessed on one day, 17 per cent required no action. Of the rest, 7 per cent had needs relating to homelessness; 9 per cent had needs relating to education; 10 per cent had benefits and housing benefits needs; and 17 per cent needed chaplaincy support. Chaplaincy support has what we call a poor box that gives immediate access to funds. It does a good job in that respect; some of the work can be done very quickly—looking after a prisoner's dog, for example. Those are the main needs. The other figures are smaller and cover issues such as careers advice, alcohol counselling, voluntary throughcare, specialist assessment and pre-release problems.

Bill Butler: I understand all of that, but what about those who serve very short sentences? Mr McKinlay used the term "signpost" when talking about prisoners who serve sentences of under 31 days. Does that mean being able to do only a little in a short time?

Bill McKinlay: Yes. Signposting means referring a prisoner to the particular agency that covers the need that has arisen.

Bill Butler: So it is not a coherent programme—you would need a lot longer for that.

Bill McKinlay: Yes—unless there was a mental health issue or something similar that required almost immediate attention.

Bill Butler: I am grateful for that information.

The Convener: I would be obliged if Mr McKinlay would pass his statistics to the clerks at the end of the meeting.

Colin Fox: In answer to Bill Butler, Mr McKinlay, you spoke about the integrated case management system. Against the background of the rising prison population that Bill Butler and the convener mentioned, the Prison Officers Association Scotland highlighted in evidence to us that there had been a reduction in staff numbers of about 600 or 700 throughout the estate in the past five or 10 years. Given the current pressures on the integrated case management system, how realistic is it that the Prison Service will be able to cope with the increased demand for assessment of prisoners who are in for 15 days or more?

Bill McKinlay: I do not agree that we are under that pressure. The integrated case management system is in its infancy. As well as putting in the system at Barlinnie, we took on another three administrative staff to cope with it. Bearing in mind my colleagues' predictions, if any new system for assessment or dealing with needs were to be decided on for the future, I would expect there to be commensurate discussion with me about the

resources, financial and otherwise, that I would need to deliver the desired outcome. However, I will not speculate.

Colin Fox: Okay, let us talk about predictions and resources. We have heard evidence that there might be an increase in the number of people who will need assessment from 3,000 to as many as 9,000 under the bill. It has been suggested to us that for every extra 1,000 offenders—we could be talking about 6,000 extra—we will need 18 or 19 staff to implement the ICM system properly. Are those estimates wildly right or wrong?

Bill McKinlay: Convener, I cannot comment on that. The people who look after the integrated case management system are the ones who determine the figures. You would have to tell me whether ICM will continue to be the means by which we carry out everyone's assessments.

Colin Fox: Let us assume that it will be.

Bill McKinlay: I have no idea at this stage. I cannot give a personal view on the matter because I have to go on the work undertaken by my colleagues, and what you quoted is their estimate. I cannot say yea or nay, or give an estimate that is above or below those figures.

Ian Gunn: I want to reiterate what Bill McKinlay said. When ICM came into being, we were given an assessment of the additional resources that we might require; those resources were put in place, which allowed ICM to function. ICM has been going since June; I have seen it working effectively in Peterhead, which is a long-term establishment, and in Cornton Vale. Whatever process is agreed in future, should the bill become law and should more assessments be required, we would expect, as Bill McKinlay said, to be informed about any additional resources that we were likely to need, and there would be a discussion about that at the time. We do not know whether ICM will still be the tool if a new process is put in place.

Bill McKinlay: Reductions and increases in staff take place in all organisations. For example, after we acknowledged that there was a mental health issue, we increased the number of our mental health nursing staff. We have increased the number of administration staff to allow us to put front-line staff into counselling and other roles. Like any organisation, we reconfigure. I need to know what the figures that Colin Fox quoted were based on. For example, are front-line staff what the union would term "white shirts"? I am not sure.

Colin Fox: Let me come at this from a different angle. I appreciate your reluctance to make predictions or forecasts, but the prison officers told us that there has been a reduction in overall staff numbers of 700, so we are not talking about an increase in resource.

Perhaps you can tell us how long it takes to train a member of staff to implement the integrated case management system. You must know that because ICM is being implemented currently. How long does the process take from start to completion before a member of staff is adequately skilled and equipped to implement the system?

15:00

Bill McKinlay: I need to think about that. Sentence management staff took over the integrated case management system, which is based on an information technology system called prisoner record 2. Training was given on the new applications for the joint approach that would allow everyone to input information into the PR2 system. I cannot specify the date of that training.

The system provides a means by which, through case conferences, the prison-based social worker and others meet to discuss, manage and oversee the management plan. They make referrals to other people—whether programme staff or others—according to each individual's needs. One individual staff member does not follow the whole system through.

The Convener: Instead of talking round an issue, if you would like to give the committee further information in writing, we would be happy to receive that. Please feel free to do that.

Ian Gunn: As Bill McKinlay said, training depends on a person's role in the process. I can talk with more authority about Peterhead, where, because all the prisoners have long-term sentences, some staff had a significant training requirement, including prison-based social workers and the person who co-ordinated the system. The personal officers of the prisoners involved required less training.

At a prison such as Cornton Vale, some staff require only awareness of the system, because they are not involved in ICM—they deal only with short-term prisoners.

Colin Fox: Those two angles are interesting. You said that significant training was required for staff at Peterhead and Cornton Vale. How long did it take to train them so that you were comfortable with their skills?

Ian Gunn: As Bill McKinlay said, ICM became another factor in our sentence management procedures. We had staff who were trained in and operated a sentence management process, and integrated case management was an add-on to that. For the first time, external social workers and others were involved in case conferences. Awareness already existed and the training was done as part of our normal training plan. Some officers had only a couple of hours' awareness

training, which they undertook during their normal shift.

Bill McKinlay: I am not sure of the time that is required to train and skill up staff in cognitive skills programmes, the STOP programme and the rolling STOP programme. If the committee wants that information, I can send it.

The Convener: I ask you to respond in writing as quickly as possible to all the questions that you feel that you have not fully answered today.

Jeremy Purvis: Colin Fox asked the question that I planned to ask, so I will ask another, brief question. What is the point of doing a risk assessment of the 80 per cent of prisoners who serve very short sentences when they pose no real risk to the public?

Bill McKinlay: We do not undertake risk assessment of short-sentence prisoners unless the risk management group notifies us of a reason to do so. We identify not the risk of reoffending but the risks that are associated with the needs that have been highlighted. An assessment is not made of dangerousness or the risk of serious harm unless a flag shows that an individual poses a significant problem or that a difficulty exists. If that happened, the case would be referred to the risk management group—each prison has one—and that group would forward on the information to deal with the risk.

Jeremy Purvis: Does that achieve the right balance and use resources properly?

Bill McKinlay: Yes.

Jeremy Purvis: The bill will mean that 9,241 admissions will require risk assessment through the ICM process. That seems at odds with the basis on which you said that you operate.

Bill McKinlay: I do not know what process will be used.

Jeremy Purvis: The ICM process will be used.

Bill McKinlay: Yes, but within that, I do not know what process will be used for risk assessment. I have just explained what we do for risk assessment of short-term prisoners.

Jeremy Purvis: I am forming a picture of the situation. The requirement in the bill for joint risk assessment by you and the local authority in the area that an offender came from or intends to go to on release is new and will apply to everyone who receives a custody and community sentence—a sentence of more than 15 days. That will be a big change to your process. At the moment, you decide whether to undertake risk assessment case by case.

Bill McKinlay: We do a risk needs assessment on everyone who comes into the prison at induction, and we will continue to do that.

Jeremy Purvis: Forgive me, but there is a difference between the needs assessment, which you have outlined clearly, and the risk of harm assessment that will be required under the bill.

Bill McKinlay: I cannot answer that because I do not know what is involved and how we would assess that risk, or even who would assess it.

Jeremy Purvis: At what stage will you find out what is in the bill?

Bill McKinlay: The SPS directorates deal with those matters for us, and we deal with operational matters. We have a superficial knowledge of the bill, but the directorates would be able to answer your questions about how we predict the bill will be implemented. I have no crystal ball. I should not make an assumption that the process will be ICM, although that looks like a good process. I cannot make those predictions.

Jackie Baillie: I am trying to be proportionate about this. I do not blame the two people sitting in front of us today, but I record my absolute disappointment that they cannot talk about the future and have no or limited knowledge of the bill. To set the context for our discussion, I must say that I find the correspondence that the committee has received from the SPS chief executive, Tony Cameron, to be a most unfortunate letter. I do not believe that these guys are telling us that they do no forward planning, have no two-way dialogue with policy colleagues and are somehow the passive recipients of information that is handed down to them. However, I do not blame either of the witnesses. They have been placed in an impossible position.

Convener, I think that these witnesses, whom I regard as having considerable expertise, have been placed in a straitjacket and I would like us to correspond with Mr Cameron on that point. It has been made incredibly difficult for the committee to do its job and for the gentlemen to provide us with robust evidence.

The Convener: In response to that, I repeat what I said at the beginning, on which the deputy convener agreed with me. We are not asking questions of policy. We are asking simply about the service's capacity to manage the chores that it will be given. We are not trying to tease out any comment about policy. I believe that we will take evidence from Mr Cameron later on.

Jackie Baillie: I look forward to that.

Jeremy Purvis: Forgive me for asking my question again. However, when the committee scrutinised the Management of Offenders etc (Scotland) Bill, we took evidence from David Croft,

Sue Brookes and Bill Millar, all of whom were in a position to give us evidence. David Croft told us:

"As governors in charge of prisons in the Scottish Prison Service, we very much welcome the Management of Offenders etc (Scotland) Bill.

Bill Millar said:

"Looking ahead, the requirements in the bill would provide a real opportunity to focus the resources where they can reap the best results."—[*Official Report, Justice 2 Committee*, 19 April 2006; c 1531 and 1536.]

In scrutinising the Custodial Sentences and Weapons (Scotland) Bill, we are trying to get a similar understanding of how the proposals will affect the operation of prisons. We were able to get that understanding when we took evidence on the Management of Offenders etc (Scotland) Bill, and that helped us enormously. The Custodial Sentences and Weapons (Scotland) Bill will affect every admission to prison. The bill will potentially make radical changes to the processes in prisons, with new partners being involved from the beginning to the end. We want to understand how that will have an impact on day-to-day operations. If the governors are saying to us that they do not know that at this stage, when will they be able to give us that information, as their colleagues David Croft, Sue Brookes and Bill Millar were able to do last year?

Ian Gunn: We will be able to do that when our colleagues in headquarters and the directorates who deal directly with the issue feel that they have something that they need to tell us. If they need our input into the process, we will be involved, as we were with, for instance, the introduction of ICM. I feel—I am sure that Bill McKinlay will agree—that we have a contract to deliver, we are extremely busy and we have a lot to do. Yes, we take an interest in what is going on around us, but our main focus is on delivering that contract at the moment.

Bill McKinlay: For me, the issue will be decided in my negotiations with the director of prisons. You asked about the effect and impact on the establishment. We will deliver whatever is required to be delivered and we will do that to the best of our ability. We will do so in a way that is consistent with the discussions that take place each year on the key performance indicators that we are set. We are not being difficult, but we are unable to predict the impact of the bill. I will not know that until my colleagues come back to me.

I would be concerned if I had to come back to the committee and say that I was not getting the resources. However, I do not think that it is like that, and I do not want it to be like that. It would be rather irresponsible of anyone to think that the bill could be implemented without some form of resource or financial backing, but that discussion still has to take place at an operational level.

The Convener: On the question of what happens currently, I turn to Bill Butler.

Bill Butler: I hope that I can reassure you, Mr McKinlay and Mr Gunn, that we know that you are not trying to be difficult. I will leave it at that; you know what I am saying.

I would like to ask about something that is currently on the go, and I am certain that you will be able to give us a detailed answer. What is the assessment process for prisoners who are released on home detention curfew? You must have thoughts on that. What can you tell the committee? Mr McKinlay, would you like to answer first?

Bill McKinlay: Let me just get my glasses so that I can look at my paperwork.

Bill Butler: I can understand and sympathise with that.

Bill McKinlay: It is just age.

Bill Butler: Same here.

Bill McKinlay: Let me give you an interesting current statistic. Barlinnie has had 126 home detention curfew releases since the June initiation of the policy and only 12 recalls: three were for offending, two of which were for breach of the peace and one was for domestic violence. There are statutory exclusions from HDCs. Rather than read them out, I can give you the relevant written information.

Bill Butler: If you could relay that information to the convener in the usual way, that would be helpful.

Bill McKinlay: Basically, we use the statutory exclusions and SPS risk assessments to ensure consistency in our approach to HDC releases. The risk assessment will recommend high or medium supervision—in other words, it assesses whether there is a security risk—and will involve consideration of whether a prisoner has a history of sexual offending or domestic abuse or violence. We have a set format and take a consistent approach to HDC when assessing somebody for release.

Bill Butler: Is that perfectly manageable? Would you say that the assessment process for HDC releases is working well?

Bill McKinlay: It is in its infancy.

Bill Butler: So far so good, though?

Bill McKinlay: So far so good. However, as we said, resources were applied to the implementation of the Management of Offenders etc (Scotland) Act 2005, and we were involved in the loop and in deciding how best to apply the resources to achieve what was required.

Bill Butler: I understand that. However, that seems rather contradictory, given my colleague Mr Purvis's comments on what your colleagues were able to say at a much earlier stage in the passage of the 2005 act. Nevertheless, I am grateful for your comments.

Mr Gunn, what is your view?

Ian Gunn: Exactly the same process is followed at Barlinnie and at Cornton Vale. I have come from a long-term establishment where HDC did not apply, so not only is it the case that HDC is in its infancy, but I am also in my infancy in applying it, so I am thankful for Bill McKinlay's greater knowledge of the process. There is a consistent approach, which seems to be working, in that we are releasing the right type of offender on home detention curfew.

Bill Butler: Could you supply the figures for Cornton Vale in writing? That would be handy.

Ian Gunn: Yes.

Bill McKinlay: Just as a point of information, one of our colleagues, a governor, sat on the Sentencing Commission.

Maureen Macmillan: I would like to ask about licence conditions, which the SPS sets when somebody is released into the community after serving part of their sentence. What are the most common causes that result in a licence being breached and the offender being returned to custody? What sort of things would cause somebody to be recalled?

Bill McKinlay: A minor breach, domestic violence, a report of disturbance, relationship breakdown, entering licensed premises, if that was not permitted—it depends on what is on the licence for each individual.

15:15

Maureen Macmillan: I would like to ask Ian Gunn to talk about, if he has not already done so, the needs that women prisoners might have. Do they have any specific needs in the context of the bill that might not have been mentioned?

Ian Gunn: As I have already mentioned, we find that women offenders can have self-harm issues and mental health concerns. They also seem to have more family issues, in that women who come to prison may have a direct responsibility for children, which is not always the case with male offenders. For example, if someone who has taken their children to school in the morning is then put into prison, there might be no one to pick up the children. Such issues have to be dealt with, as well as issues around accommodation.

Maureen Macmillan: What sort of breach of licence conditions would be likely to require the return to prison of a woman who has been released on licence?

Ian Gunn: In my relatively limited experience, I have seen very few breaches. In fact, the only one that I have seen was for alcohol abuse—the offender ended up not turning up for an appointment. I think that I am right in saying that female offenders are less likely to breach their licence conditions than male offenders, but I have still to learn about that.

Maureen Macmillan: So something as minor as not turning up for an appointment could result in someone being brought back to jail.

Ian Gunn: If it was the first time that such a thing happened, it would not result in a return to jail, but if someone turns up clearly the worse for drink or if they have taken drugs, that would be a different matter.

Maureen Macmillan: Yes. We are concerned about the revolving-door principle: people are brought back to jail for something that would not seem to pose a risk to the community and then the Parole Board for Scotland lets them out right away because there is no risk.

Bill McKinlay: The other day, I spoke to 12 short-term prisoners and told them about the bill's intentions for prisoners who go out on licence. Their view is that no one goes out with the intention of breaching their licence conditions. They had mixed views on the proposals and whether they would benefit from them, but the issue that they brought up was who would police the licence in the short term. Basically, however, they said that they do not leave prison intending to breach their licence conditions.

On an earlier point that was made about breaches of licence conditions, sometimes a person who is in breach is recalled, although if they had appeared in court, they might have received only a fine or some other outcome. Of course, that is for the courts to determine.

The Convener: Thank you both for coming along. I appreciate the position that you are in, although I tried to make it clear that we do not expect you to be accountable for policy. I look forward to receiving the written evidence that you have offered to send to the clerks. The committee will be pleased to have that because it will help us with general background information. The bill is still at an early stage and, as you will appreciate, several issues have arisen since we started on the process. I wish Mr Gunn good fortune in his new position.

The committee will now take a two-minute break.

15:18

Meeting suspended.

15:23

On resuming—

The Convener: I reconvene the meeting. A decision has been made, in agreement with the minister, to defer consideration of the affirmative Scottish statutory instrument until next week's meeting. There will also be a slight change in the running order. I am grateful to the community justice authority witnesses for allowing their evidence to be moved to after the minister's evidence to enable her to attend to a personal matter.

We are grateful that Johann Lamont is here. I welcome her in her new role as the Deputy Minister for Justice. We will have a lot of dealings with you over the next few months, minister, with regard to Executive legislation, to which we look forward. I also welcome Tony Cameron, the chief executive of the Scottish Prison Service; Valerie Macniven, the head of the Scottish Executive's criminal justice group; and Charles Garland, from the Scottish Executive Legal and Parliamentary Services.

Minister, we have heard much expert evidence to the effect that the bill may not deliver on its intended aims. Please explain the general ways in which you believe that the bill could be said to enhance public protection, reduce reoffending and increase public confidence in the justice system.

The Deputy Minister for Justice (Johann Lamont): Thank you for your welcome, convener. I genuinely look forward to working with the committee over the next period. I have a record of recognising the critical role of committees in helping to shape legislation, and I am happy to be as co-operative as possible with the committee. I acknowledge that you have reordered your agenda in order to take evidence from me, and I would be happy to respond in writing to any questions that are raised after my departure this afternoon.

You will be aware that I come relatively fresh to this area of work, so I will be more cautious than normal. I hope that you understand—recognising the significance of what appears in the *Official Report*—that I will need to refer to officials questions on the technicalities of this important bill. I do not want to mislead anyone through my lack of expertise and experience or even my ignorance. I trust that you will accept my responses in that spirit.

The Convener: That is a generous comment, minister. Thank you.

Johann Lamont: I now turn to the bill. Will it do what it says it is going to do? As with all legislation, it is not that somebody somewhere has decided that it is the solution and therefore the Executive is determined that it is going to work, regardless of what anybody says. We will work closely with all those concerned as the bill progresses and after it is enacted to ensure that it does what it is intended to do. In considering any legislation, we are always mindful of the law of unintended consequences, and we will keep anything that we do under review.

It is important that we give people confidence in the system by enabling them to understand more clearly how sentence management works. The bill recognises the importance of working with offenders during their time in custody and that the custody part of a sentence is important in making people recognise that there are consequences to their actions. However, when offenders leave prison they will be on licence and people will still be working closely with them. That is a strategy for addressing the problem of reoffending.

The bill will create clarity and give people some certainty about sentencing. People will see that a sentence does not end with the custody part, and that there is progression while the person is in jail and after they have been released from jail to help them to address their offending behaviour and to reduce reoffending. People—especially young people—will also recognise that there are consequences to their actions, and they may be deterred from offending behaviour when they see what happens to those who have ended up in the system.

We are seeking certainty. We recognise the role of victims, and a lot of work is going on around that, far beyond the bill itself. We are also seeking to address the issues that offenders face and we are trying, through the custody and community parts of sentences, to address offending behaviour. The fact that we are challenging offenders should give people confidence in the system.

The Convener: On the issue of people's confidence in the system, I have little doubt that, during this session, you will be asked questions by the committee about the clarity of the sentencing process. If you had a simple message to send to the public, to give them confidence in the proposed new sentencing procedures, what would it be?

Johann Lamont: When a sentence is decided in court, an explanation will be given of how that sentence will work, so that people will know what to expect. We recognise the role of victims in the justice system, but we also recognise the challenge for all of us if we do not address and seek to deter offending behaviour. In attempting to

do that, we recognise the pressures and tensions in the judicial system. We propose a planned, secure process. What we say is what we intend to do. At an early stage, when the court decides what the sentence will be, people will understand what that sentence will mean both for the offender and for the community.

The Convener: The Sentencing Commission has suggested that the financial viability and procedural fairness of its proposals possibly require a downward recalibration of sentencing to take account of the additional burdens that compulsory post-release supervision places on offenders. Such a recalibration is not proposed in the bill. Will you explain why?

15:30

Johann Lamont: There are a lot of technical issues there. I will ask officials to respond to them.

Nothing in the bill requires judges to change their sentencing practice. We are talking about the way in which we manage sentences once they have been decided in court. There may be a broader issue about which offences we regard as sufficiently serious—the committee will be aware that the Sentencing Commission has addressed and reported on consistency in sentencing. The bill, however, deals with the next stage, once sentences have been identified, and how we work with those who have been given those sentences. We are not talking about categories of offence and which sentences should attach to them. That is a much broader issue than the one the bill addresses.

Valerie Macniven (Scottish Executive Justice Department): The reference to recalibration takes the committee back to provisions recommended in the Sentencing Commission report that sought to apply parts of the existing sentencing regime under the Prisoners and Criminal Proceedings (Scotland) Act 1993 while at the same time importing the new policy. Those quite complicated provisions would have required the sentencer, in considering the sentence that they were going to impose under the new regime, somehow to have regard to the previous one. In considering how best to move forward, ministers took the view that it would not assist clarity in sentencing if the future legislation tried somehow to merge the two regimes. That important factor was taken into account when ministers decided not to follow the Sentencing Commission's precise recommendations on recalibration.

The Convener: How will the Executive and its advisory groups come up with a clear answer to the Sentencing Commission's question? Presumably, the commission is talking about the expected capacity of the system to be able to provide what is indicated in the bill. Are you saying to the committee that there will be no need for recalibration in any form, because the capacity to do what is being suggested will exist? If that is the case, when will it exist?

Valerie Macniven: The minister may want to come back on some of the more strategic points. The detailed information set out in the financial memorandum takes each element of the policy in the bill, costs it and shows how it will be resourced. When the Sentencing Commission made its recommendations, it was not to know what would be in ministers' minds on the various elements, how they would be costed and how the costs would be set out in the bill. I cannot get into the mind of the Sentencing Commission, but in its report it tried to provide answers on sentencing, whereas ministers have taken the view that the sentencing regime should be left as it is for the time being. There have been further recommendations on consistency in sentencing, which ministers are still considering.

Jeremy Purvis: I welcome the minister to her new position. I have a brief question on terminology in the bill. In deciding the custody part of a sentence, the judge will have to

"satisfy the requirements for retribution and deterrence."

What will judges have to take into account with regard to retribution? What is the Scottish Executive's definition of retribution?

Charles Garland (Scottish Executive Legal and Parliamentary Services): The intention behind the framing of the bill in that regard is dealt with in the three paragraphs in section 6(4). Section 6(4)(a) mentions the seriousness of the offence or of other relevant offences. Section 6(4)(b) refers to previous convictions. Section 6(4)(c) relates to a provision of the Criminal Procedure (Scotland) Act 1995, which is on the timing of a guilty plea. The Executive's understanding is that those three paragraphs constitute the main elements of retribution and deterrence.

Jeremy Purvis: So the seriousness of the offence is part of retribution. Surely that is not correct.

Charles Garland: The intention is that those three paragraphs make up the retribution and deterrence package.

Jeremy Purvis: Are you saying that deterring criminals is the same as exacting retribution?

Charles Garland: I would not say that they are necessarily the same thing.

Jeremy Purvis: Where in section 6(4) are they separated?

Charles Garland: I simply aimed to make the point that the factors that are mentioned in section 6(4) constitute the main elements of retribution and deterrence. It is not stated which factors relate to retribution and which relate to deterrence.

Jeremy Purvis: The same appears to be true of the way in which the bill deals with retribution in relation to life sentences, which have different characteristics. When the punishment part of a life sentence is set, will retribution be defined in the same way as it is for non-life sentences?

Charles Garland: The terminology for life sentences is slightly different, in that retribution and deterrence are labelled as the punishment part of the sentence. The punishment part must satisfy the requirements for retribution and deterrence, leaving aside any requirements for the protection of the public. To some extent, for life sentences retribution and deterrence essentially constitute punishment.

Jeremy Purvis: Are you talking about deterring the public or deterring the individual concerned from reoffending?

Charles Garland: Both are covered.

Jeremy Purvis: Where in section 6(4) is that stated?

Charles Garland: There is no explicit mention of that. The court must consider—

Jeremy Purvis: So it is not necessarily the case that both interpretations are covered.

Charles Garland: The courts will interpret the provision as they see fit. On occasion, they will pass a sentence with a view to deterring other people from committing the crime and in some cases—

Jeremy Purvis: That is precisely what the sheriffs said in their evidence to us—they said that they consider matters on a case-by-case basis. They may decide that the purpose of a sentence is to prevent the person from reoffending or that it is to provide a signal to the community. However, although section 6(2) makes it clear that the custody part is

"an appropriate period to satisfy the requirements for retribution and deterrence",

there is no definition of whether the aim of deterrence applies to the individual or to the community. In addition, the definition of retribution for life prisoners seems to be different from that for other prisoners. Can you appreciate the confusion that exists?

Charles Garland: We can have a look at that. The punishment part of lifers' sentences is intended to be comparable to the custody part of custody and community prisoners' sentences in that both must

"satisfy the requirements for retribution and deterrence."

I note from some of the evidence that has been presented that the constituent elements may not clearly be read as being those that are set out in section 6(4).

Jeremy Purvis: We will have a look at your review of that section.

Johann Lamont: I would be happy to dig into the matter further. Rather than sit back until stage 2 to find out whether we complete a review, you may wish to have an active dialogue about the concerns. It sounds as if they are technical, but they may not be. I think I know instinctively what retribution, punishment and deterrence are, but I might be entirely wrong about that. We can discuss the matter further.

The Convener: It would be helpful to have clarity on that point at the earliest possible convenience.

The sheriffs stated in their evidence that they do not feel able to tell offenders—or, indeed, victims—what the final sentence served will be, because of the roles of the Government and the Parole Board.

Jackie Baillie: The convener is in danger of straying into my question.

Minister, I press you on your response to the convener's first question. We all want clarity about sentencing and release, because that will increase public confidence in the system. As the convener said, the only public announcement of the sentence will be made in court, but the actual period to be spent in prison will not be stated at that time, because ministers can reduce or increase it. The conditions that will be applied to the community licence will not be stated, because ministers and the Parole Board will decide them, and neither will what will happen in case of breach be stated, because in those circumstances ministers and the Parole Board will decide what is in the public interest. How will victims and the public know what will actually happen to the offender? The courts will have one opportunity to say in public what the sentence will be, but there are all those caveats.

Johann Lamont: There are two separate issues: there is the stage at which the sentence is announced and there is the process by which it can be shifted. There is a separate discussion about the extent to which the general public should be engaged and involved in the movement of individual sentences and how that is dealt with.

We know with some certainty that the minimum amount of time that the offender can expect to

spend in custody will be stated at the first stage. That is significant, because at present one thing is said but something entirely different happens. My understanding is that, at the next stage, if it is agreed to extend the community licence because of the considerations of the Parole Board, that will not be made public.

There is a distinction between the general public and victims. There is also a discussion about what information victims want and the degree to which they want to be engaged in the detail of somebody's sentence. However, there will be clarity about the minimum time to be spent in custody and the process by which there will be any changes. People should have confidence that what happens to the offender will not be determined by factors that are extraneous to the offender and the threat that they pose to the community. There is a process—when they go from the custody part into the community part, there will be a risk assessment and licence conditions. People need to know that if there are breaches, there will be consequences—if they do X, Y will follow.

There is a distinction between the statement that will be made in court and the process by which there will be a shift in the sentence, but there will be no shift in the minimum period in custody, which will be stated clearly at the initial stage.

Jackie Baillie: I understand the process that you have outlined, which is helpful. I will explore the minimum period of custody later, but what will happen to home detention curfew? Ministers will be able to reduce the custody period, so the minimum period could be reduced by ministers at a later stage.

Johann Lamont: I think that all members of the committee understand the positive role that home detention curfew can play—and has played—for low-risk offenders. We want to consider that in the new process, but we are clear that we will not commence home detention curfew in the custody part until we are confident that the system has bedded in, so that will be done at a later stage. The power will be available, but it will not be used until the system has bedded in.

A statement will be made about the custody part, and home detention curfew will not be available to people who are sentenced under the regime in the bill. We might wish to consider making it available in the future—that is logical, given the conversations and evidence about short sentences of less than six months—but ministers do not intend to exercise the option for people who are sentenced under the regime in the bill.

Jackie Baillie: Then why do we have the option at all, given the desire for clarity, transparency and confidence in the system?

15:45

Johann Lamont: To have confidence in the system you must have confidence that it works. There is some evidence—others here know more about it than I do—that home detention curfew works for certain offenders. However, in order to give people confidence, we are committing to not exercise that provision until the process is bedded in. Whole areas of the bill require people to have confidence. People can sign up to the notion that a sentence should reflect the need to punish, to deter and to rehabilitate—we all accept that—but if any part of that is seen as meaningless or weak, people will lose confidence in the system as a whole.

The new provisions reflect quite a significant change. At the earliest stages, we do not want the explicit clarity about the custody part and the community part of the sentence to be clouded by the notion that the home detention curfew could be introduced at the same time. We can see its strength as an option, but we want to ensure that the new provisions are bedded in before that happens.

Jeremy Purvis: Given that it will be the law that home detention curfew is an option, could not a prisoner ask for it? Perhaps Mr Cameron could comment on that. The proposal will end a procedure that is already under way: we heard from the previous panel that there have been 126 home detention releases. Will that now be halted?

Tony Cameron (Scottish Prison Service): There have been 700.

Jeremy Purvis: We heard that there had been 126 from Barlinnie. Is the total 700 across the whole estate?

Tony Cameron: There are 308 people on home detention curfew at the moment.

Jeremy Purvis: Given that every prisoner will have a custody and community part for sentences of more than 15 days, does that mean that there will now be an end to that process?

Tony Cameron: Eventually, because a new system of a custody part and a discretionary part will supersede the current automaticity that attends sentences of less than four years.

Jeremy Purvis: Then I wonder whether it would be better just to take chapter 4 out of the bill, because that would make matters quite clear. I shall return to that issue.

I turn to section 6 again, to the delight of Mr Garland. The factors to be taken into consideration when setting the headline sentence and the custody part can effectively be taken into consideration twice, when setting the headline sentence—for the seriousness of the offence—

and when setting the custody part. If matters to do with the seriousness of the offence have to be taken into account under section 6(4), why cannot the headline sentence be longer, instead of the custody part of a shorter headline sentence being longer?

Charles Garland: As has been made clear, the intention of the bill is to alter nothing to do with the setting of the overall, or headline, sentence. That will continue as at present, and there are well-established appeal procedures for sentences that are either too lenient or too stiff. As regards overall sentencing, it is expected that that will carry on. What is being introduced is the requirement to set a custody part for all determinate sentences of more than 15 days. As you point out, all the factors that we identify in section 6(4) as being relevant to the length of the custody part will also contribute to the length of the overall sentence. To put it simply, the intention has been to try to leave the overall sentence as it is at the moment, but to strip out any elements of that sentence that the sentencer may have in mind for the purposes of protecting the public, and then to take whatever is left—provided that it is between 50 and 75 per cent of the overall sentence—as the custody part.

Jeremy Purvis: If the offence has the same characteristics as those set out in section 6(4), with regard to the seriousness of the offence and so on, why have a 75 per cent limit? If the headline sentence and the custody sentence determinants are the same, and both satisfy the requirements for retribution and deterrence, why have that 75 per cent limit?

Charles Garland: The assumption is that some element of every custody and community sentence will be served in the community. The custody limit has been set at 75 per cent. However, it is also recognised that it is likely that some of a sentence will be referable to the need to protect the public. The bill aims to get the sentencer to strip that out in deciding what the appropriate custody part will be.

Jeremy Purvis: If the Scottish ministers decide that the public are at risk, and therefore ask the Parole Board to refuse someone's release into the community after the custody part, why will that person not serve the whole sentence in prison?

Charles Garland: Shortly before expiry of the custody part, ministers will have the power to refer the matter to the Parole Board, which will be obliged to direct release or to refuse to direct release, provided that three quarters of the sentence have not been served. As I said, after three quarters of the sentence have been served, the intention is that the offender will proceed automatically to serve a period—the minimum is 25 per cent of the sentence—on licence in the community, subject to recall to custody should that be deemed appropriate.

Jeremy Purvis: That would mean recall for the remainder of the sentence.

Charles Garland: Indeed.

Jeremy Purvis: The minister said at the beginning and the policy memorandum clearly states that one policy intention is to reduce reoffending. However, section 6(5) debars sentencers from considering the risk of reoffending in setting the custody part. Does the bill really intend to remove sentencers' consideration of public protection as a significant factor in determining the period in custody?

Johann Lamont: That factor determines what happens at the end of the custody part.

Valerie Macniven: A major objective of the policy is to have real-time consideration of the risk to the public and not a decision that is based on the ticking of the clock. We have discussed separating the two elements. A minimum custody part will be set. I will not say that the punishment part is an equivalent, but the custody part has that effect and it is not to protect the public, except to the extent that if someone is in prison they are clearly not in direct contact with the public.

The aim is to allow real-time factors to be taken into account in deciding about release. Time in custody provides the opportunity to build a further sense of the risk that a person poses to the public, according to factors such as their behaviour in prison and their acknowledgement of their previous offence—factors that are already relevant to other decision making when the period is not determined, as in lifer cases.

Jeremy Purvis: Why cannot the sheriff make the decision? Why should the Prison Service do it? When the Prison Service does it, it is not on the public record or transparent. That follows from Jackie Baillie's questions. A sheriff could state clearly that part of the custody part is to protect the public, but the bill debars them from considering protection of the public.

Valerie Macniven: I can say only what I have said already. In ministers' view, the opportunity to consider the public risk in real time is a significant advance on the current arrangements, under which the ticking of the clock determines when the public reconnect with a prisoner.

Jeremy Purvis: Surely the elements are not mutually exclusive. A sheriff could take into account public protection when determining the custody part. If a person's behaviour in custody is not appropriate, the Prison Service will be able to refer them to the Parole Board.

The Convener: I will bring in Mr Cameron, who wants to comment.

Tony Cameron: I want to correct something that Jeremy Purvis said about who will refer a prisoner to the Parole Board. It has not been decided that the SPS will do any such thing; the Scottish ministers will do it. The SPS does not currently make such determinations and the bill does not provide for us to do so. The issue has yet to be considered, and no one should jump to the conclusion that the SPS will make the decision.

Jeremy Purvis: Who does the Executive intend to make the decision, if not the SPS? What other options are there?

Johann Lamont: I suspect that I should take advice and come back to the committee on that.

Maureen Macmillan: How will the Scottish ministers determine the conditions of community licences in cases in which the Parole Board has not been involved? The bill does not specify what the standard community licence conditions will be. What conditions do you envisage will be typical and what additional conditions might be added in particular cases? Will there always be a condition that requires the person to be of good behaviour and to keep the peace?

Johann Lamont: We are keen that licence conditions should reflect decisions that are made after the individual who is to serve the community part of their sentence has been assessed. If the sentence is less than six months, we would expect relatively straightforward conditions, such as you described, but in some circumstances further conditions might need to be attached. In other cases, I would expect stricter conditions, which would reflect the assessment of the individual, as I said.

Valerie Macniven: There is likely to be a similarity between the minimum community licence conditions and the current standard conditions of licence that are set out, which apply when people who are serving longer sentences go before the Parole Board for a determination of release—the current processes are quite similar to the process envisaged in the bill. As the minister said, there will be a build-up of conditions from that minimum. That relates to the point about real-time assessment of circumstances.

Maureen Macmillan: Where are the conditions set out? Nothing in the bill tells us what the standard conditions will be.

Valerie Macniven: Community licence conditions are not set out in the bill. I was referring to the current standard conditions in the parole system.

Maureen Macmillan: Will the standard community licence conditions be the same as the current standard conditions?

Valerie Macniven: The area can be developed, but the basic concept is that minimum conditions on good order and good behaviour will be the starting point, after which consideration will be given to the offender's circumstances and public protection, which is crucial.

Maureen Macmillan: The committee thinks that there has been some vagueness about community licence conditions. We are not terribly sure what the standard conditions will be and how they will be added to, depending on the seriousness of the offence.

What would happen if an offender breached the conditions or was considered likely to do so? I am thinking in particular about offenders at the lower end of the scale. It seems from section 31(1) that an offender could be recalled to prison for quite a minor breach. The prison governors from whom we heard suggested that an offender who did not turn up for an appointment might be recalled to prison, if attendance was a condition of their licence. However, section 33(3) provides that the Parole Board must order re-release unless there is a risk of

"serious harm to members of the public."

A person who was serving a short sentence probably would not present a risk of serious harm to the public. They might get out of prison on licence but do something fairly minor that breached the licence conditions and be recalled to prison. They would then be let out again—and perhaps recalled again. The approach would create an odd situation in which people popped in and out of prison.

16:00

Johann Lamont: I will be happy to consider the matter further. When I first considered the evidence I was struck by the suggestion that, perversely, we might be creating a revolving door. However, I do not think that we have done that.

It must be clear that the licence conditions are there for a purpose and cannot be ignored, but at the same time there must be a sense that the response is proportionate. As you will know from your schooldays, there is a difference between wilful disregard and forgetting a jotter. I do not mean to trivialise the breach of conditions, but there is a difference between an unfortunate breach of a condition in certain circumstances and an emerging pattern of behaviour. We must ensure that people take the conditions seriously. There will be a hierarchy of responses. There might be a warning or further discussion with the

person who has breached the conditions. Scottish ministers will be responsible for recalling an offender, so it is reasonable for them to acknowledge that that is a significant step.

We recognise that a different body must judge whether the person should be re-released. That is a different test. If we want people to have confidence in the community part of the sentence, the conditions that are attached must be seen as part of a contract that people must live up to rather than ignore. However, there is a tension between addressing that concern and having a flexible response to breaches.

We do not want there to be perverse consequences, nor do we want anything to undermine the system, so it is necessary to seek clarity about the consequences of breach of conditions. I recognise the significance of the points that have been raised.

Valerie Macniven: I will draw some parallels with the current arrangements for community-based sentences. Similar points apply when someone is on a probation order and is under the supervision of a community justice social worker. National standards on how community sentences operate are kept under review. The underlying intention is to have a proportionate response. Parts of the regime are relevant to the situation that we envisage, in which we will deal with many more people coming out of custody under supervision than we do now. There is scope for knowledge transfer.

Someone who missed one appointment would be highly unlikely to be immediately recalled. That would not usually satisfy the public interest test, unless there was a pattern of behaviour of complete disregard for the conditions or if there was something exceptionable about the missing of the appointment. We never say never, but it is not the intention that if someone missed one appointment their feet would not touch the ground and they would be off to jail.

Maureen Macmillan: I am content with what you have said. There is a lot of room for further discussion on the criteria for recall and on the Parole Board's role in relation to the possibility of re-release. We look forward to further discussions.

The Convener: Before we move to the next question, can I press the minister to clarify why the standard conditions do not appear in the bill and to indicate whether they are likely to do so? Making clear in the bill the basic conditions, as opposed to variations or conditions related to the assessment of individual cases, is a matter of public confidence.

Johann Lamont: I do not know whether knowledge about the history of the drafting of the bill might help us.

Valerie Macniven: As I said, there are de facto standard conditions, which include one about good behaviour and another about not quitting the country. Those are important and, in the interests of transparency, the suggestion that the standard conditions be imported into the bill could probably be considered further, subject to anything that might be said about the difficulty of doing so.

The Convener: We would be grateful for a note on that.

Bill Butler: I welcome the minister formally to her new position.

The committee realises that many offenders released on licence will be short-term prisoners. To what extent can meaningful risk assessment and management be carried out with that group both in prison and in the community?

Johann Lamont: That will be a challenge. We all recognise that short-term sentences reflect a different level of offending and presumably, therefore, a different level of risk. The work that is done with such offenders should be proportionate and will not be the same as the work done with people who are in prison for a great deal longer.

If I thought that work with offenders could take place only in prison, I suppose that I might have more anxieties about that. However, because sentences will have a custody part and a community part and because we recognise the significance of licence conditions in trying to get offenders to engage with those who can help them, I believe that there will be space to work with offenders throughout the sentence rather than just within the custody part. The approach in the bill recognises that work can be done with offenders at the level that is required for them throughout the two parts of the sentence.

Bill Butler: I take that on board and I understand that. In practical, day-to-day terms how will the proposals in the bill contribute to the assessment and management of offenders throughout both the custody and community parts of the sentence?

Johann Lamont: We seek to clarify that risk assessment should be done during the custody process rather than when the offender reaches the halfway point, when a decision must be made. An integral part of the work during the custody part will be to prepare the person for the community part. That important work will be at the heart of the sentence. In practical terms, the bill sets out how people should work their way through the system rather than setting out a process that is driven simply by time. I hope that I am making sense.

As I think I mentioned earlier, for very short-term sentences, we need not just a formal determination of how the person should be

supervised but to have in place services such as health and housing that are responsible for reaching out to folk who come out of prison. Those services need to be much more geared up to picking up on people who are in need.

Bill Butler: For very short-term prisoners, I recall that one of our witnesses last week suggested that it is inappropriate to use terms such as "assessment and management". We were told that only the most basic screening can be carried out of such prisoners. How would the minister respond to that?

Tony Cameron: That is the case for very short-term prisoners. Given that 98 per cent of prisoners arriving at Cornton Vale and about two thirds to three quarters of male prisoners test positive for illegal drugs in their systems—the figures for the men vary according to whether the sentence is short or long term—medical issues are paramount in the first short period of a sentence. If the person is in prison for only 21 days, that gives us no time. As members heard me say when the issue arose during my previous appearance at the joint meeting of the justice committees on 31 October, given current resources and a prison's knowledge of the prisoner who comes in, the amount that a prison can do with people on short-term sentences is extremely limited. At the moment, we have no system of integrated case management for offenders who have been sentenced to less than four years, because we have concentrated on the most difficult and dangerous, or problematic, prisoners. For the vast majority of prisoners on very short-term sentences, there is a limit to what any prison system can do. It is not a social service.

Bill Butler: I did not have the pleasure of hearing you on 31 October, as I was elsewhere. I apologise for that, Mr Cameron.

Mr Cameron has replied to my question, but I would rather hear the minister's reply. Is not the use of terminology such as "assessment and management" inappropriate, given that only the most basic screening can be carried out for very short-term prisoners? I know that Mr Cameron alluded to that. Does the minister agree?

Johann Lamont: I could not be certain about the distinction that is being drawn in the language that you have used, so I would not concur with you on that. However, I recognise the obvious fact that, if someone is on a very short-term sentence, the capacity to understand the complexities of that person during the custody part will be less than if the person was due to be in prison for a longer period.

We are considering how we deal with people once the court has determined what the custody part should be and what the community part should be. We have to acknowledge that if somebody is given a shorter sentence, not all their needs can be delivered through the Prison Service. Therefore, we must ensure that they are not abandoned when they serve the community part of their sentence and that the mainstream services are there to meet the specific needs that have been identified in prison. I can be corrected if I am wrong, but perhaps some of the conditions could direct people to co-operate with agencies that might help to address their needs. I am pretty sure that the sentence that is imposed for an offence will be a reasonable reflection of the needs that have been assessed.

Valerie Macniven: I want to add three points to that. First, the advice that was available to ministers when they formulated the policy was that a period of 15 days in the community—which you might think would be the balance in many cases in which there was a 50:50 split—was the minimum amount of time in which we could begin to engage practically with a person. Anything less than 15 days would be too short a time to engage, although we would still be able to signpost people in some direction. In 15 days we could begin to help people to reduce the risk of their reoffending through practical measures.

Secondly, you might have picked up the term "integrated case management", which Mr Cameron said is currently applied to prisoners on longer sentences. The financial memorandum gives a sense of the preparatory work that needs to be done to put in place the new measures. We have been thinking about how the integrated case management approach would apply to a much larger number of prisoners. From the moment a prisoner arrives in custody, we are thinking about the time when they will go back into the community. We are planning how to integrate case management in custody and in the community.

Finally, the context for the bill is implementation of the Management of Offenders etc (Scotland) Act 2005 and the setting up of community justice authorities, which are intended to join up the process of managing offenders in the prison and the community on a grand scale.

Jeremy Purvis: Paragraph 163 of the explanatory notes to the bill, which develops the point about the minimum time needed for supervision to be effective, states:

> "social work practice experience suggests that a minimum supervision period of 3 months in the community is essential."

However, as far as I understand it, section 27 provides that supervision conditions will apply only to those who have a custody or community sentence of six months or more, which means that 80 per cent of the prison population will not have conditions set on their release on licence into the

community. Do you want to reconsider that, or am I misinterpreting the bill?

Valerie Macniven: A great deal might turn on the term "supervision", which has a distinct meaning in the section to which you referred. I have been talking about helping people integrate back into the community. A range of measures are available for that, from helping people to access joined-up services to providing supervision by a fully qualified community justice social worker and addressing people's offending behaviour in a much more intensive way.

The explanatory notes acknowledge that the original sentence has to correspond with the severity of the offence and that the supervision that is applied in real time takes account of the particular circumstances and the risk. It is more of an intensive package.

16:15

Jeremy Purvis: That has not answered my question. Where in the bill does it state that anyone who is sentenced to under six months can have legal conditions set for them other than the basic licence conditions when they serve the community part of the sentence?

The only place in the bill that might allow that to happen is in section 11, I think. If the SPS—or whoever it might be—recommends to the Parole Board that the offender is not to be released after the end of the custody part, the Parole Board can overturn that recommendation, because it has the statutory power to apply conditions to the offender. The section goes on to explain what those conditions can be. However, there is no statutory power to apply conditions to the licence of someone who serves less than six months, which means 80 per cent of the prison population.

Valerie Macniven: I was answering your question in terms of the support for offenders rather than the statutory conditions.

Jeremy Purvis: Yes, but those conditions do not exist for offenders who serve less than six months.

Valerie Macniven: A distinction is made between the two periods.

The Convener: When you review the *Official Report* of today's meeting, it would be helpful if you would drop us a note to clarify that point.

Colin Fox: You will appreciate that much of the evidence on the bill that we have heard so far has placed central importance on effective and accurate risk assessment. That is the line of inquiry that we are following today—how to accurately assess the risk to the public and the problem of reoffending and how to address public confidence.

In evidence last week we heard that risk assessment is an inexact science and that it is difficult to predict confidently whether someone will reoffend. Perhaps this question is directed more at Mr Cameron, who is at the service delivery end, so to speak. The bill requires assessment for all offenders who serve more than 15 days. Will you give the committee a flavour of the risk assessment process that takes place in prison and what staff look for to allow them to make an accurate and effective assessment of where an offender should go next? So much depends on that.

Tony Cameron: As the law stands, we do not make such assessments. Halfway through the sentence, the offender is released, not on licence but unconditionally. We do not make assessments of the risk of harm or apply any other test at that point. The law is clear at the moment, but the bill proposes to change it. Therefore, we have no basis on which to be sure about how such assessments will be made. We are in uncharted waters.

The current system involves the Executive only when prisoners serve sentences of more than four years or life sentences. There is a well-tried system for assessing whether such prisoners who have reached the statutory stage—whether that is after the punishment part or otherwise—remain a risk to the public, although I will not go into that in detail. The Parole Board takes a decision about such prisoners and the Scottish ministers are required to implement that decision. Ministers have no discretion whatsoever, although they and not the Scottish Prison Service are party to decisions about what representations to make to the Parole Board, currently through the Scottish Executive Justice Department.

Colin Fox: Guide us, if you will, towards what you believe SPS staff will do following implementation of the bill. What will SPS staff look for in order to assess the relative risk that a prisoner poses when they have to make a judgment about whether to release a prisoner after they have served either 50 per cent or 75 per cent of their custodial sentence?

Tony Cameron: As I pointed out, it has not been decided that SPS staff will make such decisions. Scottish ministers will make them. It has simply not been decided that SPS staff, governors or I will make them.

Colin Fox: Okay. Let us leave aside what uniform people wear and whether they are ministers or—

Tony Cameron: I do not know the answer to your question.

Colin Fox: Given your experience in the Prison Service, surely you have an idea of how you assess the risk that a prisoner presents and the likelihood of their reoffending when they are released.

Tony Cameron: No. Legally, we are not required to make such judgments at the moment.

Colin Fox: At what stage does the SPS suggest the referral of an offender to the Parole Board, in relation to whether they are likely to be considered a greater or lesser risk, for the Parole Board to consider what licence terms or what release would be—

Tony Cameron: We do not have that function. We give an opinion about a person's behaviour in prison, but we make no judgment about the likelihood of their reoffending.

Colin Fox: What opinion do you give the Parole Board in relation to the offender's circumstances in prison to allow the board to make its own assessment?

Tony Cameron: Various assessments are done by staff, particularly the psychologists whom we employ, who give a professional opinion on how dangerous the person is. That applies to prisoners who are serving life sentences and to certain other categories of prisoners such as serious sex offenders. However, the number of people in respect of whom those judgments are made is very small.

I cannot tell you what judgment will be made about whether to refer people who are in prison for six months to the Parole Board or recommend their release, because the SPS has not been involved in that. However, we have said that our integrated case management system could be extended to inform those who will make such decisions. The system was built for another purpose, but it could be extended to include information about people's offending history, behaviour in prison and so on, and that information could be made available to those who will make the decisions. That is part of our involvement in the risk assessment process, which is costed in the financial memorandum.

Colin Fox: I turn to the role that the SPS will play in preparing offenders for the community part of their sentences. At present, offenders who serve long sentences with the SPS are prepared quite intensively for their release and efforts are made to consider their housing and support services. As I understand it, that is done for prisoners who have been with the SPS for a long time, but there is not the same level of intervention in planning for the release of short-term prisoners. Do you expect that to continue? Will planned intervention continue to be directed at those who serve long sentences?

Tony Cameron: It is a matter of degree. It is still our view that we should spend more time and energy on serious and violent offenders. That is expensive, but the work needs to be concentrated on prisoners who serve long sentences. However, as Valerie Macniven said, the Management of Offenders etc (Scotland) Act 2005 introduced community justice authorities—we are not part of those, but we are a partner to them—in an attempt to ensure that all prisoners are more integrated, except those who serve extremely short sentences. It was intended that work on people's employability, housing, benefits, drug addiction and so on should start before they get to prison.

Very few people come to prison without being known to "the authorities" beforehand. That work should be continued seamlessly during their incarceration and they should be handed on sensibly to those who will supervise them in the community or—where there is no formal statutory supervision—the voluntary, local authority and other bodies that can help them. Resources have been put into that.

Integrated case management is part of the offender's journey and it is supposed to help. We are engaged in trying to improve what, in some cases, we might call the throughcare of people who become serious offenders—I am not talking about people who have received fines but those who are likely to get or have got custody—so that they do not fall between the steps or slip through the grid at any point but are handed on sensibly. We are putting a lot of effort into that by working with the new chief officers of the eight community justice authorities to improve that service to the public. The committee will hear later from them about the planning for that.

Colin Fox: Indeed we will.

What can the Prison Service do that it is not doing just now to prepare better the majority of offenders who are serving shorter sentences for release to serve the community part of their sentences?

Tony Cameron: Irrespective of the bill, we have for some time been improving our service—we hope to continue to improve it—to all the prisoners who are sent to us in order that we can make them slightly better when they leave than they were when they came to us. That includes improvements in the health care that we give. Prisoners are not eligible for the national health service, so we try to ensure that our health care is as good as, if not better than, what they would get in the community.

Through the throughcare arrangements in our link centres, for example, we hope to enable even short-term prisoners to sign some of the forms that they need to sign before they get out. If someone

is not quite sure what to do, the folk who know how to fill in the forms come into the prison and help them with that before they are released. We hope to develop that.

All that is predicated partly on our ensuring that our estate and buildings are fit. It is also highly dependent on the degree of overcrowding that we have to cope with. The higher the numbers, the more difficult it is. We currently have 7,500 prisoners, if we include those who are on home detention curfew, but we have only 6,400 places. You do not need to be Einstein to see that the first figure does not fit into the second very easily. We cannot do anything about that, but our interventions have, even with short-term prisoners, been making progress in terms of decency for some years. We hope to continue that, but we do not have a new magic wand to wave over very short-term prisoners that will make them good. Many of them come to us in a pretty poor state—we try to patch them up. The longer they stay with us, the more we can do and the more we aim to do, but I would be kidding the committee if I said that we could do much more with very short-term prisoners than we are already doing.

However, we can join up with our community justice partners elsewhere much more effectively than we have done in the past.

Colin Fox: I appreciate that—

The Convener: Before we go on, members should ask brief questions and the witnesses should give brief answers. Our time with the minister is limited and we have to deal with other sections of the bill. Make your last question short, Mr Fox.

Colin Fox: I was simply going to say that the throughcare and work with the community justice authorities is clearly something that the Prison Service is doing now and will do whether or not the bill is passed.

Tony Cameron: It is true; we can do more.

Johann Lamont: I have a point to make about risk management. It is important to understand that risk management is a challenge—we are not in the business of misrepresenting something as an exact science when it is clearly not. The Risk Management Authority is on the custodial sentence planning group that is considering with a range of partners how the bill will be implemented. There are too many bodies for me to rattle out just now, but they include the Convention of Scottish Local Authorities, social work, the Association of Chief Police Officers in Scotland, and the Scottish Prison Service. There is an appreciation of the need to work closely with the people who really know about risk management so that we neither misrepresent it nor allow it to be a block to the things that we are doing. We will want to explore that further.

I also want to flag up release and post-custody management of offenders. Paragraph 58 of the policy memorandum deals with who would be responsible. We would expect the SPS and the Scottish Executive Justice Department to act under delegated authority. We still take the view that

"these arrangements are the most practical, effective and efficient way of delivering these aspects of the new policy. There remains scope for fine tuning of how the Scottish Ministers' functions are split between SPS and the Justice Department, but these do not affect the terms of the Bill and accompanying documents."

Again, I would be happy to dig further into that.

16:30

Michael Matheson: In evidence to the committee, two specific concerns relating to structure and process have been expressed about the Parole Board. First, the proposal to reduce the Parole Board to two members in a tribunal might result in less breadth of experience on the tribunal. Secondly, the bill requires that a tribunal decision to release a prisoner must be unanimous. It has been suggested that that could be challenged under the European convention on human rights, largely on the basis that the requirement for unanimity is at odds with tribunal members reaching independent and impartial decisions. How do you respond to those two concerns?

Johann Lamont: I will deal first with the second concern. My understanding is that our advice is that the bill is ECHR compliant and that to require a unanimous decision would not conflict with ECHR.

On the size of a tribunal, we are keen that the system be as efficient as possible and that we harness as much expertise as possible. The proposal to reduce the number of tribunal members from three to two is not in the bill—that is a matter for the Parole Board's rules. When the new rules are drafted, the board will be fully involved in the discussions. That will provide an opportunity to explore further the concern that in seeking to achieve efficiency by reducing the number of tribunal members from three to two, we would get rid of expertise. I am not sure whether that is the case. We are keen to work closely with the Parole Board, which has a crucial role to play. We must ensure that it is able to carry out its functions and use its expertise in a vital part of the process. We would be happy to continue that dialogue with the board.

Valerie Macniven: I have a supplementary point to make. At present, one member of a tribunal must be legally qualified. When the number of

tribunal members is reduced to two, that will remain the case, so there will still be legal expertise on tribunals.

Michael Matheson: Is it fair to say that you would still be open to the possibility of tribunals continuing to have three members, if the Parole Board was keen on that? That said, I am conscious that the bill will have resource implications for the board. If tribunals were to continue to have three members, consideration would have to be given to whether the number of people on the Parole Board overall would have to be increased.

Johann Lamont: I have not been involved in the argument from the beginning and I am always open to persuasion. However, cost is an issue, given the work that the Parole Board will do under the bill. If we want to achieve greater efficiency without losing any of the board's expertise and competencies, we must acknowledge the logic of tribunals having two members rather than three. We must continue to discuss that proposal.

As I said, the size of tribunals will not be set by the bill. I am more than happy to continue a dialogue to establish whether what is being claimed would happen if the number of tribunal members were reduced from three to two would actually happen. We must consider whether a reduction in the number of tribunal members would liberate resources that would enable the Parole Board to do other things that we want it to do. We must strike a balance in the judgment that we make. The board and other experts in the field have crucial roles to play in making cases on which we can come to conclusions.

Jackie Baillie: I want to pursue that slightly further. It is acknowledged that the Parole Board's resources will be stretched, not least because it will have to deal with short-term prisoners and those on recall, as well as long-term prisoners. Have you costed the additional impact and, if so, what is that cost? Can you give us an estimate of the number of oral hearings that the board is likely to have to oversee?

Johann Lamont: I will deal with the generalities—the convener asked me to give short answers, which is always helpful—and I will ask my officials to give you the detailed costings.

It is recognised that there will be an increased workload for the Parole Board. We acknowledge that it will deal with cases such as it has not dealt with before, but we think it important that it will be engaged in that process. We have made a commitment and we recognise that there is a resource implication that we will want to meet. There is no point in giving people new responsibilities while not giving them the means to fulfil them, given the important part that they will play in the overall processes that are identified in the bill. I ask my officials for assistance with the figures.

Valerie Macniven: In view of the time, it might be useful just to signpost to the committee various parts of the financial memorandum. Paragraph 176 includes a table on recalls, and a significant amount of information is given before that. Paragraph 147 contains figures for assumptions of numbers and explains how the costings have been worked up. There are estimates of the number of recalls and suggestions for the number of those that would need oral hearings, as well as a certain amount of matrix showing X times Y equals Z.

Bill Butler: The Parole Board expressed in its written submission concern about provision of information to it about the offence or offences that have resulted in an individual's being sentenced to imprisonment. Can you clarify whether sentencing sheriffs are to be asked to provide post-sentencing reports in respect of all offenders who receive a sentence of 15 days or more?

Johann Lamont: I want to make two points. First, we recognise that the responsibilities of the Parole Board will change, which will have consequences for any information that it may have. Secondly, as I said, a planning group is considering how such information will be delivered. Valerie Macniven will take you through the detail.

Valerie Macniven: If judges had to make a report in every case, that would be a significant change. However, there is a question about how big a report that would be—some streamlining might be possible. I am pleased to say that we have the benefit of a sheriff assisting with the work of the planning group, which is only just starting—obviously, the matter depends on outcomes here in Parliament. It is a case of assembling the right people so that they can help when the time comes. The questions concern what is right for the system and what is proportionate.

Bill Butler: So, that work is going on. From what you have said, however, I assume that it is unlikely that such reports will be required for people who receive very short sentences.

Valerie Macniven: We would not rule anything out. The answer would depend on what was proportionate in each case. The requirement for a report is not always determined by the length of the sentence, but by what is appropriate.

Bill Butler: The Parole Board has stated that, given the short timescale and if the sentencing sheriffs are forced to provide a post-sentencing report for every case, a sentence may expire before they can consider the case. Have you taken that on board?

Valerie Macniven: I might have to turn to my legal colleague. The bill will not allow such loopholes. If there are any issues around that, we will have to consider whether that should be addressed at a later stage.

Bill Butler: I am obliged, but I hope that we can get a bit more clarification—that response was a wee bit general.

Charles Garland: Some of the timings will be found in the new Parole Board rules, which are yet to be drafted. It is expected that they will be drafted in parallel with the bill. As the committee will be aware, the current Parole Board rules lay down time limits for various—

Bill Butler: When will a draft of the new rules be available to the committee?

Charles Garland: I cannot give an undertaking as to when a draft will be available. However, the Parole Board rules will need to be in operation around the time the bill is implemented.

Bill Butler: I understand that, but I would be grateful if you could say approximately when draft rules will be available for us all to look at.

The Convener: Jackie Baillie has a brief question on licensing.

Jackie Baillie: No—it is fine.

Jeremy Purvis: My question follows on from Bill Butler's questions. Under section 9, if Scottish ministers determine that they want to keep a person in custody for longer than was set by the judge, they must refer the matter to the Parole Board before the end of the custody part of the sentence. However, there is no requirement on the ministers to do that in good time, although it would be unfair on the Parole Board if such matters were to be referred to it a day before the end of custody. The Parole Board is required by section 10 to determine whether section 8(2) applies to the individual before the expiration of the custody part, although it could have only half a day in which to do that.

Charles Garland: That difficulty exists at the moment. Under the current Parole Board rules, various processes need to happen before the Parole Board can determine a matter. For example, the prisoner needs to be sent a copy of the dossier and must be allowed to make representations. There is then a period for consideration by the Parole Board. It is intended that time limits will be put in the new rules, which will make it plain that ministers must initiate the process by making the referral at a suitable point, so that there is enough time for all that to happen.

Johann Lamont: This is an issue about—we always talk about it, but it is genuinely important—working in partnership and not asking other people to do the impossible. The general efficiency of the system depends on people taking responsibility and making decisions at the appropriate time in order for the next stage to kick in. I would like reassurance about that in whatever way the matters are expressed. I presume that the planning group will consider what could reasonably be expected of the various partners at each stage.

Maureen Macmillan: We have heard evidence that the provisions in the bill could increase the prison population by 1,100 or more—some witnesses have suggested that the number could be a lot bigger. You said earlier that the bill deals with sentences as handed down rather than different kinds of sentencing. However, I wonder whether the Executive is considering replacing short custodial sentences with conditional sentences or sentences that are served entirely in the community. Those could perhaps include fast-track recall.

Johann Lamont: I repeat the point that the bill deals with the management of sentences once they have been issued. Good examples of community disposals and so on have already been developed. However, the bill is also about the management of sentences and understanding that there are custody and community parts to them. The notion of community disposals will be given more authority where such disposals are seen to be working effectively. The issue is broader and goes beyond the bill.

We are saying that an understanding of the individual offender is critical to management of sentencing, rather than taking the blanket view that we should do X for certain offences. Sentencing remains a matter for elsewhere, but it is entirely reasonable to approach management of sentencing as we are doing in order to give people confidence. In recognising that there needs to be a balance between punishment and rehabilitation, we are giving more authority to the notion of community disposals elsewhere in the system. Additionally, there are always other things going on around the bill. The bill is just one step along the road—which the committee has been on for longer than I have—towards managing offences, cutting reoffending and deterring people from committing offences in the first place.

Maureen Macmillan: Do you accept that the number of prisoners will increase significantly?

Johann Lamont: The financial memorandum estimates that the number will go up.

Tony Cameron: That information comes from us.

Johann Lamont: Our aim, in the longer term, is not just to manage what is inevitable, but to change behaviour through our action. If we are

effective in providing rehabilitation, in dealing with reoffending and in giving out messages about the consequences of certain offending behaviours, there ought to be a shift in behaviour over time. I am optimistic that there will be such a shift. Nevertheless, the financial memorandum is explicit in saying that we expect there to be extra prisoners as a consequence of the bill.

16:45

The Convener: Michael Matheson will ask the last question on sentences.

Michael Matheson: The committee is conscious that the impending spending review means that the financial situation for some policies is a little bit fluid. To what extent will negotiations be required to secure the funding that is necessary for the bill?

Johann Lamont: Whenever we decide on a policy or a legislative approach, resource consequences accompany it and we must argue for them to be met. As I have said, there is no point in having an aspiration to take a policy approach if we do not have the means to deliver it. I am not saying that that is not challenging—any set of budgets will have competing priorities—but that is part of the process. We have said in the financial memorandum that resource consequences will have to be met.

Michael Matheson: So the overall funding that is required for the bill has still to be secured.

Johann Lamont: The financial memorandum identifies the expected cost, but that must be kept under review.

The Convener: Concern has been expressed in evidence that the bill does not contain a definition that clarifies the difference between domestic and non-domestic knives. Future court cases might provide clarification, but what additional guidance will the Executive provide in advance to assist retailers and trading standards officers in approaching the bill?

Johann Lamont: I acknowledge that the bill does not use the term "non-domestic knife"; it says that a licence will be needed to sell

"knives (other than those designed for domestic use)".

You are right that part of the definition will come from the court process.

A general anxiety is that putting complex definitions in legislation is more likely to produce loopholes than solutions. We are keen to ensure that guidance is given to local authorities that enables trading standards officers to advise retailers. We are keen to work with local authorities to ensure that any guidance on that and other issues is consistent throughout Scotland.

The Convener: I am sure that the minister is aware of evidence that we have received from interest groups other than retailers. Based on that evidence, the committee's plea is that it would help us to have definitions early of all types of knives and equipment that could be classified in that category. Are we likely to see such definitions early?

Valerie Macniven: Several of the details that will clarify some of those points will be included in regulations, which are not yet available to the committee. Below that, local discretion will exist. The arrangements will have two elements. The subordinate legislation that will be produced in due course will leave latitude in some cases to allow local authorities that apply the measures to take into account local circumstances. The regulations have not yet been drafted.

Bill Butler: How will the bill discourage people from buying non-domestic knives when they have no legitimate reason for doing so? For example, is there evidence that a significant number of the current problems arise from retailers that market and sell such knives irresponsibly?

Johann Lamont: A broader issue than the question that the bill tackles is that we must challenge the culture that makes people feel that they need to carry knives, which will make a difference. Members will be aware of the campaign that the Minister for Justice launched on the consequences of knife crime, which I hope will have an impact.

Any retailer that wishes to sell non-domestic knives or swords to the public will have to apply for, and be granted, a licence and will be bound by that licence's conditions. That will concentrate minds. Licence conditions will impose restrictions on display in shop windows or any other part of premises that is visible to the public from the street. That will affect how people are encouraged and how some notion of what it means to carry a knife is fed.

As you know, we have made exceptions to the general ban on the sale of swords, but we are nevertheless introducing a general ban, which will be helpful in itself.

Bill Butler: Do you not think that the problem stems from a significant proportion of—how can I term them—rogue retailers?

Johann Lamont: The licensing scheme, like any licensing scheme, seeks to drive out those retailers who are uncomfortable with any regulation of their business or with trading visibly. Because licensing manages the process, it deals with those who may fall into the category that you have identified.

Colin Fox: We have been considering whether there is a danger that, when we introduce licences, somebody who does not want to buy a knife from a licensed shop would get one on the internet or by mail order and that we would drive the purchase of knives underground. Do you have any concerns in that regard?

Johann Lamont: That could lead to the counsel of despair that we cannot do anything about anything because we cannot do everything about everything. I recognise the problem that you raise—it is obvious in every area of life that we license—but licensing seeks to bring the trade out into the open, challenges legitimate retailers about the way in which they do business, raises the question of why people carry knives and confronts some of the reasons for carrying them. It has been alleged that the trade will be driven underground but, although we offer no absolute guarantees about the way in which knives move around the system, licensing seeks to manage and control a significant part of the trade and therefore adds significantly to our capacity to confront knife crime, even though it does not necessarily deal with it all.

Colin Fox: We are all keen to defeat the knife culture that blights our society, but how would you prevent people from getting knives from abroad, by mail order or from unlicensed traders? Is it even possible to do that? Have you considered whether that is a consequence of introducing a licensing scheme?

Johann Lamont: People will still be held to account for carrying knives without due reason; other parts of the system deal with that. We are trying to deal with both supply and demand—that is, why people want to carry knives in the first place. We will enforce the legislation that says that people ought not to carry knives and that there are grave consequences to carrying and using them. We have already underlined the significance of that offence.

We do not pretend that the bill sorts out knife culture, but part of the problem is that some people seek to make a profit from the unhealthy desire of young men in particular to carry knives and, unfortunately, use them on their peers. The bill is part of the solution, but not all of it.

Valerie Macniven: Colin Fox has mentioned the use of the internet a couple of times. There is clearly a difference between organisations that are based in Scotland and those that are based in other countries, but businesses that sell over the internet will be caught by the bill if they are based in Scotland.

Jackie Baillie: The bill allows the Scottish ministers to set minimum conditions for any knife dealer's licence, with individual local authorities being able to impose additional licence conditions. Some witnesses have argued that local variations will make it more difficult and costly for retailers to comply. Is there a case for having standard conditions throughout Scotland?

Johann Lamont: Now we are revisiting issues that were discussed in connection with the Planning etc (Scotland) Bill: the tension between the central authority and local flexibility and the question of where it is sensible for decisions to be taken. My instinct is that the Scottish Executive and the local authorities are at one on the need for a licensing scheme. It is possible to clarify reasonable standard conditions that should apply while recognising that it is also reasonable for local authorities to have flexibility because the knife culture is expressed differently in different parts of the country and knives that are used for legitimate purposes in some places are not used in the same way throughout Scotland. It is very much about partnership, not about confusing people—why would we want to confuse those who are seeking a licence? However, we recognise that there are specific issues in different parts of the country and that, as local authorities have said, those differences require specific conditions.

Maureen Macmillan: I would like to ask about swords. The policy memorandum sets out some examples of what the Executive considers to be the legitimate use of swords, but some of the people who have submitted evidence to the committee have expressed concern that the planned secondary legislation will not recognise their particular use of swords as legitimate. For example, it would not allow the collection of modern high-quality reproduction swords. Will there be any further consultation on that area?

Johann Lamont: We have already acknowledged that there is a need for exceptions in certain circumstances and that there are people who have a legitimate use for swords. Of course, that must be tested against the consequences of swords being available in a local community in entirely illegitimate ways, which is the huge challenge that nobody gainsays. We will consult further on secondary legislation. We do not wish the legislation unnecessarily to capture people who have an entirely legitimate purpose in using swords. People should be reassured on that point.

The Convener: I am aware that you have to leave us, minister, but I wonder whether I can prevail upon Mr Cameron to stay for a couple of seconds to answer a specific question.

Tony Cameron: As long as it is just a couple of seconds.

The Convener: We appreciate that you have time difficulties as well.

Thank you, minister, for taking time to come here this afternoon.

Johann Lamont: Thank you very much. As I said at the beginning, I am more than happy to ensure that you have sufficient information in front of you to draw up your report as timeously as possible following today's meeting.

The Convener: Thank you, minister.

Jackie Baillie has a specific point to raise with Mr Cameron.

Jackie Baillie: It is less a question than a comment, but I would prefer Mr Cameron to be here to hear what I have to say.

I regard the letter that Mr Cameron sent to the convener as particularly unfortunate, as it is clear that the context in which we took evidence today was guided by it. The evidence given was less than forthcoming and it is my view that the very experienced witnesses were placed in a most unfortunate position—almost in a straitjacket. In relation to another bill with fewer implications for the Scottish Prison Service, prison governors could comment on issues that affected operational matters, but today we are expected to believe that the same prison governors are passive recipients of knowledge.

I do not want to take up Mr Cameron's time or the committee's, but I suggest that we provide him with a copy of the *Official Report*, so that he understands the dissatisfaction of the committee members, when we write to him, as we agreed to do earlier. I look forward to his response.

The Convener: Mr Cameron, I am obliged to give you an opportunity to comment at this time, if you wish to do so.

Tony Cameron: If the committee chooses to ask the wrong people on my staff, it gets what it has got. I am unmoved.

The Convener: Thank you.

I now ask our final panel, which was to have been the penultimate panel, to join us. I welcome Mark Hodgkinson, chief officer of the northern community justice authority, and Chris Hawkes, chief officer of the Lothian and Borders community justice authority. I thank them for their forbearance this afternoon. We are extremely grateful to them for being so accommodating in view of the minister's difficult circumstances. I appreciate that Kirriemuir is a fair way away—although it is nearer to the Parliament than where I live.

Under the Management of Offenders etc (Scotland) Act 2005, you now hold key responsibilities and face significant challenges in relation to the management of offenders. What progress have you made in setting up the structures and systems through which you intend to meet them? What do you think are the key challenges that you will face?

17:00

Mark Hodgkinson (Northern Community Justice Authority): The chief officers have been in post for between four months and—in Mr Hawkes's case—a matter of days. Nevertheless, we have all now presented to the Executive draft plans to reduce reoffending in our local areas and to operationalise some of the broader aspirations in the 2005 act. In doing that, we have had a considerable amount of support. Parts of my plan were written by both the Northern constabulary and Grampian police. Also, we were helped with a significant part of it by the Scottish Prison Service liaison officer who is attached to the northern community justice authority.

Because of the timescales in which the plans were written, they are concerned largely with setting in place the building blocks from which actions can be taken to join services up, manage offenders more efficiently, effectively and co-operatively and reduce reoffending.

It is early days yet, but we have made a good start. There has been a tremendous amount of enthusiasm and commitment from all the partner agencies that have been involved so far.

Chris Hawkes (Lothian and Borders Community Justice Authority): In my area, the most significant development has been the creation of the community justice authority. It has five political members and a convener and it has a public meeting every two months. Those meetings are attended by a broad range of agencies that are involved in dealing with offenders. Also, in that relatively short period of time, each of the authorities in Scotland has managed to put in place the infrastructure that is required for an authority to be effective. That is no small achievement because, as you will all be aware, the legislation did little to put in place the necessary infrastructure that would be required to run a public body.

The Convener: I think that it is fair to say that the very reason why we wanted you here is that we did not see much in the way of comment in the bill and we felt that you both had a useful view to offer on behalf or your respective organisations and your collective body.

Bill Butler: What lines of communication and joint-working arrangements are in place between, for instance, the SPS and the other key stakeholders? Mr Hodgkinson, you said that you have been liaising well with the police and the SPS, but it would be useful if you could go into that in more detail.

Mark Hodgkinson: I will struggle to give you much in the way of specific detail. That is not because I do not want to but because the project is still in development. We are still developing a

range of working groups to support the CJA and to devise, for example, the means of reporting on the performance of not only the SPS and the local authorities' criminal justice social work services but the other key players, such as the statutory partners—the health service, police, courts and so on—and voluntary organisations. We are still at quite an early stage. What will be particularly challenging is ensuring that the links are right with respect to key parts of health services, substance misuse services and forensic services. That will be particularly challenging for community justice authorities such as the northern CJA that cover a very large area with massive problems of transport and geography. Therefore, significant challenges remain. The signs are that people are willing to take part, but we are still working out the best ways of doing that.

Bill Butler: While recognising the incipient nature of CJAs, I ask Mr Hawkes whether he would like to add to his colleague's words.

Chris Hawkes: I recently ran a Lothian and Borders community justice authority workshop that was attended by 30 representatives from the multitude of agencies that, along with the local authorities and the Scottish Prison Service, are covered by the legislation. Every person who attended that workshop could identify something that they could do to contribute towards the achievement of the reducing reoffending strategy. That shows the broad range of commitment that exists among all the players to make the legislation work.

Bill Butler: So stakeholders have not shown reluctance—quite the opposite.

Chris Hawkes: Absolutely.

Mark Hodgkinson: That is correct. I echo the comments that Mr Hawkes has made. We organised two seminars that were attended by a wide range of people. Because of the nature of the geography of our area, many of them had to catch an aeroplane to attend the seminar.

Michael Matheson: The fact that the bill will require risk assessment and risk management to be provided for all prisoners who serve a sentence of more than 15 days will clearly create a significant level of additional work for, apparently, some people within the SPS and for criminal justice social work services. I am conscious that you have been in post for only a limited time, but can you give us some idea of how prepared those different parts of the workforce are for the increase in their workload that will result from the bill?

Chris Hawkes: As we heard clearly from Mr Cameron when he gave evidence earlier this afternoon, the Scottish Prison Service does not currently undertake risk assessment of offenders who serve less than four years. A significant implication of that aspect of the bill is that the Scottish Prison Service will need to put in place a mechanism for undertaking a risk assessment—we are talking about risk of reoffending and risk of harm—and a needs assessment for a huge number of short-term offenders. Such a mechanism does not currently exist.

I would go a stage further than that. At the moment, we do not have a model of risk assessment that could be used effectively in that environment. Furthermore, having spent a long time working with offenders in Scotland, I think that we recognise that any model of risk assessment must have two components to it. One component is known as the static factors, which are all those preconditions that indicate what the future risk might be. The other component is the dynamic factors, which are the factors that are concerned with those things that happen in ordinary life that increase risk. Arguably, custody is not the best environment to understand dynamic risk. Dynamic risk is to do with relationships, employment or the lack thereof, addiction, the availability of treatment services and mental health. A variety of dynamic factors that occur in the community are not present when the person is in custody. I would argue that custody is not the best environment in which to undertake an assessment of the risk of harm of future behaviour.

Michael Matheson: Where is the best location for that risk assessment to be undertaken? Is it within the community?

Chris Hawkes: We need to recognise that some significant work is already undertaken at some expense by local authorities. Approximately 50,000 social inquiry reports are undertaken by local authority social workers in preparation for the sentencing process in the sheriff court or High Court. Every one of those reports is required to include an assessment of the person's risk of reoffending and risk of harm and an assessment of need. As I say, that work is already undertaken, and it is normally available to our colleagues in the Scottish Prison Service. Although some offenders who receive a custodial sentence do not attract a social inquiry report—although I believe that a majority of them do—we could develop a clear, interchangeable model of risk assessment that works in the community, in custody and back out in the community again.

Mark Hodgkinson: I concur with everything that Mr Hawkes has just said. It would be advisable, almost as a prerequisite to the bill, for one single model of risk assessment, both in and outwith prisons, to be agreed to, settled on and issued. Having listened to the contributions at this meeting so far, I note that people use the word "risk" in a variety of ways. It is important that, when people

talk about high risk or low risk, everybody else clearly understands what they are talking about. Until that is made clear, there will be problems with the bill.

That is not strictly answering the question that you have asked. I have not had so much time to study the bill or the attached memoranda in great detail. I have seen part of the financial memorandum, which mentions a sum of £7.45 million. Essentially, that will get spent on lower-risk, short-term offenders. If asked, I could suggest much better ways in which to spend that amount of money.

The Convener: You seem to be offering various models. The committee would welcome it if you could send in some of the options and your ideas about definitions. One committee member raised that point earlier this afternoon.

Michael Matheson: I come now to the second part of my question, which is about risk management. Responsibility will fall on criminal justice social work services. How prepared are they for the potential increases in workload that they will have to undertake as a result of the bill?

Mark Hodgkinson: I started working as a criminal justice manager around 1998, right at the start of a transformation in the relationships between criminal justice social work services, the police and the management of high-risk offenders. I think that local authorities and the police generally work extremely well together now when it comes to jointly managing the risks that are posed by potentially dangerous offenders. Sadly, that is not well understood by the general public.

However, short-term offenders are by definition unlikely to require risk management—that is, management of the risk of serious harm that they might pose to the public. I do not know whether the local authorities or police even need to work together in that respect but, in those cases where they do, they are probably very well equipped under the existing procedures and under the developing procedures for managing high-risk offenders in the community.

Jeremy Purvis: I put it to the minister earlier that, as the bill is framed, the assessment that is undertaken for all those who are sentenced to more than 15 days in custody is to do with whether or not the person is likely to cause serious harm to members of the public. That is quite a high threshold. There is nothing in the bill to provide for an assessment that is wider than what the Scottish Prison Service does at the moment, which is to signpost or refer people to services or to schemes such as the link scheme; nor is there any ability to include conditions according to which the individual will be supervised in the community to some degree. That means that 80 per cent of the prison population will not benefit from any of the risk management measures. Those measures will make no difference to them. Could you expand a bit on what you said about spending money better? If the proposals will incur annual revenue costs to the Prison Service of nearly £6 million—plus nearly £1 million to local authorities in addition—can Mr Hodgkinson and Mr Hawkes indicate how the resources could be differently targeted?

17:15

Chris Hawkes: Lothian and Borders community justice authority welcomes the intention of the bill, the concentration on the importance of transparency in sentencing and the commitment to reduce reoffending. Our concern is that it is significantly mistargeted, which goes right to the heart of the issue that Jeremy Purvis raised. The majority of short-term prisoners will not have a risk assessment or supervision plan; we would delude the public if we pretended that the bill would assist those offenders. They would be much better placed if they were left in the community, subject to supervision through probation orders, drug treatment and testing orders, supervised attendance orders or community service orders. They would receive a much better service, appropriate to the level of risk that they presented.

We understand how destructive custody is, especially when it is delivered for such short terms. There are no positive outcomes of short periods in custody. In the circumstances that Jeremy Purvis described, we pretend that something will happen through a sentence that has a custody component and a supervision component, but it will not. My real concern is that the sentences will not reduce the numbers of people in custody but increase them, because people will think that there is a punitive component and a supervision component to the sentences. In fact, the majority of people who are sentenced—Jeremy Purvis said that the figure was 80 per cent—will get the punitive element of the sentence and will be in custody for a relatively short period. We know that that is destructive and sends people back into the community who present a 60 to 80 per cent risk of reoffending. We know that if we use community-based alternatives for such offenders, we get much better outcomes in relation to reducing reoffending.

The cost of keeping an offender in prison for six months is £16,000. The cost of keeping someone on a probation order in the community for one week is £30. Is it not surprising that what we know to be most effective gets the least resource, and what we know to be least effective gets the majority of the resource? There is a fundamental problem that needs to be addressed through

resource transfer and the transfer of people away from short-term custody into community-based disposals.

The Convener: Mr Hodgkinson, you came up with a figure.

Mark Hodgkinson: I quoted the figure from the financial memorandum, which is a considerable sum. You asked for a shopping list, but before I suggest how money might be better spent, I have to say that, given Scotland's limited resources for addressing crime, prioritisation is extremely important. I concur with Mr Hawkes's remarks, especially in relation to finance. Some local authorities in some community justice authority areas have developed and are funded to provide effective programmes to deal with men who have been sentenced to probation or are on licence, having committed serious offences of domestic abuse. However, the provision of such services is exceptionally patchy, despite considerable evidence of their effectiveness. Rather than pouring resources into increasing the prison population with short-term offenders who are persistent but relatively minor offenders, putting money into services that we know are effective would be hugely beneficial by comparison.

I can suggest two other areas for which funding might be helpful. There is a major link between crime and substance misuse—it is mainly alcohol in the area of the northern community justice authority, but there is also drug misuse. Health and education services in respect of alcohol and drug misuse would have a significant impact on the levels of crime, offending and therefore reoffending.

I will mention one other long-term rather than short-term measure. I do not know whether the committee has heard evidence on the work of the violence reduction unit, which receives funding from the Scottish Executive, or the research of the WAVE Trust into the root causes of violence and the amount of good that can be done by resourcing a major effort on the root causes of violence. In the long term, such an effort could prevent many people from becoming victims of serious violence in Scotland. That would be a far better and more effective use of resources than spending money on increasing the prison population significantly, which the bill will certainly do.

The Convener: I ask Bill Butler whether that answered all the questions that he was going to ask.

Bill Butler: That answered all the supplementaries that I had in my mind.

Jackie Baillie: My questions are by and large answered, but let me ask some just to round up the session. Part 1 of the bill has three high-level objectives: first, that we should have a clearer and more understandable system for managing offenders while they are in custody and in the community; secondly, that we should take account of public safety; and thirdly, that we should have victims' interests at heart. How well will the bill achieve those three aims?

Mark Hodgkinson: One measure in the bill that I support is the notion that, when a sentencer passes sentence, there should be some explanation of what it actually means. However, when I listened in the anteroom to the explanation of the Executive official who was with the minister, the provision became less clear to me and I am now not sure that the bill will achieve clarity of sentencing procedures.

Because I am not sure that the bill will achieve any greater clarity, I am not sure that the public's confidence in the system is likely to be greatly enhanced. I have spoken to somebody senior at the Scottish Executive about ensuring that the public understand better how the criminal justice system works and why. The community justice authorities and the Executive have work to do in producing a joint communication and publicity strategy to try to overcome what seems to be the persistently hardline lock-'em-up-for-longer approach that some of the tabloid newspapers, for example, espouse. Such a strategy might be a better approach.

I have a horrible feeling that the bill will run counter to the aim of reducing reoffending. The bill is likely to mean that sheriffs will lock up more people. At present, sheriffs have a stark choice between a community sentence and a custodial one but, under the bill, there will be a much more softened system in which sheriffs can combine both. Therefore, with somebody who at present might get a straight probation order, the sheriff may view the fact that there will be some licence or supervision following the custody part of the sentence as a way of achieving punishment and rehabilitation in one order. It is clear that the bill will mean that more people will spend longer in prison.

All the efforts to join up services between the community and the Prison Service are likely to be somewhat undermined by the Prison Service's having to deal with the number of people who are entering and leaving prison.

As part of the preparation for our area plan and our consideration of working jointly with the Prison Service, I recently spent some time at the prison in Aberdeen. The work done by the staff and the governor was fantastic. I cannot imagine how they achieve what they do, given that they are so impeded by the problem of overcrowding. A group of prisoners who need protection are taken out for activity then moved back in and locked in their

cells while another group does the same activity. Everything is done on a rota. It is a matter of making do. Further increasing that problem by increasing the size of the population is a big worry. I have to say that, as we start to get into the meat of the bill, I now feel less confident than I did previously about making a success of the community justice authorities.

Chris Hawkes: I do not believe that the bill is wholly negative. What is wrong with the bill is that the thresholds are wrong and the proportionality is wrong. It would be a significant advance if we could get offenders who serve periods of less than four years back into the community and into a community in which there are services that address needs around literacy, alcohol, drugs, employment and mental health services—the list goes on. That range of normative services should be available to everyone in the community.

The offender group is, by and large, currently denied access to those services. The purpose of the community justice authority is to ensure that the transition can be made and that there is that level of integration of services for offenders when they come out of custody. However, as the bill stands it would overwhelm the Scottish Prison Service, local authorities and independent providers. We need a clearer threshold that is arrived at more rationally. I know that previous witnesses before the committee have suggested six months, 12 months, 18 months and 24 months.

We must consider the issue. I believe that Bill Whyte described two years as being the minimum period necessary in which to undertake effective work with offenders. Let us examine effective practice both nationally and internationally and ask what is effective in work with offenders. The bill seems to include some things that are effective and some things that we know are ineffective. Why pass a bill that has ineffectiveness built into it? Let us pass a bill that has a good chance of succeeding because it is based on effective practice.

The Convener: In the absence of further questions, I thank you both for the clarity of your evidence and for the direction in which you have sent the committee, which is an inquiring one. I thank you also for your forbearance in relation to the delay before we asked you to come.

As that was the final evidence session on the bill, I seek the committee's agreement to consider the options paper and the draft report in private at future meetings.

Members *indicated agreement*.

Subordinate Legislation

Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2006 (SSI 2006/521)

17:28

The Convener: As we have agreed not to take item 3 today we now move on to item 4, which is subordinate legislation. The regulations are subject to the negative procedure. Do members have any questions on the regulations?

Members: No.

The Convener: Are members content to make no recommendation on the regulations?

Members *indicated agreement*.

17:29

Meeting continued in private until 17:52.

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