JUSTICE 2 COMMITTEE

Tuesday 27 February 2007

Session 2

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JUSTICE 2 COMMITTEE
6th Meeting 2007, 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)
Carolyn Leckie (Central Scotland) (SSP)
Mr Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Bill Aitken (Glasgow) (Con)
Johann Lamont (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Tuesday 27 February 2007

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

Subordinate Legislation

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2007 (SSI 2007/58)

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen. I welcome everyone to the sixth meeting in 2007 of the Justice 2 Committee and remind you to switch off mobile phones and pagers, if you have not already done so. We have received no apologies, and I welcome Bill Aitken to the meeting.

Agenda item 1 is consideration of the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2007, which is subject to the negative procedure. The Subordinate Legislation Committee has advised that no points arise on the order. Are members content with it?

Members *indicated agreement*.

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2007 (SSI 2007/72)

The Convener: The Subordinate Legislation Committee has advised that no points arise on the regulations, which are also subject to the negative procedure. If members have no questions, are we content with the amendment regulations?

Members *indicated agreement*.

Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2007 (draft)

Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 (draft)

Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2007 (draft)

The Convener: I welcome to the meeting the Deputy Minister for Justice and her team for consideration of three sets of draft regulations that are subject to the affirmative procedure. The Subordinate Legislation Committee has advised that no points arise on any of the sets of draft regulations.

Minister, I gather that you want to make an opening statement. Am I also right in thinking that you want to link the three sets of draft regulations together?

The Deputy Minister for Justice (Johann Lamont): Yes—if that is okay.

I am delighted to be giving evidence to the committee once more. There are five sets of regulations that will give effect to a number of reforms to civil advice and assistance and which will enable annual uprating of financial limits for eligibility for legal aid. The overall package consists of two sets of regulations that are subject to the negative procedure and three sets that are subject to the affirmative procedure. We are debating the latter group this afternoon. The provisions that relate to civil advice and assistance reforms will commence on 1 May 2007, while those that relate to uprating financial eligibility will come into effect on 9 April 2007.

The Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2007 will amend the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 (SI 1993/3187) by amending the financial limits for all categories of advice and assistance, with the exception of criminal cases. The financial limits are set out in section 10(2) of the Legal Aid (Scotland) Act 1986 and solicitors are required to seek prior approval of the Scottish Legal Aid Board before they provide advice and assistance beyond those limits. The regulations will also introduce a new financial limit of £35 for some civil cases.

The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 will uprate the financial eligibility limits for advice and assistance, which are increased annually in line with contributory benefits. The Department for Work and Pensions announced on 7 December that contributory benefits will rise by the retail prices index increase of 3.6 per cent. We therefore propose to increase accordingly the income limits and contributory bands for advice and assistance. We propose to increase the capital limit for advice and assistance on the same basis.

The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 also prescribe the scale of contributions to be paid by persons receiving advice and assistance for matters that are not “distinct matters”. Our approach is connected with the amendment of the application process for civil advice and assistance to remove arrangements whereby solicitors can be paid more than one minimum fee in relation to closely linked aspects of a case. In some cases, advice and assistance will be given through a

diagnostic interview, which will be a stage in the application process. The introduction of the diagnostic interview will allow a solicitor to determine whether the subject matter is in a distinct category—as agreed with the Law Society of Scotland and appearing on a list issued by SLAB—in which case it will be passported into the advice and assistance scheme. The new scheme will also allow SLAB, when an application is made to it, to treat a matter that is not on the list as if it were.

The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2007 will uprate limits for civil legal aid. Increases are linked to increases in the level of income-related benefits, which are ordinarily uprated by the Rossi index increase, which is based on RPI less housing costs. The DWP announced on 7 December that the Rossi index increase this year is expected to be 3 per cent. That has not yet been confirmed by the Secretary of State for Work and Pensions, due to the DWP's administrative arrangements. Confirmation of the rate is not expected before dissolution of the Scottish Parliament, but we are advised by the DWP that it is not expected that the rate will change. We therefore propose to increase accordingly the income limits for civil legal aid. We also propose to increase the lower and upper disposable capital limits for civil legal aid.

The changes that we propose will ensure that eligibility criteria are kept up to date and that no one falls through the legal aid net because of the effects of inflation. If we did not introduce new rates we would unnecessarily penalise people who are on the fringes of eligibility. If the finalised figures are different, consideration can be given later in the year to making regulations that would make the necessary adjustments.

The Convener: If members have no questions for the minister on the regulations, I invite her formally to move motions S2M-5619, S2M-5620 and S2M-5622.

Motions moved,

That the Justice 2 Committee recommends that the draft Advice and Assistance (Financial Limit) (Scotland) Amendment Regulations 2007 be approved.

That the Justice 2 Committee recommends that the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 be approved.

That the Justice 2 Committee recommends that the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2007 be approved.—[*Johann Lamont*.]

Motions agreed to.

Custodial Sentences and Weapons (Scotland) Bill: Stage 2

14:09

The Convener: Item 3 is our final day at stage 2 of the Custodial Sentences and Weapons (Scotland) Bill. We will consider sections 36 to 42, sections 47 to 50 and schedules 2 and 3. I gather that the minister wishes to change teams of officials at this point. In the meantime, I remind committee members to check that they have before them the marshalled list, the groupings and the summary description of the Executive amendments.

I welcome the minister's team for this item.

Section 36—Curfew licences

The Convener: Amendment 53, in the name of Bill Aitken, is in a group on its own.

Bill Aitken (Glasgow) (Con): I will not detain the committee long, convener, and I will certainly not do anything to temper the obvious delight of the Deputy Minister for Justice at being here. Amendment 53 is perfectly straightforward and is fairly topical. There has been considerable publicity surrounding the case of a man who had carried out a deliberate, lengthy and well-organised fraud against a women's charity for breast cancer. He was jailed for 18 months, but was released after four and a half months. On that basis, I have little confidence that the system that has been proposed is likely to result in a great many people who should be serving full sentences doing so.

There sometimes seems to be a view that judges and sheriffs jail people on a whim. They do not: they consider matters fully. The man whose case I mentioned was sentenced to 18 months and should have served 18 months—or nine months, bearing in mind the present regulations. I have real concerns about the message that has been sent out. It could with some merit be argued that the individual in question did not present a physical danger to society. Nevertheless, what sort of message is sent out when a man who commits fraud involving the taking of a substantial amount of money from a women's charity serves only some 18 weeks in custody? We cannot afford to send out such a message if the Scottish judicial system, in particular the sentencing system, is to retain some credibility.

Amendment 53 will increase the limit for the period from 25 per cent to 75 per cent of the prisoner's sentence.

I move amendment 53.

Johann Lamont: I will deal first with amendment 53 as it stands, rather than what Bill Aitken claims it to be, which is entirely different. Perhaps we might say something separately about the home detention curfew at the end. For the record, it is appropriate to comment first on the amendment itself, which is—of course—unworkable. I have stated clearly throughout the bill's progress that no new curfew scheme will be introduced until the new measures are fully implemented and are working effectively—we recognised the issues that the committee raised in this regard. A curfew scheme would be introduced through Parliament by an order that would be subject to the affirmative procedure.

In considering amendment 53, we must imagine that a curfew scheme has been introduced. Section 36(2) will allow ministers to release an eligible prisoner on curfew licence before the expiry of the custody part of the prisoner's sentence. An eligible prisoner can have the custody part set at no more than 75 per cent of the sentence. Amendment 53 states that ministers may release a prisoner only during the period that starts when

"three-quarters of the prisoner's sentence"

has been served, and ending two weeks

"before the expiry of the custody part."

Considering how the bill's provisions stand, that would mean that the curfew licence period could not start until after the prisoner had been released on licence anyway—if, that is, ministers could decide, taking amendment 53 into account, whether they could apply a curfew condition in the first place.

14:15

Bill Aitken has flagged up the matter before. He identified topical circumstances, but under the new scheme, somebody who is sentenced to 18 months will be in custody for a minimum of nine months and will then be out under supervision for a further nine months. That is different from the circumstances that Bill Aitken described. As home detention curfew is not being introduced at this stage, it would not be possible for the offender to be out in four and a half months.

I emphasise that when we consider whether we wish home detention curfew to apply under the sentence management regime, a series of tests will apply; it will not be done willy-nilly. Equally, offenders will not be released into the community without constraints having been placed on them. By use of the phrase, "home detention curfew", we know that tagging is involved.

The comparison that Bill Aitken draws is inappropriate. We have made it clear that we might consider home detention curfews in the future for people who are sentenced under the new sentence management regime, but that would be subject to further approval by Parliament. In the short term, we are keen to give back the clarity that Bill Aitken hinted at in relation to the experience of the individual to whom he referred. I urge the committee not to support amendment 53.

Bill Aitken: Although I hear what the minister says, I am not reassured. There is an argument—I am not alone in my view—that sometimes the Executive tries, frequently for the best of reasons, to do too much too quickly. Several initiatives that have been introduced have been claimed as being successful, but we need to look over a much longer period with the benefit of experience to see whether anything in life is a success or a failure.

It would be wrong to condemn the tagging experiment for being a failure after the comparatively short period in which it has been in operation, but it would be equally wrong to claim that it is an unqualified success. It is clear that it is not. I know that the minister will concede that because it is a sensible proposition.

I have sought to be consistent in my arguments throughout the committee's consideration of the bill. What concerns me now is that we should not release people early unless we are satisfied beyond reasonable doubt that they are not likely to reoffend. We must send out a message that certain offences will inevitably attract custodial sentences. It is the old argument about the definition of "minor offence" and "short sentence". Minor offences such as breach of the peace, vandalism and theft can have a traumatic effect on the victims. The message that the unamended bill would send out is that such offences are not considered serious, which will not go down terribly well with the population of Scotland. I will press amendment 53.

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Davidson, Mr David (North East Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

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

Amendment 53 disagreed to.

Section 36 agreed to.

Sections 37 to 42, 47 and 48 agreed to.

Section 49—Minor and consequential amendments and repeals

The Convener: Amendment 84, in the name of the minister, is grouped with amendment 87.

Johann Lamont: Amendments 84 and 87 seek to introduce a transitory provision that will alter the position regarding release decisions for long-term prisoners—those who are sentenced to four years or more—who are dealt with under the Prisoners and Criminal Proceedings (Scotland) Act 1993 and who are liable to removal from the United Kingdom on release.

In the past, amendments to the 1993 act have all but removed Scottish ministers' involvement in decisions about the release of long-term prisoners. With the exception of those who are granted release on compassionate grounds, the only category of prisoner over whose release Scottish ministers have any direct control—to decide whether to grant parole or not—is long-term prisoners who are subject to removal from the UK. Although it is not a legislative requirement, as a matter of practice, officials in the Justice Department, acting on behalf of Scottish ministers, seek the Parole Board for Scotland's advice in such cases before ministers decide whether to authorise release once offenders have served half their sentences. Such cases average around 12 per year.

Once they are released under the terms of the 1993 act, those offenders become the responsibility of the immigration and nationality directorate of the Home Office. Immigration policy is, of course, a reserved matter. When the sentence is complete, the offender would be detained under Home Office rules. It is a matter for that authority to deal with the offender as appropriate, but the licence remains extant. The measures in the bill will remove any distinction between that category of prisoner and other long-term prisoners. All prisoners who are assessed as posing a high risk of serious harm will be referred to the Parole Board for it to consider whether they should be detained beyond the court-imposed custody part.

Amendments 84 and 87 also reflect a recent House of Lords ruling in an English case relating to prisoners who are liable to be deported. That ruling found that the equivalent provisions in English legislation are incompatible with the European convention on human rights in that they deprive long-term prisoners who are liable to be deported of the right to have their continued detention considered by an independent body—which would be the Parole Board. Although the ruling applies only to England and Wales, should a similar challenge be brought in Scotland the outcome would be likely to be the same. The Custodial Sentences and Weapons (Scotland) Bill offers the opportunity to regularise the current position, and that is what amendments 84 and 87 seek to do.

I move amendment 84.

Amendment 84 agreed to.

Section 49, as amended, agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Convener: Amendment 85, in the name of the minister, is grouped with amendment 86.

Johann Lamont: Amendments 85 and 86 are minor technical amendments. Amendment 85 will remove paragraph 2(2)(b) of schedule 2 to take account of the fact that section 40(1) of the Criminal Justice (Scotland) Act 2003 has been amended with effect from 1 December 2006. Section 40(1) of the 2003 act prevented the Parole Board from imposing electronic monitoring—tagging—as a licence condition for children under the age of 16. That restriction was removed on 1 December 2006 by section 21(13) of the Management of Offenders etc (Scotland) Act 2005, after the bill was introduced; therefore, the amendment that the bill would make is no longer required.

Amendment 86 will amend section 40(3) of the Criminal Justice (Scotland) Act 2003 by substituting for the words "specify" and "specified" the words "include" and "included" in order to ensure clarity and consistency in its language. The amendment reflects the language that is used in the bill.

I move amendment 85.

Amendment 85 agreed to.

Amendment 86 moved—[Johann Lamont]—and agreed to.

Schedule 2, as amended, agreed to.

Schedule 3 agreed to.

Section 50—Short title and commencement

The Convener: Amendment 83, in the name of Colin Fox, is grouped with amendment 82.

Colin Fox (Lothians) (SSP): Amendments 83 and 82 seek to amend section 50 in relation to part 2 of the bill, on the confinement and release of prisoners. The amendments seek to ensure that that part of the bill is implemented only after ministers have presented to Parliament a report compiled by independent experts that examines

the cost effectiveness of the measures that are proposed to reduce reoffending and the impact of the likely increase in the prison population. Amendment 82 specifies that that report must be made available to Parliament within 12 months of the passing of the bill.

Why do we need to amend the bill in that way? The minister knows, from the stage 1 debate and from a great deal of the evidence that the committee took, that many people within and outside the Parliament have serious concerns that the bill will have the effect of requiring more offenders to serve longer sentences in custody. At stage 2, the minister has sought to play down the likely consequences of having offenders serve 75 per cent rather than 50 per cent of their sentences behind bars—as I have described it before. Quoting the Sheriffs Association in particular, she says that the provisions on that will seldom be used. Nevertheless, as the minister knows, the committee has taken evidence from a procession of witnesses who believe that sentencers will use the new powers widely, which will result in many more people going to jail for longer.

For me, any bill that could add 1,100 people to our prisons is asking for trouble. As HM prisons inspectorate for Scotland highlights to the Executive every year, with graver and graver warnings, our prisons are already bursting at the seams. In that regard, I note that, in the past few days, we have heard that Low Moss prison, near Glasgow, is to be taken out of capacity.

The second issue that the committee has addressed in its consideration is the cost effectiveness of the bill. The committee has been told that if there are to be 1,100 extra prisoners, we might need to open two new prisons, costing upwards of £100 million each. On top of that, we would need additional prison officers, which would cost another £6 million a year, and additional criminal justice social workers, which would cost another £7.25 million a year—assuming we can get them; as everyone knows, they are difficult to find and retain. Further, between £11 million and £12.5 million would be needed for extra training in the new risk assessment techniques, methods and programmes. Also, according to Bill Whyte, of the Association of Directors of Social Work, the social work system would need another £40 million to cope with the demands that would be placed on it by the bill. The total cost, therefore, would be around £250 million. I accept that the financial memorandum and other sources do not help us much as the potential costs vary widely, but the figure that I mention is, at least, a potential consequence. We need to know whether that kind of money is involved and whether the goals relating to improving public safety and public confidence in the criminal justice system could be achieved more effectively by other routes, such as improving crime prevention measures, increasing community policing and introducing far greater support for offenders in the community and alternatives to custody. If such initiatives were properly financed and supported, the Executive would be more likely to succeed in its aims than it would be if it spent a further £250 million on a "lock them up for longer" strategy.

As the minister knows, I believe that there is compelling evidence that, as the experts suggest, we should be taking a more holistic approach to the problem. We need to examine such issues as housing, education, drug and alcohol dependency and violence reduction programmes. That approach is more likely to succeed than a dead-end strategy that locks more people up for longer periods. That gets us nowhere and there is less and less professional backing for it across the criminal justice system.

Amendment 83 presents an approach that, I believe, is sensible, reasonable and responsible. As the sums of money that are involved are significant, the amendment does not hold up the passage of the bill but seeks to ensure that the provisions are fully examined and are compared to other routes to the same end before the decision on which approach to take is made.

I move amendment 83.

The Convener: You say that there are not enough criminal justice social workers in the system, which most people would agree with. Under your model, if offenders were not being put into prison, who would provide them with the support that you would like them to have in the community?

Colin Fox: The part of the bill that talks about community sentences is welcome and progressive. For my money, it is a step in the right direction. It deals with the additional resources that the necessary level of thorough supervision would require. The figures that I quoted from the ADSW flag up the extra resources that would be required in order to achieve a 10 per cent increase in the number of social workers.

14:30

Johann Lamont: I say to Colin Fox that nothing is simple in the process. It is not right to imply that anyone round the committee table or anywhere else simply wants to lock people up. We are wrestling with difficult issues and we are balancing many interests and pressures in the system. It is not fair to imply that we are washing our hands and saying that just locking people up will sort the problem. All the work that has been done on the issue recently has recognised the significance of a lot of work with offenders, communities and victims.

As for the proposed report, we have been here before. It has been suggested that bills should say that a report must be produced at a randomly chosen point before some provisions can be enacted or that a sunset clause should prevent provisions from being enacted. The practical problem that we have shown with that is that we in the Parliament have ended up insisting on having a report at not necessarily the most appropriate moment. The best example of that is from when the Executive was obliged to lay before Parliament a report on the right to buy before we could take into account the new measures to limit the right to buy. The idea of having a report is quite attractive, but it arises naturally from the parliamentary process and need not be written into legislation, as any committee can hold an inquiry at any stage. We must be careful of the suggestion.

The bill deals with sentence management, not sentences. Colin Fox says that the bill will increase the length of sentences. The bill deals with what happens once a court has decided what the sentence should be and indicated how long the period in custody should be. The bill will kick in once the court decides that a custodial sentence is appropriate after taking everything into account. There are now more non-custodial sentences—community disposals—than custodial sentences.

The bill deals with how a custodial sentence is managed once it has been imposed. That is when the lack of transparency that all committee members and Bill Aitken most immediately have highlighted applies—when people have thought that a sentence was one thing but, because of unconditional and automatic early release, the offender has been released halfway through their sentence without support or supervision and, I presume, without any work having been done to prevent reoffending.

As I have said, the bill has two purposes. It will manage the custody part and increase transparency, but it will also recognise the legitimacy of the community part. To suggest that we simply want to lock people up is to misrepresent the bill. The bill acknowledges the legitimate interests of victims and others in knowing, once a court has determined a custodial sentence, what the custody part will be.

As I have said, we will end automatic and unconditional early release and put a structure into sentence management that will provide for punishment and rehabilitation. As I have said, we are not just sticking people in prison but giving offenders the chance to turn their lives round. For some people, prison can be part of that—the committee heard evidence about that. Stopping offending is the best way to protect the public. We intend the criminal justice reforms that are in hand and the measures in the bill to make significant inroads into tackling reoffending.

Amendment 82 would require the Scottish ministers to commission an independent report before commencing the provisions on custodial sentences. That report would consider the custodial sentence measures in isolation and would speculate about their impact on the levels of offending and reoffending and on the size of the prison population. The amendment would require the Scottish ministers to publish the report and lay it before Parliament within 12 months of the bill becoming an act.

However, amendment 82 does not tell us what the Parliament should do with such a report. What would such a narrowly prescribed report tell us? It could not reveal the benefits of the structure that was established through the Management of Offenders etc (Scotland) Act 2005 or the other recent criminal justice system reforms. It could not reflect that the measures in the bill will build on those strong existing structures and, most important, it would have to speculate on the bill's effect, as the Scottish ministers could not commence part 2 until the report had been produced.

Indeed, the report would probably not even achieve what current monitoring arrangements tell us. The Scottish Prison Service board agrees its business plan with ministers. The plan for 2006 to 2008 included for the first time an indication of the prisoner population that might have to be accommodated, to help planning. Its use in that way shows the importance that ministers and the SPS place on considering the level of population and planning to provide for it.

The increases that have been reported on recently have been mainly in the remand population, in the number of prisoners on short sentences and in the number of young offenders. That is completely in line with what the SPS has been saying.

The SPS keeps a close eye on the prison population and ministers took full account of that in the financial memorandum when they considered the bill's impact. The population level is one half of the story, and the Executive has shared full information with all relevant parliamentary committees about the relationship between population levels and capacity. The capacity levels that the SPS has indicated take account of the current plans for development and redevelopment of the SPS estate, including Low Moss. As the financial memorandum makes clear, Scottish ministers have accepted fully that adequate and proper resources have to be in place before the new system commences. The committee is aware that a high-level group involving all the stakeholders—the very people who will take the

provisions and make them work—is working on the detailed implementation plan.

Throughout the process, we have talked about being proportionate. A proportionate approach to assessment in custody will result in the right response being taken for different types of offenders. A proportionate approach to setting conditions will result in the right assistance being provided to offenders once they begin the community parts of their sentences. A proportionate approach to supervision will result in the right levels of support being provided where it is needed most. We will target resources on that rather than on the production of additional and unnecessary reports.

Once the new provisions are in place, it is only right that we evaluate them. That will be part of the process. In addition to the monitoring plans that I have mentioned already, statistics that are produced by the courts, the Prison Service and the local authority criminal justice social work departments will reflect developments once the new system is up and running.

As we know, amendment 83 is a consequential amendment.

Today is not the first time that I have spoken about the planning group that is working on the detailed implementation strategy. It is only right that the strategy be developed by the people who will need to take it and make it work. We aim to implement the measures as soon as is practicable, but we are talking about big changes. For such root-and-branch reform, it is essential that we take the time to ensure that the preparation is right and that the proper infrastructure is in place. We should not be driven by the artificial time constraint that Colin Fox seeks to apply.

I do not dismiss the arguments about striking the right balance between community and custodial sentences and between punishment, rehabilitation and the rights of victims, but I do not think that the bill contains anything that is contrary to our position, which is about having transparency in sentences and clarity in sentence management and recognising that, as well as tackling reoffending, we must ensure that communities and individuals understand what a sentence means when it has been decided. We have taken big-picture measures to tackle reoffending; we cannot pretend that people are not offending simply because they are not being sent to prison. There is the broader strategy around working in communities on employability, drug rehabilitation and all the issues that we are highly versed in.

I understand the argument behind amendment 82, but I do not agree with the practicalities of it. Some of the concerns that drive Colin Fox's argument that a report needs to be produced are unfounded. The proposals in the bill address the range of issues that members of the committee and others have raised in the past. I hope that if Colin Fox is not reassured, he at least recognises that our position is legitimate. I urge the committee to reject amendments 82 and 83.

Colin Fox: I am happy to give credit to the Executive for the present state of affairs, whereby for the first time—I think I am right in saying—there are more non-custodial disposals than custodial disposals. The Executive deserves credit for that and I am happy to give it because it is a step in the right direction.

The minister says that nothing is simple and that there are different pressures in the system, but I hope that she would accept that although the number of non-custodial disposals has increased such that they now make up a majority of disposals, it is right to highlight that we are locking up record numbers of prisoners in Scotland. Given that that is a record that we break year after year, it is quite legitimate for those of us who have concerns about the incessant expansion of the prison population to raise them in the context of the bill, which we are gravely concerned will add another 20 per cent to the prison population.

The minister has repeated her point of view—which I entirely respect—that the bill is about sentence management, but she must accept that, over many months, the committee has heard from many experts in the field who have sat where she is sitting and who have told us that in their experience, in similar circumstances, such powers have been used to extend the length of sentences that are handed out to offenders in court.

That background allows us to make a calculation or a guesstimate—call it what you will—that there will be 1,100 extra prisoners. The minister has again not taken the opportunity to dispute that figure. Neither has she taken the opportunity to question the costs or figures that have been put to the committee and which I have again raised today. That is significant, because it seems to me that the minister is conceding those points.

It is legitimate to try to ensure, as amendment 82 tries to do, that a report is made by independent experts. It would contain recommendations and comparisons with ways to reduce reoffending in the prison population other than those that are suggested in the bill. The minister herself said that we would have to examine the implementation of the bill's proposals once they have been implemented. That is precisely what amendment 82 is driving at. It is a question of when we take the decision to implement the provisions in the bill, which contains big, root-and-branch changes, as she suggested.

The minister also mentioned a detailed consideration of strategy. That, in essence, is what amendment 82 suggests but, rather than the Executive doing it, we would give the opportunity for independent experts to do it based on their experience and the evidence that they have already given to the committee. That is a reasonable and legitimate approach.

The minister and I share the same wish to reduce reoffending rates and the overall prison population. As I listened to the minister's reply, it struck me that a big part of the bill puts the onus on offenders not to reoffend. That, of course, is legitimate, but there is not enough in the bill that puts the onus on the Scottish Executive to help through the provision of housing, drug rehabilitation and violence reduction programmes. The experts have said that those things work, but they are singularly lacking from the bill. Again and again, the emphasis is put on offenders to turn round their own lives without enough support from the Executive. That is part of what the report that amendment 82 suggests would examine. I will press amendment 83.

The Convener: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)

AGAINST

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

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

Amendment 83 disagreed to.

Amendment 82 moved—[Colin Fox].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Fox, Colin (Lothians) (SSP)

AGAINST

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

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

Amendment 82 disagreed to.

Section 50 agreed to.

After schedule 3

Amendment 87 moved—[Johann Lamont]—and agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister and the officials who supported her for attending.

We will have a short break before we carry on.

14:43

Meeting suspended.

14:44

On resuming—

Legacy Paper

The Convener: Item 4 is our legacy paper. For members' information, a Scottish Parliament information centre briefing paper on session 2 legislation—for which we thank SPICe—has been provided. We are invited to consider the draft legacy paper and to agree any changes or additions. A final version of the paper will be brought back to our meeting on 20 March, which we expect will be our last meeting.

I will go through the draft legacy paper paragraph by paragraph, as that is probably the quickest way of dealing with it. Do members have any comments on paragraphs 1 to 4?

Paragraph 5 is pretty factual. Have members any comments on paragraphs 6 to 9?

The next section is "Post-legislative Scrutiny Undertaken". Are there any comments on paragraphs 10 to 14?

Next is "Committee-Initiated Inquiries". Do members have any comments on paragraphs 15 to 20? Obviously, paragraph 21 will need to be updated once we take evidence from the minister, but we can come back to that at our final meeting. Are there any comments on paragraphs 22 to 25?

Do members have any comments on paragraphs 26 to 29?

We turn to "Budget Scrutiny". Do members have any comments on paragraphs 30 to 33?

We move on to "Scrutiny of Justice and Home Affairs in Europe". Do members have any comments on paragraphs 34 to 37?

We turn to "Other Matters". Do members have any comments on paragraphs 38 to 40?

Next is "Petitions and Subordinate Legislation". Do members have any comments on paragraphs 41 and 42? Obviously, paragraph 42 will need to be updated.

The "Conclusion" is paragraph 43. Do members have any comments on that?

In that case, having noted those paragraphs that will need to be updated by the clerk, we can reconsider the legacy paper at our final meeting. As agreed, we now move into private for the final agenda item.

14:47

Meeting continued in private until 14:55.

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