JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 31 August 1999
(*Afternoon*)

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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CONTENTS

Tuesday 31 August 1999

JUSTICE AND HOME AFFAIRS COMMITTEE
2nd Meeting

CONVENER:

Roseanna Cunningham (Perth) (SNP)

COMMITTEE MEMBERS:

*Scott Barrie (Dunfermline West) (Lab)
*Phil Gallie (South of Scotland) (Con)
*Christine Grahame (South of Scotland) (SNP)
*Gordon Jackson (Glasgow Govan) (Lab)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Kate MacLean (Dundee West) (Lab)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Pauline McNeill (Glasgow Kelvin) (Lab)
*Tricia Marwick (Mid Scotland and Fife) (SNP)
*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES:

Mr Jim Wallace (Deputy First Minister and Minister for Justice)
Angus MacKay (Deputy Minister for Justice)
Lord Hardie (The Lord Advocate)
Colin Boyd (Solicitor General for Scotland)

COMMITTEE CLERK:

Andrew Mylne

SENIOR ASSISTANT CLERK:

Richard Walsh

ASSISTANT CLERK:

Fiona Groves

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 31 August 1999

(*Afternoon*)

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

The Convener (Roseanna Cunningham): I now open this meeting and welcome everybody to what, in most people's eyes, is the first meeting of the Justice and Home Affairs Committee, although it is actually our second meeting.

I have received apologies from Maureen Macmillan, who is not able to attend until later this afternoon. That is the only item of formal business before the substantive business of the day. I ask that the Minister for Justice and the Deputy Minister for Justice be invited to come before the committee.

Evidence

The Convener: I see that we have been joined at this stage by both law officers as well. It is our intention to direct the first section of questioning to Mr Jim Wallace, who is the Minister for Justice, and to Mr Angus MacKay, who is the Deputy Minister for Justice. We will then move our attention to the role of the law officers. We hope to reserve a period towards the end of the two-hour session for a discussion with the four witnesses together.

Thank you for agreeing to come to the committee, Mr Wallace. It would be helpful if you began by taking a few minutes to explain what your role is as Minister for Justice and what your responsibilities and those of your deputy are. It would be particularly helpful to know what the interaction with the law officers is, as a lot of people do not understand that clearly. You may wish to take this opportunity to make a brief statement about current Executive initiatives.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Thank you, convener, and members of the committee.

I welcome this opportunity to meet members of the Justice and Home Affairs Committee formally and to set out the policy framework within which ministers will tackle the wide range of justice issues that confront us.

First, I understand that the committee would like to hear a statement on ministerial responsibilities. In simple terms I, as Minister for Justice, and Angus MacKay as my deputy, are responsible for all justice and home affairs policy matters, including criminal and civil law, the police and fire services, emergency planning and freedom of information. The Lord Advocate, who will expand on this in his own statement, is responsible for the prosecution service and for legal advice to the Government. If it would be helpful, we will provide the committee with a note on ministerial roles and responsibilities.

To improve co-ordination in law and justice, and to provide a coherent basis for taking forward a wide range of policies, we have created a new department: the Scottish Executive justice department. It will be responsible for a number of bodies and agencies that provide important services in this field: the Parole Board for Scotland; the Scottish Prison Service; the Scottish Court Service; the Office of the Accountant in Bankruptcy; the Scottish Legal Aid Board; the Scottish Law Commission; and the Scottish Criminal Cases Review Commission. The department also has general responsibility for the National Archives of Scotland, Registers of Scotland, and the census.

As ministers, Angus and I also have wider cross-cutting responsibilities for land reform and for drugs. Those issues involve other departments of the Scottish Executive as well as the justice department. For example, in the case of drugs, the creation of the drugs enforcement agency clearly falls within the justice field, but health education and treatment are health matters.

I understand that the committee would also like to hear a statement of the Government's legislative programme on justice. The First Minister announced the Government's first legislative programme in his statement on 16 June. Three bills in that programme fall within the responsibility of this committee; the abolition of feudal tenure bill; the land reform bill; and the adults with incapacity bill. I understand that the committee has already had an informal briefing from officials on two of those bills. We all recognise that the committee will have a substantial legislative load and that in the coming months we will become very familiar with each other and with the bills.

In addition, we must be ready to respond to unexpected problems. The existence of a Scottish Parliament will make it possible to deal quickly and effectively with the need for urgent legislation in a way that has not been possible in the past. We intend to ensure that your committee is given notice as soon as possible of our plans to introduce legislation on matters within the committee's remit. We will be willing to consider representations from members of the committee about the need for legislation when our support

might be helpful in taking matters forward.

The need for immediate action by the Parliament has arisen already in the form of emergency legislation to deal with the loophole that has been exposed by Mr Noel Ruddle's absolute discharge on 2 August 1999, by the sheriff, from the state hospital, Carstairs.

The bill will set a new test of public safety that must be satisfied before a sheriff can discharge a restricted patient under section 64 of the Mental Health (Scotland) Act 1984. It will introduce a new right of appeal to the Court of Session against the decision of the sheriff. The bill will have effect in relation to appeals under section 64 on or after 1 September 1999, and will bite on appeals currently in process. It is an interim measure and will not pre-empt the important work of the Millan and MacLean committees, which are examining mental health and serious and violent offenders.

I am happy to answer questions from the committee on the bill. In any case, it will be the subject of full debate and detailed consideration in the Parliament later this week and next.

Our role as ministers is to work with everyone involved in the justice system to promote continuous improvement in the provision of justice in Scotland. I would like to set out our criminal justice strategy. We want to tackle the social causes of crime. We know from research that there are certain risk factors associated with crime, which is not to deny individual responsibility for criminal behaviour. However, tackling low incomes, poor housing, low school attainment, community disorganisation, substance abuse and neglect will reduce the risk factors and consequently reduce crime. Our social inclusion policies are designed to do just that. They provide the basis not only for our policy on criminal justice, but for our whole social justice policy.

Tackling social causes is a long-term policy. The public want protection now. We will provide that protection through community safety planning and active policing policies, through more information technology and closed circuit television, and through more policing initiatives, such as those on drugs and knives.

We must also ensure that the law is adapted to respond to changes in criminal behaviour. Recent changes have included new powers, such as anti-social behaviour orders, sex offender orders and a range of new measures to deal with racial harassment, which will provide extra tools for the police and other organisations in their task of protecting the public.

When the police catch criminals, the offenders need to be brought to justice promptly and dealt with effectively. We want to see the courts operating more swiftly and we will take forward a range of efficiency measures. We want to ensure that the courts have an effective range of sentences from which to choose. In particular, we are keen to develop alternatives to custody.

We also need to support victims. We need to pursue measures to protect vulnerable and intimidated witnesses, including children. The Lord Advocate will say more about that, covering not only his responsibilities in that area, but those of the justice ministers. We need to protect women; we will implement an action plan on violence against women. Tackling domestic violence is a matter to which we attach high priority.

Above all, we believe that the system must enjoy the confidence of the public as a fair system. We have announced an action plan on the Macpherson inquiry on the Stephen Lawrence case. The main objective of that is to ensure that people from ethnic minority communities are treated fairly. More generally, the incorporation of the European convention on human rights into domestic law is designed to increase the fairness of our system. The establishment of the Scottish Criminal Cases Review Commission will ensure that all representations about alleged miscarriages of justice are considered independently.

That is our broad agenda on criminal justice. We will take it forward energetically and we look forward to working in partnership with the committee to deliver it.

I come now to civil law and the civil justice system. We wish to encourage the progress that has been made in recent years towards improving the quality of civil justice. We must enable all sections of the community to have access to justice and we want to encourage the development of other methods of resolving disputes, which may avoid the need for cases to go to court.

In the interests of efficiency, we need to ensure that cases are determined in the right level of court and that the higher courts are not filled with business that could be dealt with more economically by a lower court. As a first step, I can announce today that, following consultation, I am going to increase the small claim limit in a sheriff court from £750 to £1,500 and the summary cause and privative jurisdiction limits from £1,500 to £5,000. Full details are set out in the parliamentary answer that I am giving today.

An important area of law and practice, and one that has been topical in recent days, relates to the enforcement of orders of the courts. There has been widespread concern surrounding the diligence of poinding and warrant sales. Warrant sales pose genuine problems. As ministers, we want to establish the case for the abolition of warrant sales, before Parliament moves to

consider legislation. The consequences of abolition must be addressed, as should the challenge of providing an effective and modern replacement. Parliament is well placed to consider those issues quickly and thoroughly and I welcome an early discussion with both the convener of this committee and the convener of the Social Inclusion, Housing and Voluntary Sector Committee on how to progress.

14:15

It is essential that due regard is taken of everyone with an interest, including local authorities, business and those who represent the interests of low income groups. I am also inviting the Scottish Law Commission to re-examine whether its conclusion that warrant sales should not be abolished remains valid and, if so, on what grounds.

We cannot consider warrant sales in isolation. We need to examine what might replace sales in the general framework of diligence. Research into poinding and warrant sales will need to be evaluated along with the other research reports. A further report in relation to diligence and the dependence has been submitted by the Scottish Law Commission, and two further reports on attachment orders and money orders, and on diligences against land are expected next year. That should ensure proper consideration of the diligence system as a whole, while urgently addressing poinding and warrant sale.

We need a comprehensive and principled approach to the problems of civil justice. Our policy should not be piecemeal. I am, therefore, considering how our policy can be more co-ordinated and responsive. To do so, I will have discussions with all the key interests about developing a strategy for civil justice.

I have already mentioned three of our bills which will make important changes in civil law; other important bills will follow, some drawing on the valuable work of the Scottish Law Commission, others, in future drawing, I am sure, on the ideas of the Justice and Home Affairs Committee. I mention family law and charity law as two major areas on which we are working.

The quality of our justice systems depends in large measure on the practitioners, in particular on the judiciary and those who practise before it: the prosecutors and defence agents; those who advise and represent litigants. It is an essential feature of our legal system that the courts should be, and are, independent. We are committed to ensuring that that is the case. That is even more important in the light of the incorporation of the European convention on human rights.

I would like to conclude with a word about judicial appointments. The Lord Advocate will be happy to answer questions on how the current system works. It is essential that the very best candidates be identified to fill the offices of judge, sheriff principal and sheriff. All must be seen to be independent and free to exercise judgments without fear or favour.

I firmly believe that our judiciary is of high quality and that we are well served by them. However, I am aware that there is concern that our system of judicial appointments is not sufficiently transparent and that some form of independent judicial appointment body should have a role to play. That is why we announced in the partnership agreement, issued by the coalition, that we would consult on arrangements for making recommendations for the appointment of judges and sheriffs.

I can inform the committee that the consultation will get under way before the end of the calendar year and that we will consult widely. Our response will be made public and the committee will have the opportunity to discuss the matter in detail before decisions are taken.

It is important that the prosecution of crime in Scotland should be seen to be independent from all interests, particularly those of the Government. As justice ministers, we are committed to that, and to the independence of the Lord Advocate's position as head of the prosecution service. The Lord Advocate will deal with that more fully in his statement.

However, I understand that, before the Lord Advocate makes his statement, the committee would like to put questions to me, and I would be happy to answer them.

The Convener: Thank you, minister. Perhaps I may open by referring to the issue that is most in the news, and on which you touched earlier. At this stage, perhaps you could tell the committee when you were first advised, in your capacity as the Minister for Justice, of the problem likely to be posed by the Ruddle case?

Mr Wallace: I was first advised of it in a minute dated 14 July, which was copied to me—I cannot say whether it was as Minister for Justice or as Deputy First Minister—and set out for ministers the background to the Ruddle case and the appeal before the sheriff at Lanark.

The Convener: So that was just a couple of weeks before the case was going to call in court?

Mr Wallace: It was a couple of weeks before the judgment—the case had been heard.

The Convener: That was the first intimation that you had of the problem posed by Ruddle?

Mr Wallace: That was the first time that I,

personally, was given that information.

The Convener: I know that other members of the committee have questions on that particular area.

Christine Grahame (South of Scotland) (SNP): I appreciate that Mr Wallace was not in this seat until May of this year. However, I have before me the sheriff's decision in the Ruddle case, which makes for very interesting reading. I am sure you are very familiar with it, Mr Wallace. You stated that the public "wants protection now".

It is apparent from reading the sheriff's judgment, starting at page eight, paragraph 7.11, that in March 1998, Dr White, who was the responsible medical officer for Mr Ruddle, informed the Department of Health—at that early stage—that Mr Ruddle had expressed his intention to appeal detention. That was when the alert was first put out into the domain of the Government.

Paragraph 7.16 on page 10 of the sheriff's report details an annual examination by a panel of the medical sub-committee of the state hospital, Carstairs, which took the view that Mr Ruddle ought to be discharged. It waited for the return from holiday of Dr Chiswick. I am not sure when he was informed, but shortly thereafter the applicant was told of the committee's decision that he should be discharged, as were Dr White and the respondent—which at that time was the Government. As early as that, this case was on the agenda.

Paragraph 1.3 on page 16 of the sheriff's report tells us that the provision of evidence in the appeal commenced on 9 April and continued until 30 April. Court proceedings are now in hand, and on 2 September we will be tackling emergency legislation. What happened to Mr Ruddle's case from March 1998 until Mr Wallace got that minute?

Mr Wallace: As Christine Grahame pointed out, I was not there. Bearing that in mind, I am happy to respond as best I can.

It is well known that appeals are made under the Mental Health (Scotland) Act 1984. The patient has the right to regular review and the right to make an application for such review. In many cases, applications are opposed or challenged—formerly by the Secretary of State for Scotland, now by the First Minister. In 1998, a case went to the House of Lords in which the Secretary of State's decision to resist an application for discharge was successful and a wide definition of treatability was given. It should be evident from the judgment that other evidence was presented to the sheriff which supported the Secretary of State in his opposition to Mr Ruddle's application.

It was only when we received the terms of the sheriff's judgment on 2 August that it was possible to confirm that there is a loophole in the law and, more important, precisely what it is. The loophole clearly existed when the sheriff made his judgment in Lanark on 2 August. Within two days we had announced our intention to seek emergency legislation. We indicated—we did not shy away from them—the difficulties involved in this area of law, arising not least from the necessity to meet the requirements of the European convention on human rights.

I said on 4 August that I hoped we would be in a position to introduce legislation when the Parliament returned after the summer recess. That is precisely what we are doing. I think that the convener will accept that, when I discussed the matter with her and Mr McLetchie on 4 August, she did not demur from such a time scale. The introduction of emergency legislation when Parliament returned was a target that we set, and it is a target that we have met after considerable hard work and effort.

Christine Grahame: I have heard what you have said, Mr Wallace. I am concerned about the fact that, when it was obvious that Mr Ruddle was going to appeal for his discharge, most of the psychiatric medical team at Carstairs supported him. What legal advice did you take on how successful his appeal was likely to be?

Mr Wallace: You personalise the matter. I did not take any legal advice.

Christine Grahame: I re-phrase the question: what legal advice was taken?

Mr Wallace: The secretary of state, as he then was, has legal advisers who are very experienced in dealing with such matters. He was advised to resist this application for discharge. That is what he has done. I am sure that the most effective case possible was presented. Counsel was instructed to meet the challenge of that case.

Christine Grahame: I appreciate that, Mr Wallace.

Mr Wallace: Other psychiatric evidence was obtained and laid in evidence before the sheriff.

The definition of treatability at which the House of Lords arrived in the case to which I referred, from near the end of 1998, was very broad. The secretary of state and those who were advising him resisted the application, believing that they had a strong case to put before the sheriff. The Lord Advocate may want to expand on that when he is questioned.

Christine Grahame: I am sure that when counsel was instructed a note would have been provided on the prospect of success or on the difficulties. What advice was given at that time, on the prospect of success?

Mr Wallace: I cannot answer that question, as I have not seen any such note from counsel.

Christine Grahame: I will move on to something that overlaps with the issue of treatability and concerns the treatment of Mr Ruddle.

It emerges from comments peppered throughout the sheriff's report that Mr Ruddle was not receiving treatments after 1992 and that Dr White, who was the medical officer responsible for him, tried to get treatment for personality disorder—as did the team that kept reviewing the case—but nothing was done. By the time an attempt was made to transfer him to Broadmoor for treatment, he had got wind of the fact that there was an opening for him to appeal—I take it that that was how it happened. By that stage, when the sheriff considered it, a referral to Broadmoor was out of the question. Throughout the case, there was a lack of treatment although the professionals apparently endeavoured to get it. That is really what led to his not being "treated" from 1994.

Mr Wallace: The Minister for Health and Community Care, Susan Deacon, has already asked the Mental Welfare Commission for Scotland to investigate the particular circumstances of this case—including the treatment regime applicable to Noel Ruddle at Carstairs. That was a prompt response. The issues that Christine Grahame raises in her question will be a proper matter for consideration by the Mental Welfare Commission for Scotland.

Christine Grahame: Is that regime in place now, or can you not answer that?

Mr Wallace: That is a responsibility of the health department. However, I assure Christine Grahame and the committee that the Mental Welfare Commission for Scotland has been instructed by the minister to investigate the circumstances of treatment at Carstairs, making specific reference to the sheriff's observations in the Ruddle case.

Christine Grahame: Do you accept that if personality disorder treatment had been made available to Ruddle either at Carstairs or at Broadmoor, he would not have been able to apply to the sheriff for appeal because he would then have been treated?

Mr Wallace: He could have applied at any time.

Christine Grahame: Unsuccessfully?

Mr Wallace: It is for the sheriff to decide, having heard all the evidence, whether an application would be successful or unsuccessful. I am not in a position to make that kind of judgment, which would, in many respects, be more of a clinical judgment than a legal one. It would not be proper for me to make that kind of judgment. However, I assure the committee that the former Secretary of State for Scotland opposed Mr Ruddle's application.

Phil Gallie (South of Scotland) (Con): Minister, you have suggested that, on 4 August, you determined that you would go forth with emergency legislation. Is the bill prepared? Is it available to members of this committee today? It should be borne in mind that we are to debate this important issue on Thursday.

Mr Wallace: I inform Mr Gallie, the committee and the members of the public who are present, that immediately prior to this committee meeting, I signed the bill and the docket that I am required to sign to testify that, in my opinion, the bill complies with the requirements of the Scotland Act 1998. The bill will be lodged formally with the clerk of the Parliament and should be published tomorrow, when members will be able to obtain a copy.

Phil Gallie: Thanks very much. I am pleased with that, although it does not give us a great deal of time to come to terms with the bill prior to the main debate.

Mr Wallace: I appreciate that.

Phil Gallie: I would like to pick up on a couple of the points that Christine Grahame made, regarding the release of Mr Ruddle. Why did not you, as a minister, make the decision to appeal that release? Did you base that decision on the judgment of the law officers? Did you take a strictly ministerial overview of the issue? What circumstances prevented you from proceeding with an appeal?

Mr Wallace: I do not want to be pedantic, but I wish to clarify that an appeal was not open. It is important to mention that one of the provisions incorporated in the bill is that an appeal should be available.

14:30

Phil Gallie: Would a judicial review have been available?

Mr Wallace: The question of a judicial review was discussed at some length between the Lord Advocate and the First Minister. I subsequently discussed the matter with the First Minister. The unequivocal advice given to us was that no action would be taken that would lead to Mr Ruddle being detained in custody.

Phil Gallie: Does Mr Wallace believe at this stage that that advice was sound, or, in retrospect, that a judicial review was perhaps open to him?

Mr Wallace: I believe that that advice was sound, and that, even with the benefit of hindsight, there were no steps available that would have led to Mr Ruddle remaining in custody.

Phil Gallie: There seems to have been a bit of a stop-go approach to the introduction of the emergency legislation. We have seen Mr Wallace on a number of occasions over recent weeks saying, "Yes, we're going ahead with it," and, "No, perhaps we've got to stand back." Is he absolutely firm in his belief that the bill that he is presenting meets all the criteria necessary to conform to UK law and European law?

Mr Wallace: I am very grateful to Mr Gallie for giving me an opportunity to clarify matters. If he read some sections of the press, that stop-go idea might have formed in his mind—or in other people's minds. I indicated on 4 August that we wanted legislation and that I would try to bring it forward when Parliament resumed. I did not underestimate the difficulty in making it comply with the, nor did I disregard the outside chance that we could not do so. It is important to recognise that there was no stop-go at all. There was a considerable amount of work and effort: checking case law, looking at and evaluating the options and checking them against the European convention on human rights.

I said on 4 August that my target would be when Parliament resumed. I said in an interview on "Good Morning Scotland", two weeks ago I think, that that was our intention. I think I said it twice more on "Good Morning Scotland" last week. I made the point that we were not going for a knee-jerk reaction. Mr Gallie and I have been at Westminster and he knows that Westminster does not always get it right when it knee-jerks. I do not believe that these measures are a knee-jerk. The bill, which I have signed, and which I hope we will debate later this week, has been carefully considered and is framed so that it tries to plug the loophole that emerged as a result of Sheriff Allan's judgment on the Ruddle case.

Phil Gallie: I am sure that we welcome that.

I would like to pick up on a final point. In early August, Mr Wallace was asked whether other cases that bore similarity to the Ruddle affair were likely to go to appeal. At that time, his answer was that he was not aware of any. Yet we found that the cases of Tonner and Doherty went to appeal in mid-August—on 17 August I think. On what advice was Mr Wallace operating in the early weeks of August?

Mr Wallace: Again, I welcome the opportunity to clarify this. I did not mislead anyone. When I met Ms Cunningham and Mr McLetchie on 4 August, we discussed the handful of cases which officials, having trawled through many cases, identified as being potentially Ruddle-like. In saying that, I do not in any way concede that they would go the same way as Ruddle's case, in case anyone says at a future date that I have made some concession on that.

Neither of the two appeals to which Mr Gallie referred came into the category that we were discussing. One of them was lodged only on the day when I had my meeting with Ms Cunningham. If that appeal succeeded, the applicant would be transferred back to prison. It was therefore in a very different category from the case of Noel Ruddle. As all members of the committee will understand, it would be improper to go into details because the case is sub judice. When that trawl had been done, it was found that the other case had distinguishing features that did not make it appear to be in the same class as the Ruddle case.

We believed—and we still believe—that sheriffs ought to have the opportunity to take into consideration the issue of public safety. That was not available to the sheriff at the hearing on Noel Ruddle's case. The issue of public safety will be a key element of our bill. The bill will take effect, subject to Parliament's will, from 1 September. That will affect not only the two appeals to which reference has been made but any appeal that might be made. All hearings in cases to which section 64 of the Mental Health (Scotland) Act 1984 applies will be subject to the test of public safety. The sheriff will have to apply himself or herself to the test of public safety.

The bill provides for applications to be made directly by the First Minister. Governments have always taken public protection into account, but the bill requires that the First Minister take public protection into account in case a judicial review decides that public protection is an irrelevant consideration.

The Convener: You referred to the meetings that took place, Mr Wallace. I would like to put it on record that while both David McLetchie and I were prepared to accept the explanation in one of those cases, there was a difference of opinion about the categorisation of the second as somehow being distinguishable from the Ruddle case. There is an on-going controversy about the second case.

Mr Wallace: You express a difference of opinion. I told you that there were significant distinguishable features. You and Mr McLetchie would accept that I acted in good faith.

Phil Gallie: Given the fact that you appear to have dealt with the Tonner situation nicely, do you think that it would be fair to bring the case to the attention of the Scottish Legal Aid Board to make sure that public finances are not wasted in useless appeals?

Mr Wallace: It is improper—and illegal—for a minister to have any involvement with the Scottish Legal Aid Board on any appeal.

Kate MacLean (Dundee West) (Lab): I think

that my question has already been answered. I have already written to the minister about the Karl Tonner case and another case involving releases from Carstairs prison, about which Dundee City Council was concerned. The minister assured me that no progress would be made on those cases until the legislation had come into effect, which will be tomorrow. On behalf of the people of Dundee, I welcome the fact that the legislation has been brought forward as quickly as it has.

Pauline McNeill (Glasgow Kelvin) (Lab): The House of Lords did not help us at all because it took such a wide view of the treatability test. In view of that, what the minister said today is welcome.

I do not know what hints you can give us, minister, given that the bill has been seen only by you and your junior minister, but I would like to know whether the new powers will be given to the minister or to the sheriff. Also, given that the new test will be based on public safety, what guidance will be available to sheriffs and the minister when they consider cases? It is at that point that human rights come into play.

Mr Wallace: You are right to point out that the issue is one of public protection. That is an important consideration that was not available to the sheriff in the Ruddle case.

To make this bill more compliant with the European convention on human rights, the burden of proof will rest with the First Minister, who will have to lead evidence before the sheriff as to his concerns about public protection and public safety. It could be argued that that is what would have had to happen anyway, but it will be a matter of law that the burden of proof will have to be discharged by the First Minister. I think that I am correct in saying—and the Lord Advocate is sitting beside me—that the term that is used in the bill is one that is already used in other statutes when reference is made to public protection, so it is not a novel concept.

The Convener: Do you want to ask a follow-up question, Pauline?

Pauline McNeill: Will there be any guidance in the legislation that would indicate the grounds, other than general public safety, on which it could be used?

Mr Wallace: There will be no guidance in the legislation, but I understand that the First Minister would have to lead evidence—psychiatric evidence or the evidence of people who had had contact with the patient in the hospital—that was designed to persuade the sheriff that there was an issue of public safety. It is not uncommon for that to happen. The sheriff would have to balance that evidence and I have no doubt that the applicant might bring evidence to try to rebut it.

That responsibility would rest with the First Minister, but in the case at Lanark concerning Noel Ruddle, the sheriff was unable to get a public safety test because, as soon as he deemed that there was no longer any treatment available to Mr Ruddle at the state hospital that would either ameliorate his condition or prevent its deterioration, he was obliged to discharge without proceeding to a test of public safety.

Christine Grahame: Treatment was available to Mr Ruddle, but he did not get it. I have two more questions about the case. First, when were the McConvilles, the victim's family, first informed that Mr Ruddle would be seeking a discharge? Secondly, what is the cost of monitoring Mr Ruddle now that he is out?

Mr Wallace: I cannot tell you the date on which the family found out; I suspect that they did not find out that Mr Ruddle was applying to be discharged, as opposed to finding out that he was being discharged. The honest answer is that I do not know, but I can find out and inform the committee.

Similarly, I cannot give a figure for the continuing cost of Mr Ruddle's care package. It would be useful to put on record, however, the fact that, allowing for the possibility that Mr Ruddle might have been discharged, efforts were made to put a care package in place before that Monday. Indeed, that package was offered to him after his discharge.

Christine Grahame: I have been told that the first news that the McConvilles had of Mr Ruddle's release was from the press on 6 August. Perhaps the minister can find out whether that was the case.

Mr Wallace: I will certainly try to find out, but Christine Grahame asked me when the family knew about Mr Ruddle's application for discharge.

Christine Grahame: The aim of my question was to establish when the family were informed that that person would be out and about.

Mr Wallace: Because of patient confidentiality, it can be difficult to inform a victim's family about an application, but that is one of the issues that the Deputy Minister for Community Care, Mr Iain Gray, was alert to. He instructed inquiries to be made as to how the family of Ruddle's victim were being catered for.

Christine Grahame: Will you just confirm when the family became aware that there were movements in the matter of Mr Ruddle's release?

Mr Wallace: I will seek to do that.

The Convener: There are other issues that members will want to raise, but I do not want to cut this discussion short as I know that other members

have questions on this case. I shall therefore allow another five or six minutes for discussion of the issue, and I ask members to keep their questions short.

Let me open up the debate somewhat and get away from this narrow point. You talked, Mr Wallace, about the Reid case, which was the first to flag up this matter as a potential problem, followed by the Ruddle case in 1998. It was around the middle of 1998 that it was intimated that that case would be an issue; we know that from the sheriff's judgment.

I appreciate that the events in question predate your taking office, but do you know why the committee to review the Mental Health (Scotland) Act 1984 was not established until April 1999, and why the MacLean committee was not set up until January 1999?

14:45

What explanation, if any, was given to you of the time-lag between the previous Administration being aware of the problem and actually setting in train committee proceedings to look at it?

Mr Wallace: My understanding is that the MacLean committee was set up as our response to the Reid judgment. I cannot recall the exact date of the judgment, but I do not think that there was much of a time-lag. It is important to make the point that the then Administration did not sit still: it set up a committee under the chairmanship of Lord MacLean. As the committee will readily appreciate, committees do not come into being overnight. The chairman must be appointed, terms of reference worked up, and members of the committee and a supporting secretariat worked up. The point that I would make is that the clear impression that I have had is that that was a direct response.

The Convener: With respect, as far as I understand it, the Reid decision was in August 1997 or thereabouts. MacLean was not set up until January 1999, and the Millan committee was not set up until April 1999.

Mr Wallace: I have a piece of paper in front of me which says that on 3 December 1998 the House of Lords handed down its judgment on R v the Secretary of State for Scotland. That was December 1998. You indicated that Lord MacLean's committee was set up in January 1999. I do not think that you can be too critical. I was an Opposition MP at the time, but even I would not have been too critical of that time-lag.

The Convener: I am sure that you would have been every bit as critical as everyone else has been of the handling of this over the years.

Mr Wallace: Of that one month, I would not. The committee chaired by Bruce Millan is not solely a response to the Reid case. Many members of this committee will be aware that there have been growing concerns over many years about the state of our mental health legislation. We are dealing with an act that is now some 15 years old. There have been many developments in mental health over that time and it was deemed timely to set up a committee to take a much broader view of mental health legislation. It was not directly in response to Reid, but was the coming together of a number of matters of concern about mental health legislation.

Euan Robson (Roxburgh and Berwickshire) (LD): That leads me neatly into my question. You mentioned that this was an interim measure of the bill that we will be looking at later this week. When the various committees, including the MacLean committee, have reported, do you envisage that there will be a need for the Parliament to take a thorough look at the whole area and for more comprehensive legislation to be introduced?

Mr Wallace: Almost certainly. Given the wide remit of the Millan committee, and the important considerations of Lord MacLean's committee, it is almost inevitable that legislation will follow. As an Executive, we would want to ensure that that legislation proceeded, taking into account and consulting on the committees' recommendations.

Euan Robson: And how the interim measure has worked.

Mr Wallace: The First Minister and myself have kept Mr Millan and Lord MacLean informed of what we are doing, and have invited their committees to take into account the emergency legislation that we are putting through the Parliament.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Very briefly, on the basis that you have answered many of the questions that I had, do you have any idea how many people will be involved with and affected by this legislation at present?

Mr Wallace: Off the top of my head, I could not give you an answer, but it is important to make the point that sections 63 and 64 of the Mental Health (Scotland) Act 1984 are the procedural route by which restricted patients can—indeed must—appeal, following the original court order. There is an annual right to appeal for discharge from hospital under section 63, which could apply to a wide range of patients. Equally important, however, is that it covers a wide range of conditions. Every case is different and is assessed on its individual merits. Some would not be considered for one moment—even before there was any question of concern for public safety. I cannot give you a number, but it is important to put this into context. This appeal route is not open

solely to psychopathic killers who are currently patients in Carstairs.

Mrs McIntosh: But your overriding concern will be for public safety?

Mr Wallace: As I have indicated, and I welcome the opportunity to repeat it, we are introducing the legislation as an interim measure pending the outcome of the MacLean and Millan committees because we believe that a loophole that did not allow public safety and public protection to be taken into account was exposed. We wanted to plug that loophole to ensure that in future sheriffs will be required to take public protection into account.

The Convener: Committee members have advised me that they wish to raise other issues; I appreciate that we have a restricted time in which to do that. I invite a member who has not spoken yet, Tricia Marwick, to ask a few questions in connection with the proposed Executive legislation.

Tricia Marwick (Mid Scotland and Fife) (SNP): Over the past few years there has been great concern about the activities of people such as Brian Hamilton, the raider of the lost titles. I am sure that Mr Wallace will wish to confirm that the proposed bill on the abolition on feudal tenure will not cover the activities of Mr Hamilton.

Mr Wallace: The raider of the lost titles is a victim of the leasehold casualties measure, which is not one of the measures that we are introducing. Leasehold casualties—I did not actually name them—are on the Law Commission's list of work to be done, to which I referred.

Tricia Marwick: That leads me on to the next point. Will Mr Wallace give us an idea of when the Parliament can expect to consider legislation on leasehold casualties?

Mr Wallace: I cannot give members a date. I am aware that the Law Commission has proposed a whole raft of legislation; there will be other matters to consider that fall within the responsibility of the Scottish Executive justice department. All members will recognise—and possibly in six or seven months' time they will recognise even more clearly—that there is a heavy legislative load. I cannot even promise that it will lessen.

For example, we still await the Law Commission report on real burdens, which is due towards the end of this year and the beginning of the next. The report and the bill attached to it will be important, because, as members will have realised from what we have been saying about the abolition of the feudal system, the bill on real burdens is required to fit in with the abolition of the feudal system. That is another bill that is to be introduced.

I mentioned the law on diligence; in family law, responses to consultations are now being considered; and the law on charities is another major issue. This committee will not have a shortage of legislative work—all of it is important. By mentioning all those—

The Convener: I appreciate that the minister wants to take the opportunity to make continual mission statements, but I ask him to stick to the specific questions that are being asked.

Mr Wallace: I cannot give members a date for leasehold casualties.

Tricia Marwick: It cannot have escaped the minister's attention that a great number of people in rural as well as urban Scotland are concerned and affected by the activities of people such as Brian Hamilton. Will the minister assure the committee that, within the term of office of this Administration, we will have legislation to tackle leasehold casualties?

Mr Wallace: There is a Law Commission bill in existence that makes things easier.

Tricia Marwick: Will we have legislation in this term?

Mr Wallace: I shall not give Tricia Marwick a commitment when the issue has not gone before the Cabinet in regard to future legislative programmes. I believe that the relationship between this committee and the Scottish Executive justice department will be fruitful and productive. In committee discussions, if members flag up specifics such as leasehold casualties, we will look at our legislative programme.

The concerns that members are expressing will be a good measure of the relative importance that we will attach to those bills. I hope that we will have a fruitful relationship and that members can flag up these issues, because there will be a number of bills to be considered. Fortunately, with leasehold casualties there is a bill. I hope that this and future dialogues will help us to prioritise the bills that are waiting. I take the point that Tricia Marwick made on leasehold casualties.

The Convener: The relationship might face difficulties if every answer turns into a long ministerial statement.

Pauline McNeill: Without dwelling too much on Trisha's point and on what Mr Wallace will take away from the committee, I am concerned that the land tenure legislation is seen as removing the dangers represented by people such as Brian Hamilton, when in fact it does not. The raider of the lost titles relates to the title to land, the land register and leasehold casualties, so it falls between those areas. One message from the committee is whether it could be got across that a tiny piece of legislation would be required to abolish leasehold casualties. We do not want

there to be any confusion about land tenure and Brian Hamilton.

Mr Wallace: I have undertaken to go back and look at the matter of Brian Hamilton and the raider of the lost titles.

Pauline McNeill: The committee will deal with the matter of land tenure legislation in due course. The Law Commission is keen to keep clauses such as pre-emption clauses. We will want to look at other issues, such as a delay of two years before the legislation is enacted. The message is that it is a good piece of legislation and we welcome it, but in order to make it as popular as it is seen at the moment, we need to ensure that we are doing away with things such as pre-emption clauses. We could be a bit more imaginative and tag one or two things such as leasehold casualties on to the end of that.

Mr Wallace: Although it is a Law Commission bill and has been the subject of much work, study and consultation, it need not be the last word; I would not expect this committee to rubber-stamp it. I therefore hope that when we get down to debating the bill on a section-by-section basis, the committee will put forward its amendments. I undertake to look at the amendments in a constructive fashion.

Christine Grahame: On a completely different topic, the headline in the *Berwickshire News and East Lothian Herald* was the top story: "Campaign to keep Duns court". That may not be the most exciting headline in the world, but the issue is important in Duns, Peebles and Selkirk and other places where there are sheriff courts. I understand that there is a review of the sheriff court provisions—provisions on which Euan Robson has lodged questions. I would like to hear what that is about, because I believe that a consultation paper on sheriff court provision in East Lothian and the Borders has been put out. I want to know who has been consulted about it, and whether it is Scotland-wide and so on. Could Mr Wallace shed some light on that, please?

Mr Wallace: I am happy to try to do so. The initiative on that comes from the sheriff principal, Gordon Nicholson, who has the overall responsibility to secure the efficient disposal of business at the courts within his sheriffdom. He has issued a consultation paper, in which I understand that he makes it clear that he has an open mind on the position and on the proposals contained in the paper, and that he is inviting comment and consultation. I am sure that local MSPs as well as local practitioners will be to the fore in doing that.

It will be a little time before any proposal is put to Scottish ministers, who would have the final responsibility for approving any court closure. Therefore, it would not be appropriate for me to comment at this stage, but I can assure the committee that there will be no court closures unless ministers have had an opportunity to consider the overall position, on which I have no doubt that we will hear representations. To clarify, it is a consultation paper put out by the sheriff principal, specifically dealing with the administration of business in his own area. It is for consultation, he said that he has an open mind, and ministers will be involved until firm proposals come from him.

Christine Grahame: I take it that local firms will be involved. If there are sheriff court closures, such firms might be unable to sustain a solicitor's office in those areas, to provide the range of services—not just court appearances—that are necessary in a community.

Mr Wallace: I should have thought that local firms would be key consultees. After all, those who are appearing in the sheriff courts know the pros and cons. I would give them every encouragement to respond to the sheriff principal's offer of consultation.

Euan Robson: I emphasise that all bodies must respond to the consultation. The consultation list should have included South of Scotland list members; perhaps that could be passed on to the sheriff principal. That would have been helpful.

One of the key issues must be access to justice and people's difficulty in getting to the suggested alternative courts. Some people simply will be unable to attend because of problems with public transport. Equally, the police have concerns about the availability of witnesses. If witnesses have to travel a considerable distance to get to a sheriff court outwith their locality, that might make the task of the police more difficult. It is important to respond to the consultation, and I urge anybody who has an interest in it locally to do so.

15:00

Phil Gallie: At times, the public has been concerned to hear that hardened criminals and killers have been returned to Scotland from Canada and Australia after having been released from jail on parole. There appears to be no way of monitoring them unless they volunteer to be monitored. Has the minister any plans to address this problem? If so, what are they?

The Convener: Phil Gallie is referring to people whose connection with Scotland might be only a birth certificate and two months' residence. That is enough to allow the Canadian or Australian authorities to abdicate responsibility for them.

Mr Wallace: I am aware of the cases and it is important to distinguish between them and those

in which prisoners are transferred to Scotland from other places—in those circumstances, arrangements kick in.

Members have written to me on the subject and I believe that the Home Office is considering the matter and that work is being done. The Scottish Executive is taking part in that discussion. The task is not straightforward. When people come to this country, we have no legal handle on them. I am sure that the committee can see the difficulty of the situation.

Phil Gallie: It is one thing for the Home Office to consider the matter but, as we have a Scottish Parliament that can consider legal issues and this is a key issue for the public, I would like the minister to get up and running with it.

Mr Wallace: We will consider the matter further. It makes sense for us to be tied in to the work that is being done by the Home Office, as cross-border issues are involved, but it also makes sense for us to go back and consider the situation in the light of Mr Gallie's question. Perhaps we could write to the clerk.

The Convener: I would like to draw this section of the proceedings to a close. I thank the minister for coming and for answering the questions as courteously as he did. I offer a small apology to his deputy, Mr MacKay, who appears to have been ignored—although he might regard that as an enormous benefit and be happy to come back in future.

We have Lord Hardie and Mr Boyd, the law officers, before us. Lord Hardie, could you begin by giving us a brief outline of your role and that of the Solicitor General, and tell us how your roles differ from that of the Minister for Justice and from each other? I perceive that there is a lack of understanding of the role of the Solicitor General and it would be appropriate for the Solicitor General to speak for himself.

The Lord Advocate (Lord Hardie): I have prepared a statement, which has been circulated, and I will seek to address the issues that you raise.

Scott Barrie (Dunfermline West) (Lab): We do not have copies.

The Convener: Copies are being circulated, Lord Advocate.

The Lord Advocate: I beg your pardon. I thought that there were 20 copies. I will read quickly through my statement to assist the committee.

I am grateful to you for inviting me to speak to the committee. I am particularly delighted that it has been possible for the Minister for Justice and his deputy to be here at the same time. Our collective attendance reinforces our mutual commitment to be as helpful and open with the committee as we can and to remain accountable for our actions, however controversial they may be. All four of us expect that this committee will be used to examine pertinent details in greater depth than will be possible this afternoon. I encourage you to do that. However, that is not the purpose of the meeting today.

This meeting provides me with an opportunity to outline the wide-ranging responsibilities and functions of the Lord Advocate and Solicitor General, who are collectively known as the law officers. We are agreed that on this occasion I should speak for both of us, although the Solicitor General stands prepared to answer questions. We have divided the topics so that, depending on the questions that you ask, one or other of us will answer.

We are now the law officers to the Scottish Executive. Part of our function is to provide legal advice to the Executive on its full range of responsibilities, policies and legislation, and crucially on whether its proposed actions are within devolved competence and are compatible with the European convention on human rights and with European Community law. This important new role as advisers on the vires of the Executive's actings has resulted in both of us being included in the Executive by virtue of the Scotland Act 1998. The advisory role has also resulted in my appointment to the Cabinet, where, again, this function includes the provision of legal advice on the legal implications of the Executive's proposals.

As Lord Advocate, I have a special role in relation to devolution. It is my duty to take a view on whether the provisions of a bill are within the Parliament's competence. If it is necessary to do so, I can refer bills to the judicial committee of the Privy Council for decisions on competence and I can raise and defend proceedings on devolution issues in other courts.

Because of devolution, issues will arise that affect devolved areas and the rest of the United Kingdom. We will liaise with the law officers of the United Kingdom on those issues. We look forward to working with the Advocate General for Scotland and with the English law officers to ensure that there are no avoidable misunderstandings in legal questions on devolution issues. That will be an important new dimension of the law officers' work. I should emphasise that, to assist me in that particular role, there is a small secretariat of lawyers within the Crown Office.

Another important role for me as Lord Advocate is that, with effect from 1 July, I am professionally responsible for the office of the solicitor to the Scottish Executive. That office provides legal

advice and a full range of legal services to the Scottish Executive.

I turn now to prosecution, with which most of you will identify the office of Lord Advocate. The decision to devolve the entire criminal justice system in Scotland as part of the new constitutional framework was perhaps one of the most natural and inevitable decisions of the devolution process. In many respects the system is so distinct from its English and Welsh counterpart that it is in fact a structure that is already devolved. The offices of Lord Advocate and Solicitor General are ancient and integral parts of the fabric of the Scottish legal system, and the line of Lords Advocate can be traced back to 1483. Similarly, the concept of independent public prosecution in the public interest in Scotland was recognised in an act of 1587 giving the Lord Advocate the right to prosecute even though parties "would utherwayis privily agree".

The Scotland Act 1998 sets out the basic or retained functions of the Lord Advocate and Solicitor General and ensures the preservation of the fundamental principle of independence of the Lord Advocate in respect of his duty of prosecution in the public interest. The act also provides that the Lord Advocate continues as the head of the system of prosecution and deaths investigation in Scotland. He is the operational head of the sole prosecuting authority for Scotland: the Crown Office and procurator fiscal service. I am assisted in discharging those responsibilities by Colin Boyd, who is sitting beside me.

The concept of collective responsibility applies to my role in the Cabinet as legal adviser, but it does not apply so far as my prosecutorial and deaths investigation responsibilities are concerned. Indeed, in discharging those functions, I must act wholly independently of the Executive or of any other person. That independence has been guarded jealously by successive Lords Advocate and I intend to be no exception.

It is vital that prosecution in the public interest in Scotland maintains an independent and balanced approach. Prosecution must not give favour to any political whim, pressure group or media construction about what should or should not be prosecuted or given priority. Prosecution must truly reflect the public interest in a considered and independent fashion. You will also be aware that important areas of the substantive criminal law remain reserved, including firearms, road traffic law and misuse of drugs. The prosecution of crime in those areas must not be seen as compromised in any way by virtue of the Lord Advocate's membership of the devolved structure, particularly as procurators fiscal receive reports from more than 50 reporting agencies in addition to the police.

A significant number of those—in particular HM Customs and Excise, the Inland Revenue and the Health and Safety Executive—are reserved agencies. Prosecution decision making is rarely a process that receives unqualified, unanimous acclaim. The very nature of the decision is such that, if the victim welcomes it, the accused will not and vice versa. Many powerful and vocal lobby groups exist to support the interests of each. Prosecution to please would be an easy, quick fix to gain popularity whether with the Executive, Parliament, the media or whatever lobby group exerts sufficient pressure and threats at any moment in time. That is not what my office or my department is about.

Prosecution decision making is a tough exercise and is sometimes unpopular but it is a process that is based on a thorough examination of the evidence—and I emphasise evidence—application of the law and careful assessment of the public interest. Those decisions must be made independently of the victim and of the agency reporting the matter—that is a safeguard for all of us and it is a duty that I accept without hesitation. Independence is not, however, to be taken as an excuse for isolation, impenetrability or arrogance—or, indeed, for lack of accountability.

The public interest must be informed and our work takes into account a wide range of information, including research, intelligence on criminal trends, knowledge of local problems and features of a particular jurisdiction as well as carefully researched and considered prosecution policy issued by the Crown Office on my behalf. My obligation to comply with the European convention on human rights also imposes the duty that decision making must be both proportionate and balanced where convention rights exist. Those obligations are taken seriously within my department.

The incorporation of the convention on human rights is a major challenge for all public authorities and one that is central to the operation of my department. It is a priority for my department to demonstrate that all of its activities are compatible with convention rights.

In general, the priority issues for the prosecution in Scotland are set out in my department's strategic plan. I advise the committee that we are about to embark on planning a new strategy for the next three years. Effective prosecution of serious, violent and sexual crime within tight time scales remains a major priority for our new strategy, as does the fight against the menaces of drugs trafficking and child abuse in all of its obnoxious forms. Racially motivated crime and domestic violence are also undergoing review to ensure that our approach is as effective as possible.

I appreciate that the Crown Office and the procurator fiscal service provide an essential public service and that many victims of crime, and other witnesses, find the criminal justice process daunting and stressful. That applies particularly to people who are vulnerable because of personal circumstances or because of the nature of certain crimes, such as rape. Others fear intimidation, which may deter them from reporting offences or make them reluctant to give evidence in court.

We will be taking forward measures to improve the protection of and facilities given to vulnerable and intimidated witnesses, including children. That follows up the consultation paper "Towards a Just Conclusion", which was issued in November 1998. The responses to that consultation are being considered and I hope that we will shortly be in a position to set out firm proposals for action.

Officials from all agencies in the system are involved in providing information to victims and all are working to develop a system that would allow victims who choose to receive information to be provided with it automatically. That would be linked to a computer program—the integrated Scottish criminal justice information system—which will in due course allow better information sharing among criminal justice agencies about individual cases.

An automated scheme would not replace existing contacts between victims and criminal justice agencies, which are often very much valued and which my department is committed to improve. An information technology based system will supplement those contacts by ensuring that key information is available when required.

My responsibility for the investigation of sudden and unexpected deaths is also a substantial and important area of work. Although the exclusion of the possibility of homicide is the major objective of such investigation, the investigation of fatal industrial accidents, disasters, deaths in custody and medical mishaps illustrates the wide range of deaths investigated by members of my department. The investigation of complaints against the police by the regional procurators fiscal is a particularly important aspect of the independent investigation of allegations of crime and one in which Colin Boyd has a direct and leading role.

15:15

Colin Boyd and I are accountable to the Scottish Parliament for the manner in which we discharge our responsibilities; we hope that, where possible, we will be in a position to be as open as those responsibilities allow. As will be clear, our departmental and advisory roles are wide-ranging and onerous. Although there is no set policy portfolio for each of the law officers, as there would be with other ministers of the Executive, Colin Boyd and I work closely as a team, with Colin heading a number of specific projects. For example, he has oversight of the preparations for the Lockerbie trial and the working group on the European convention on human rights. Colin also takes a very active interest in operational matters and appears in court in respect of important and sensitive appeals.

The strategic aim of my department must be to maintain the security and confidence of the community by providing a just and effective means by which crimes may be investigated and offenders brought to justice. For prosecutors to be effective, they must have quality and timeous reports from the police and other agencies. There also needs to be streamlined and effective organisation of the courts and effective working relations with prisons and those other partners in the criminal justice system for which Jim Wallace is responsible. Although a necessary constitutional independence must be preserved, the parts of the system must work towards common objectives. Jim Wallace and I have already begun to work closely, with our officials, on how the system as a whole can be enhanced and improved through both the individual and collective efforts of its various parts.

As for that part of the criminal justice system for which I have responsibility, I wish to record that I have been proud over the past two years to head a department of dedicated, hard-working and committed staff. Prosecutors are rarely paraded in public for their successes. Much of the work of the service—such as attending murder scenes in the middle of the night, post mortems, being on call to the police, as well as the detailed and painstaking preparation of some complex and difficult cases—goes on quietly and efficiently.

Prosecutors do not enjoy the spotlight or public recognition that our front-line services, such as police and customs, gain when major cases are successfully prosecuted. However, the work of the service is onerous. It proceeds under the most rigorous custody limits in the world and under conditions that require corroboration. The incorporation of the European convention on human rights also provides a challenging new area of law for the prosecution to consider and I am pleased to report that my department was the first United Kingdom Government department to train all its lawyers and investigators on convention rights.

These many challenges that face the department, as well as the growing complexity of prosecution activity arising from developments in technology, forensic science and international crime, were recognised in the comprehensive

spending review with a significant increase in the department's basic funding. With a major recruitment exercise earlier this year, it is hoped that the department will be equipped to face these important challenges over the next few years. Investment and innovation in staff training and development and the use and development of advanced IT systems are at the forefront of the department's activities. The award of Investor in People status in April 1998 recognises how seriously the department takes its obligations to its finest resource—its people.

In conclusion, I hope that I have given some insight into the invaluable work carried out by the department in the prosecution of crime and the provision of legal advice. Every effort will be made to improve even further its performance; we all welcome scrutiny by this committee, which, I am sure, will contribute to that improvement. Colin Boyd and I will be pleased to take questions. To give as much information as possible, convener, we have, as I said, split up topics between us. Depending on the topic, one of us will answer.

The Convener: Lord Hardie, you spoke at some length about prosecution decision making. I think that it is fair to say that all members of this committee have been extensively lobbied, both by the Dekker family and by Tricia Donegan, about the emergence of apparent Crown Office policy whereby the number of charges brought under section 1 of the Road Traffic Act 1991, which deals with causing death by dangerous driving, has declined in comparison with the number of charges brought under the lesser offence of dangerous driving. That is despite the rising number of road death victims. We cannot discuss individual cases if they are still live, but I would welcome your comment on the issue in general, as it gives great cause for concern. Furthermore, is there internal monitoring in the Crown Office to establish whether trends are developing that you may wish had not emerged?

The Lord Advocate: There is a system of monitoring. The fiscals report back, through the regional procurator fiscal, to the Crown Office. There is no policy to downgrade charges in road traffic cases or in any other cases. The fiscal must consider the evidence that is available to him or her and form a view as to whether the proper charge is one of careless driving or the more serious charge of causing death by dangerous driving.

What must be considered is the quality of the driving, not the consequence of the driver's actions, as has been said frequently in the courts. I understand the distress that such cases cause to the relatives of people who are killed or injured in road traffic accidents, but we are bound to examine the quality of the driving rather than its consequences. In such a situation, the fiscal looks at the police report and at the available evidence and decides on the basis of that evidence alone whether it is a case of careless driving or of something more serious.

The Convener: At a time of rising road deaths, surely there must be some explanation for why the driving that is causing those deaths is considered less careless. Despite the increasing number of road deaths, there is a distinct downward trend in prosecutions at the higher end of the scale. There must be an explanation of why those trends diverge.

The Lord Advocate: With respect, convener, you are falling into the error that others fall into. The fact that someone dies does not make the driving anything greater than careless. The consequences of the act are irrelevant as far as the choice of the charge is concerned and indeed, according to the courts, as far as the penalty is concerned. Fiscals are applying the same approach to road traffic cases as they have for many years.

Research is being carried out by the Transport Research Laboratory, a UK body that carries out research into offences in Scotland as well as in England. It is examining how offences for bad driving, to put it in a neutral way, are dealt with in England and in Scotland. Research staff from that body are based in Scotland for that purpose and two Scottish police forces—Lothian and Borders, and Tayside—are involved. There have been discussions between the researchers and the Crown Office and there will be further contact between the researchers and the procurator fiscal offices. That will enlighten us about the issue.

The Convener: I must press you on this issue. The figures, in the terms of your own explanation, suggest that driving is becoming less bad but that more people are dying. Is that the case?

The Lord Advocate: Yes, I think that it is. A lot of deaths are caused by speeding, and speeding does not necessarily amount to dangerous driving. In some circumstances, speeding would amount to dangerous driving, but those are issues for the fiscal to look at and to decide in the light of the evidence.

Mrs McIntosh: Would it therefore be the case that someone who is, say, a professional racing driver would be thought of as a competent driver, whereas someone who does not drive for a living would be seen as a less competent and less able driver and would therefore be more likely to have a serious charge laid against them?

The Lord Advocate: The fiscal would look at the relevant factors. If one were looking at a racing driver, depending on what he was doing in the context of the alleged offence, that might be—but

would not necessarily be—a relevant factor.

Mrs McIntosh: The convener mentioned downgrading. What about the perception that cases—not just driving convictions—are being downgraded from one court to another so that the penalties may be less?

The Lord Advocate: There is no policy of downgrading offences from one court to another or from one charge to another. I am aware that Mrs McIntosh has a particular interest in this matter and that she appeared in a television programme, "Frontline Scotland", some time ago.

Mrs McIntosh: Yes.

The Lord Advocate: That programme was inaccurate and wholly misleading. I challenged the accuracy of the appearance of an individual who wished to remain anonymous. I asked for his identification by the BBC because, as he had been dealt with, he could not be prosecuted. If people were generally concerned about downgrading I wanted to have access to the particular office in question. The BBC refused to produce that evidence. It may be of interest that there were disclosures that the previous week the programme "Frontline Scotland" had been suspect as well.

Mrs McIntosh: I was not responsible for making the programme.

In your statement, you commented on

"providing a just and effective means by which crimes may be investigated and offenders brought to justice".

In your preamble to that section you spoke about the apparent remoteness of your own officers and the fiscal service. They are the ones who actually make the decision about whether to prosecute. Unfortunately they do not have the opportunity to explain the reasons behind the decision.

Without going into specific detail, would it not be more appropriate for there to be an interface with your department rather than with the police—the front-line troops? The public naturally identify the police as having helped with an investigation and then they have to turn round and say, "I am sorry, but it is going nowhere."

The Lord Advocate: The system of crime investigation involves the police, of necessity and quite properly, as the first line of inquiry. The police report to the fiscal who assesses the evidence and decides whether to take action. There is an interface between victims and the prosecution. I accept that much could be done to improve it and, as I said, we are working on procedures to improve the relationship between victims and not only the fiscal service but all the criminal justice agencies.

Mrs McIntosh: Does the Lord Advocate appreciate that for most people the perception of his fiscal service is that they are the people who appear on the day of the trial and who they have no further contact with?

The Lord Advocate: That is not the case in serious cases, when the fiscal or someone on his or her staff will precognosce the complainer and so will see them. When we are dealing with vulnerable witnesses such as children or people with learning difficulties, there is a procedure whereby the fiscal will take the witness to the court in advance to show him or her round the court and explain what will happen. That fiscal will take that case.

Mrs McIntosh: Is that not also a duty that is sometimes shared with people who work with Victim Support?

The Lord Advocate: I welcome the co-operation of voluntary agencies such as Victim Support. They make an invaluable contribution and I would not dream of cutting Victim Support out in any arrangements for dealing more effectively with victims. I would welcome further involvement with it and with other agencies in ensuring that victims get a better deal.

Mrs McIntosh: And this tag team that the law ministers—[*Interruption.*] Will you fund it as well?

The Lord Advocate: I am not the Minister for Finance.

Mrs McIntosh: No, but you are sitting beside someone who can speak to him.

The Convener: I think funding is something that we would want to look at as a different issue.

15:30

Tricia Marwick: Victim Support Scotland claims that victims of crime are denied basic information about crucial decisions in the prosecution of cases. Would Lord Hardie care to comment on that?

The Lord Advocate: Yes. I think my statement alluded to what we are doing about that. I recognise that the system is far from perfect. We try to give victims information about the crimes against them and about the progress of their cases. It must be borne in mind that some victims do not want that information.

We must first identify whether the victim wants to be kept informed about what is happening in his or her case. If they do not want to know, informing them can be even more offensive and upsetting. We are trying to ensure that if they want to know they get the information. In my statement, I said that the IT system that is being developed is necessary to ensure that information is updated regularly and is readily available. That system will be an improvement.

Tricia Marwick: I am sure that the IT system will be very welcome in updating information, but nothing beats having somebody to talk to. That is vital.

The Lord Advocate: Yes, I agree.

Tricia Marwick: I am not suggesting that the system in England and Wales is better than the one that we have in Scotland, but they at least have a victims charter, and the Director of Public Prosecutions has stated publicly that it is a matter of common courtesy that victims should receive information and explanations. That does not happen here.

The Lord Advocate: I do not think that that can be said in such sweeping terms. I accept that things are not perfect, but there are arrangements here to communicate with victims and to impart information to them. I am the first to acknowledge that we have fallen short in fulfilling the need to provide that information to victims in certain cases.

I said in my statement that the IT would not replace personal contact—contact that already takes place. I would be doing a disservice to people in the procurator fiscal service if I did not acknowledge that many of them maintain contact with victims and tell them that they can telephone the office to find out about the progress of their case. Furthermore, for vulnerable witnesses, special arrangements are made.

Tricia Marwick: It seems to me that that is a very ad hoc arrangement—it does not mean that every victim of crime has a right to basic information about how a case is being progressed. In the near future, will we see some sort of consultation that will result in, for example, a victims charter that states people's rights to information and to advice about the progress of cases? Information and advice should be available as a right.

The Lord Advocate: I was trying to say in my statement that we are working—with the justice department—towards improving the facilities for victims. At this very moment, officials are working on a joint paper to consider how we can improve the victim's lot. It would be wrong of me to give any assurances that that will result in a victims charter. I would like to await the outcome of that joint venture between my department and the justice department. Once we have completed that we will come back and report to the committee.

Pauline McNeill: This is not a new point; it is on the same running theme. As members of the Justice and Home Affairs Committee, we have already received a number of letters from the Dekker family, raising these points. I can see that we are going to continue to be bombarded with mail of a similar kind. I think that you will find that members of the committee intend to take the matter very seriously. We do not want to bog you down with individual cases, but we will pursue them so that families such as the Dekker family get an answer.

I would like to pick you up on some elements of your statement. I think it is fair to say that the prosecution service is perceived as being isolated and one that people cannot approach to get answers. You said that you are working with the Scottish Executive justice department, but we would like to be included, because we have quite a bit to say: it is a matter of developing the transparency of the service and enforcing your statement about consistency and transparency. Some families cannot, with the information available to them, see where the law has been consistent—which is one of our aims.

There is plenty scope for us to work together; it is all about making the prosecution service seen to be a bit more approachable and, as Trish Marwick said, avoiding a piecemeal approach and having a charter so that victims know that they have rights—if they want to use them—and can find out why a particular case turned out a particular way.

The Lord Advocate: First, I can assure you that I, Colin Boyd, and my officials take seriously any representations that we receive from the public, including from the Dekker family. We have received numerous letters and communications about that matter. I accept and fully agree that it is essential to have a consistency of approach throughout the prosecution service in Scotland. We endeavour to achieve that. It is important to be careful that people do not assume that there is inconsistency simply because a newspaper report of one case seems to be on all fours with their own case. Each case is decided on the available evidence and on the quality of the evidence, which is known only to the procurator fiscal.

Phil Gallie: I have four points, and will ask each question without following up with supplementaries.

First, Lord Hardie, do you consider that if someone with no licence and no insurance commits a driving offence in which someone dies, having deliberately driven contrary to the road signage, that crime should be treated in the most serious way?

The Lord Advocate: I think that it should be prosecuted as appropriate, depending on the facts. It should be prosecuted, first, for the statutory charge of not having a licence and, secondly, for the statutory charge of not having insurance. Then, as far as the driving is concerned, what the appropriate charge is depends on the evidence.

Phil Gallie: I regret saying that I would not follow up my question—never mind. You talked in

your statement about Scotland having the most rigorous custody time limits in the world. With the incorporation into domestic law of the European convention on human rights and the requirement to include a solicitor to represent charged individuals—which can make that tight time limit disappear because of the time required to bring the solicitor to the scene—do the police now face a very tight time limit when charging people?

The Solicitor General for Scotland (Colin Boyd): The incorporation of the European convention on human rights has consequences for the operation of the prosecution and, ultimately, for the police. The time limit to which Phil Gallie refers represents the police's power to detain a suspect for up to six hours and to question the person during that time under section 14 of the Criminal Procedure (Scotland) Act 1995.

Before the police question the suspect, they have to do a number of things. First, they have to caution the person. Secondly, they have to give an opportunity to contact a solicitor, or rather to intimate to the solicitor that the person is in detention. In the 1995 act, there is no right for a solicitor to be present. The question that Phil Gallie is asking is whether the European convention on human rights will require that a solicitor should be present.

It is certainly the case that when a vulnerable accused, such as a juvenile or someone with a mental disability, is involved, the courts are likely to say that a solicitor ought to be present. Whether the courts will go as far as insisting that a solicitor must be present on all such occasions is open to doubt.

Phil Gallie: My third point, Lord Hardie, concerns a major change of Scottish parliamentary legislation and the make-up of the Executive. Your inclusion as, effectively, a minister and your right to sit in the Cabinet and, effectively, to vote on Cabinet issues, as I understand it, must surely have an effect on your independence although you are charged with protecting the independence of the law.

The Lord Advocate: No, it does not have any effect on my independence. There has been a lot of misunderstanding in the media. It may not come as a surprise to experienced politicians such as you, Mr Gallie, that the media sometimes get it wrong.

For many years—as long as people can remember—the Lord Advocate has sat on Cabinet committees in the United Kingdom Government. In previous Administrations, my predecessors sat on such committees. Two of the committees on which they always sat were the Queen's speech committee and the legislation committee. Those are two of the most political committees in any Cabinet, where the policy of the Government is decided. No difficulty was ever perceived in their performing both their function on the committees and their function as Lord Advocate.

The whole debate, among the public and in the media, is confused because it speaks about the separation of powers, but it is a fanciful separation of powers; if it were adopted, no minister would be permitted to sit in the legislature.

Phil Gallie: That is a point to take further in the future. The final point that I want to make is about drugs legislation and the confiscation of assets from convicted drug dealers. The question is for Mr Boyd.

Does Mr Boyd agree that the courts are obliged to use the law to find in the way for which they believe members of Parliament have legislated? Members of Parliament are virtually unanimous in their hardline approach to the way in which the law regarding the confiscation of assets from drug dealers should be applied. Given recent findings, in which drug dealers seem to have got away with not murder, but something like that in financial terms, are there deficiencies in the present law?

The Solicitor General for Scotland: The present legislation is covered by the Proceeds of Crime (Scotland) Act 1995, which extended the previous legislation, which dealt with drugs alone. Now we can pursue anyone who has committed a specified offence for the proceeds of their crime. The legislation requires that where an order is made, the amount that is caught is either the proceeds of crime or the accused's assets—whichever is the lower. In recent, high-profile cases, the difficulty has arisen that if the criminal spends as he goes, there is little to attach in the way of assets.

That difficulty is not peculiar to Scotland or, indeed, to the UK. I understand that other jurisdictions, in particular the United States, have come across that phenomenon. We have been involved in a number of initiatives. The head of the fraud and special services unit—which deals with confiscation—recently attended a G8 international conference which examined how to attach people's assets. Often, when we talk about the major drugs players, we are talking about people who, if they are not spending, are salting assets abroad. We must ensure that we attach those assets.

15:45

Christine Grahame: I have been told that my two questions have to be short, which they are. My first question has two parts—sounds like a quiz—and concerns the monitoring of the alleged downgrading of charges. Are you monitoring both the percentage of cases in which the sheriff has

had to remit to the High Court and the percentage of cases where the sheriff has commented on his unhappiness about the case being brought in the sheriff court and not as solemn proceedings in the higher court? The second aspect might be more difficult to monitor.

The Lord Advocate: I am certain that we have statistics for the first part of the question, but I do not think that we have statistics for the second part. Can I write to the committee with that information?

Christine Grahame: I would like you to consider the second part, which I think is as important as the first. Picking up on what Patricia said about victim support—much of which I agree with—my second question concerns a simple matter that could be performed by the service. There is no obligation to tell a victim—who may be the prime witness—when a bail appeal has been successful. We know that one of the conditions of a successful appellant's bail is that they must not contact witnesses. However, main witnesses should be told that a bail appeal has been successful to ensure that they do not find out when they meet the appellant in the local supermarket the next day. The police are often blamed for that. Cannot such a measure be introduced?

The Lord Advocate: I do not want to mislead the committee, but I can say that in cases of successful appeals, where—as you have suggested—the victim does not know that an appeal has been successful until he or she sees the appellant in the street, we have instructed the Crown Office that it should pass the information about a successful appeal to the procurator fiscal so that it is communicated to the victim.

Part of the difficulty, which is not a criticism, is the speed of communications now. Although the media are not present at bail appeals—which are conducted in private—they are present at appeals, and information about such proceedings can get back quicker through those channels than it can through some official passing it on from the court. We are addressing the issue and are considering how to improve communication with victims.

The Convener: I should remind the Lord Advocate that a number of members of the media are sitting right behind him.

The Lord Advocate: I am always conscious of the existence of the media, which is probably a tribute to the fact that they are speedier on their feet than other people.

The Convener: Perhaps the Crown Office needs to investigate the issue, rather than find itself outgunned by the media.

I and the rest of the committee wish to flag up the policy of refusing to give any reasons for decisions not to proceed. I will write to the Lord Advocate about a particular constituency case that involves that policy; however, I know that at the moment there is a blanket refusal to give such reasons. Has any consideration been given to finding a compromise between the current closed door and the full—and, you feel, inappropriate—disclosure of reasons? This is an area where members of the public will simply refuse to be patted on the head any longer and told that the matter is too complicated for them to understand and that they should go away and not ask questions about it.

The Lord Advocate: I hope that we never pat the public on the head and say that the matter is much too difficult for them to understand. There is a more fundamental justification than that for the refusal to give reasons and it concerns issues of people's liberty and their entitlement to a presumption of innocence until the contrary is proved in a court—not by a prosecutor or anyone else. If I were to disclose that a decision not to proceed with a prosecution in a case was due, for example, to the fact that there was insufficient evidence at the time, the effect would be to condemn a member of the public who had not had the opportunity of having my accusation tested in a court. That said, I will examine whether I can assist the public in certain limited cases. However, it is important to bear in mind that there are sound constitutional principles for not disclosing reasons.

The Convener: Do any members wish to come in on that point before we take 10 minutes to bring in all of the witnesses?

Phil Gallie: I will certainly come in on this point, because I can think of several cases where this policy has acted against the interests of individuals who have, perhaps, suffered a great loss to their family. I welcome the fact that the Lord Advocate has said that he will review the policy. I recognise the fundamental legal principle of proving innocence, but much interest will be directed at the victims of serious crime and their families and that should be incorporated into the equation that the Lord Advocate takes on board.

The Lord Advocate: Nobody has to prove their innocence; we start with the presumption of innocence, which can be displaced only in a court after the relevant evidence has been tested. I hope that I and none of my predecessors as Lord Advocate will—

Phil Gallie: Live for ever?

The Lord Advocate:—will condemn people through the back door.

The Convener: We have 10 minutes to bring everyone in.

It would be useful at this stage if you, Lord

Advocate, but perhaps also the minister, would comment on your parliamentary role, for example with regard to referring bills. Could you outline in a sentence or two how proactive it is intended you should be. For example, you sit in the chamber and respond to oral questions when it is considered appropriate. Is it your intention to become involved in debates? If that is considered appropriate, do you intend to propose amendments in your name? May we explore your parliamentary role, because we have not seen that role at Westminster and this is a slightly different aspect for us?

The Lord Advocate: We have not seen that role at Westminster because there is no Lord Advocate in the Commons. The last one was Ronald King Murray. If there were a Lord Advocate in the Commons, he or she would participate in debates as appropriate.

I intend to be in the chamber whenever it is considered appropriate to be there and I also intend to participate in debates. I will speak to the emergency motion in Thursday's debate. I shall probably wind up the debate, but that is to be confirmed. The matter of amendments is slightly difficult. I would not expect that amendments in my name would be lodged very often. I would expect a minister for the department that is promoting the legislation to lodge amendments, but as a minister, if it were suggested that I should lodge an amendment or if, in exercise of my legal function, it were thought that an amendment should be lodged to cure what might be seen as a defect, I would do that. Having said that, I would hope that defects would be caught before the bill was introduced. Obviously, if amendments come in, they may affect the legality of the legislation if they are accepted, so we may have to tweak the legislation to ensure that it complies with the European convention on human rights or the Scotland Act 1998.

The Convener: Minister, did you want to come in at this point?

Mr Jim Wallace: No, Lord Hardie has given a good explanation of how he sees his role, and I concur. I am always wary about making comparisons with Westminster, but I recall that when law officers were in the House of Commons they would be summoned to appear before committees if particular issues arose. It is to the advantage of the Parliament as a whole that we have law officers who, although not elected to the Parliament, nevertheless are members.

The Convener: I think it is fair to say that we have lost the sense in which the Lord Advocate played an active part in parliamentary proceedings in the chamber. Today, we are getting a clear indication that we are now back to an original position, in which the Lord Advocate does play an active part in chamber debates, albeit not as a voting member.

Mr Wallace: Perhaps the Lord Advocate would not want to say it, and heaven forbid that it should ever happen, but were you or I in the House of Lords we might see that the Lord Advocate was playing an active part there.

The Convener: I can absolutely assure you that I will never be in the House of Lords.

Are there any other comments?

Phil Gallie: May I ask a separate question? Perhaps Mr MacKay would like to answer it. [*Laughter.*] His boss referred to Westminster. I draw his attention to the Sexual Offences (Amendments) Bill that is currently progressing through Westminster. Can he advise me what stage that bill is currently at? Will he give an assurance that no matter what stage it is at, it will be brought into the Scottish Parliament for debate because it has Scottish implications.

The Deputy Minister for Justice (Angus MacKay): The short answer is that I cannot give a categorical statement as to what stage the bill is at, but my understanding is that it will come to the Scottish Parliament and we will address the issue.

Mr Wallace: As I understand it the position at Westminster is that the bill fell because it was defeated in the House of Lords. The UK Government has indicated that it wishes to bring the bill back to Westminster in the next session and that it will use the powers in the Parliament Acts to take the bill through Parliament and override the Lords' veto. To do that, the bill must be presented in the same form as it was originally presented—in other words, with the Scottish provisions in it.

I think I am right in saying that the First Minister has already flagged up to the Scottish Parliament that it will have an opportunity to debate the principles of the bill, but that we want the Westminster Parliament to deal with the bill so that it can be passed through the UK Parliament. If the Scottish parts were to be excised from the bill it would have to start from scratch again in Westminster and would be subject again to the Lords' veto.

Phil Gallie: So it will be subject to debate and a vote in the Scottish Parliament?

Mr Wallace: There is a convention—if we have been around long enough to have them—that any Westminster legislation that relates to matters that are devolved must do so with the concurrence or consent of the Scottish Parliament. Mr Gallie may recall that we have already had debates on, I think, the food standards agency, and that Mr MacKay took three debates on some very interesting and esoteric subjects where there was

some overlap between Westminster and the Scottish Parliament.

Euan Robson: May I ask the minister, and perhaps also the Lord Advocate, where the Criminal Injuries Compensation Board sits within the devolution settlement? My understanding was that under the former constitutional arrangements appointments were partly referred to the Secretary of State for Scotland and the Lord Advocate and that some of the expenditure came out of the old Scottish Office home and health department's budget.

More significant is the fact that the Secretary of State for Scotland received a full report on the activities of the board and the report was open to debate in Parliament. Are there provisions for the Scottish Parliament to examine what the CICB does and to review the 1990 scheme that I believe is currently operated by it? I have been unable to find that out.

Mr Wallace: Criminal injuries compensation is a devolved subject, but the CICB has been a cross-border body, not in the geographical sense, but in the sense that it has English and Welsh adjudicators appointed by the Home Secretary after consultation with Scottish ministers, and Scottish adjudicators appointed by Scottish ministers after consultation with the Home Secretary. I am advised that Scottish ministers will appoint five of the total panel strength, or more with the agreement of the Home Secretary.

It may be that the Scottish Parliament will devise its own scheme, but it is perceived that there are advantages in having a Great Britain scheme. As a matter of policy, ministers have tended not to intervene in the handling of individual cases. As there is devolved responsibility, I am sure that if this committee wanted to examine more closely the issue of criminal injuries compensation it would be free to do so. If MSPs have complaints or questions about the working of the criminal injuries compensation arrangements they can address letters to me and I will ensure that we try to provide an answer.

The Convener: I think that it is appropriate that we draw this part of the proceedings to a close.

Pauline McNeill: May I raise one issue that has not been mentioned?

The Convener: Very quickly.

Pauline McNeill: I know that the family law report is due, following the consultation that occurred prior to July 1. Was any consideration at all given to some modernisation of the law, for example with regard to giving some rights to same-sex couples or cohabitees? Will any mention been made of that?

Mr Wallace: There was a consultation paper entitled "Improving Scottish Family Law". The responses to it are still being analysed. It is our intention that we should be able to make an announcement regarding the Executive's intentions before the end of this year. Off the top of my head, I cannot say whether the issue of same-sex marriages was covered in the paper or whether we will be addressing it, but I will get back to Pauline McNeill on that point.

16:00

The Convener: I would like to draw this part of the proceedings to a close. On behalf of the committee, I thank the four of you—Lord Advocate, minister, depute minister and Solicitor General—for appearing before us today. I also take the opportunity to issue the warning shot that when ministers appear before committees and take the opportunity to make statements that is afforded them, they should ask their advisers to err on the side of brevity rather than length. I think that all members of this committee would join me in saying that we do not want such occasions to become simply an opportunity for further ministerial statements. That is a brief warning shot, as committee time is constrained. Having said that, thank you very much for the courtesy with which you have received our questions. You have, no doubt, a great deal to think about and to respond to regarding individual questions, and we expect to see all of you—together and individually—during the coming weeks and months. Thank you very much.

I will now suspend the meeting for five minutes only. I am conscious of the fact that it has become extremely hot in here and that people may need a short break for a variety of reasons. I ask that we reassemble at 5 minutes past 4 to discuss the next agenda item, which is the committee's business for the next few weeks.

Meeting suspended at 16:03.

16:20

On resuming—

Future Business

The Convener: The next item of business is what we wish to do as a committee in the coming weeks and months and the issues that we might wish to examine. We had a brief, general discussion in June at the first meeting, during which members indicated areas of concern. The committee has been allocated weekly slots from now on, and we must ensure that we maximise the time that is available to us.

There is a matter that I wish the committee to consider, and I know that Maureen Macmillan has

another. I will ask Maureen to outline the issue that she wishes us to consider, following which other members may speak.

Maureen Macmillan (Highlands and Islands) (Lab): I hope that the committee will agree to discuss at an early date the introduction of a bill to amend the Matrimonial Homes (Family Protection) (Scotland) Act 1981. It could be the Parliament's first committee bill. It would be a small, if intricate, measure that should not prove to be contentious but it would be of enormous benefit to victims of domestic violence as it would extend the protection of interdict with powers of arrest to ex-spouses and former cohabitees.

When the act was passed, it was meant to protect women by making it possible to have an interdict with powers of arrest against a violent husband who was harassing his wife. Those powers are tied up with rights of occupancy of the marital home—I can explain more about that if members wish, although they may wish to keep that issue for another time.

The interdict remains following divorce, but the powers of arrest fall, leaving the woman vulnerable. In 1981, it was probably not thought that, once they had been divorced, husbands would continue to harass their wives. However, that has often proved to be the case. Where couples are cohabitees, there is no protection—or only limited protection—for the woman, unless both partners have occupancy rights to their home.

Family patterns have changed greatly since 1981; many more couples are cohabitees rather than spouses. Many more women need protection from violent and abusive ex-spouses and ex-partners, which they cannot receive under the current legislation. I ask members to consider amending the act, as it would have a great effect on many women's lives, protecting them where they have no protection at present.

The Convener: Maureen, would you object to this discussion being extended a little to allow consideration of other changes that could be made to matrimonial interdict, in the same bill? Would you be happy for that to be discussed?

Maureen Macmillan: Yes, but I do not want to overload the discussion as I want to get this measure through as quickly as possible. It might be held up if it becomes too complicated. However, we could certainly discuss other members' proposals.

The Convener: Do members wish to speak on this specific issue?

Christine Grahame: At the first meeting, I mentioned post-decree continuation of matrimonial interdicts. The wording—of definitions, for example—will probably be more complicated than we think. As was rightly said, the issue is linked to the matrimonial home, yet how can it be a matrimonial home when the couple no longer occupy it? I have one correction: the matrimonial interdict falls, but usually a lawyer will also take out a common-law interdict at the time of taking out a matrimonial interdict. In principle, I think that it is an excellent idea, but it may prove technically quite difficult. I am no expert in drafting, and we would be tinkering with a substantial act.

The Convener: We have ascertained that somebody from Scottish Women's Aid would be available to come to the committee next Wednesday morning if the committee thought it appropriate. We could then at least begin to look at and talk through some of the issues with somebody who understands even more than we might. Before Wednesday, we should consider inviting more people.

Gordon Jackson (Glasgow Govan) (Lab): What space do we have in the timetable to introduce a bill? I have no problem with the subject matter, but I do not want to spend time discussing something if the practical reality is that we cannot draft a bill. We would no doubt get help, but we might never be able to legislate. Are there slots for committees?

The Convener: It will be for the bureau to handle the business. It must take into consideration the need for appropriate standing orders that allow committee-initiated legislation to come forward. The bureau cannot take the view that it has filled up the Parliament's time to the extent that—notwithstanding this wonderful new committee system that it has introduced—it will, because of time constraints, debar us from ever bringing anything forward. The only way that we will find out is to go ahead and present the bureau with something that it might find very difficult to refuse.

Gordon Jackson: Do we have the drafting ability to do that?

The Convener: I do not wish to cause fear and alarm among the clerks, but I think there is. As long as the proposal is clear, it can be turned into a draft bill. That comes back to what Maureen said about not making any bill too big. We do not want to end up with pages and pages. The proposal is meant to be short.

Does anyone want to come in specifically on this issue? I would like advice about people who committee members think it would be appropriate to invite to talk to us.

Phil Gallie: I would like to pick up on Gordon's point about time. The Government is putting through three bills that will, presumably, have to come to committee for detailed debate. That will

take up quite a bit of time. This morning, Pauline, Christine and I sat in the Public Petitions Committee, which will receive petitions. That will add to the time spent debating. We must examine the time element that was mentioned by Gordon and we must be rational about what we will take on board

The Convener: I take those comments on board but in my position as convener I want to state that I do not want this committee to have its entire agenda dictated by other committees, by the Executive or by people who are not part of this committee. We must have the ability and the time afforded to us to pursue some of the very serious issues that will arise.

We must, after all, remember that the point of committees is to hold the Executive to account. It would be a mistake if we allowed ourselves to have no time to do that. That will be a matter for the bureau to juggle. It needs further discussion, but I want to put down a marker at a very early stage that we will not have the entire business of this committee dictated from outside. That would be unfair to members of the committee.

Pauline McNeill: I agree and I do not think anyone in this committee wants that. We all have our own responsibilities, apart from committee membership, so I have no problem with what you are saying.

I would like to hear from Scottish Women's Aid—or others—about the need for this proposed legislation. I agree with Christine—I can see some complications with drafting a bill. I am in favour of going ahead, but I think that we must allocate sections of ongoing work and work to come. I would be in favour of allocating a lot of time to hearing the case and progress from there on the principle that you mentioned.

The Convener: The Executive is not here and—notwithstanding the Executive bills that we know are coming—we have an allocated slot next Wednesday. It is incumbent on us all to ensure that this committee meets next Wednesday morning and discusses matters beyond the Executive's agenda.

Christine Grahame: I would like to go back to the request for suggestions on people who could come to the committee. Should we invite somebody from the family law group to represent family lawyers generally? Their input on practical difficulties might be very useful.

The Convener: It would be very useful to get on to that quite quickly. I am conscious that we do not have much time and that that is why we took it upon ourselves to ensure that Scottish Women's Aid can come next Wednesday morning.

Gordon Jackson: I want to go back to what we were talking about earlier because I am really very anxious to find out what we are doing. I totally agree that we do not want to be running on the agendas of others, but how do you see our time being divided up? We meet once a week, so do you envisage that we will look at the Executive bills that come to us every second week, or that we will concentrate on our business every second week? Do you have a plan?

16:30

The Convener: I do not think that we can arrange things like that. We were told that we would get two Executive bills in September, and we are almost at the beginning of September. We have this committee meeting today and there is another timetabled for next Wednesday morning, when we do not have Executive business to discuss.

Let me explain briefly how the system will work. When bills are referred to us for what is called stage one, we will be given a time within which to complete that stage. We will examine each bill and make a report on its principle, which will be sent to the Parliament. At that point, the bill will receive what would be described at Westminster as its second reading. In other words, we will get a first bite at the legislation, but will be expected to complete our work within a specified time, which will be dictated by the Parliamentary Bureau. That is why I say that the bureau will have to consider carefully how it allocates time. It would, I think, be unreasonable for the bureau to do so in a way that precludes our dealing with other business. With the committee's agreement, I will make that point to the bureau. At this stage, that is as much as I can say, but I will report back to the committee.

Gordon Jackson: At the moment, all we are discussing is what we will do next week—which is essential, because that is where we are in the life of this committee. There needs to be some flexibility to allow us to deal with emergencies, such as somebody else being released from Carstairs, but we should have a diary that allows us to know what we are likely to be doing week by week until Christmas, for example. Is that to be the case, or is everything to happen week by week, on the hoof?

The Convener: We hope to organise our business for more than a week ahead. I would be concerned if we got into the trap of working on a week-by-week basis.

Scott Barrie: Surely it will be possible for us to plan in advance once we know what bills will be before us and the likely time scales. We might be told that we must finish consideration of the bills by the end of November, for example. That would give us eight weeks, which is a ridiculously short

time. We would then have to say how many weeks we thought the process would take, which would dictate the timetable. Until we receive the bills, we are in no position to guesstimate what our business will be.

The Convener: If it is helpful to the committee, the advice that I have so far is that we would be expected to take a couple of committee meetings to produce the stage one report for each bill, which means that the end of November may not be a ridiculously tight deadline. Everything depends on when the bills are referred to us. The bills will come back to us after the stage one debate in Parliament, which is when we will deal with them line by line and consider amendments. Line-by-line consideration of bills does not happen at stage one. When bills are first referred to us, we discuss them in principle, not in detail.

Kate MacLean: When we are considering legislation, at what stage do you envisage our consulting other organisations or individuals—at the line-by-line stage, or at the initial stage?

The Convener: We will want to take some formal advice at the initial stage.

Kate MacLean: A couple of weeks is not much time to consult.

The Convener: I appreciate that, but organisations will have to become more responsive to the needs of this Parliament's committee system. To be fair to most organisations in Scotland, that is not an issue with which they have had to deal until now. However, from now on they will have to deal with it, because no committee will be in a position to say to someone that they should set aside two days, say, in January, to appear before it. No committee will able to give that much notice.

Gordon Jackson: I accept what Scott said, but I was trying to get an idea of what subjects were likely to come up in the few weeks ahead. Maybe that is just the way that my mind works and I am being unrealistic.

The Convener: We are having this discussion today because Justice and Home Affairs Committee meetings should be marked in everyone's diaries and we want to attempt to indicate what business we will cover as far in advance as possible.

I will raise an issue that I would like to consider, which we will have to go into another week because of a lack of time. I want the committee to consider the report of Her Majesty's Chief Inspector of Prisons, particularly in light of the comments he made about Low Moss, Longriggend and Cornton Vale. His comments were serious and we would be failing in our duties if we did not consider this matter. The inspector is not available next week but he is the week after. Therefore, I ask the committee to agree to having domestic violence on the agenda for next week and having Her Majesty's Chief Inspector of Prisons come the week after. Other people might be invited to attend on those days, so that we do not hear only Scottish Women's Aid next week, or only the inspector the week after, but that is the way in which we hope to go on.

Gordon Jackson: Talking about prisons is not a problem for me because I am fascinated by the business. The subject of prisons is a big one for me, almost by definition. However, it is a huge subject. What aspects do you have in mind for a discussion on prisons? Maureen has something in mind. We are having a discussion with a view to bringing in legislation to close another loophole. We would like to draft a bill and get it through Parliament. On prisons, however, what would we be addressing?

The Convener: Prisons are part of our remit in terms of scrutinising the Executive, Gordon. A report has been published that has serious things to say about the conditions in two or three of our prisons. It is incumbent on the committee to push the Executive as much as possible on the way that Scotland's prisons are being run and on the conditions in them. That is not necessarily about producing a piece of legislation.

Gordon Jackson: What would we produce?

The Convener: We might choose to produce our own report on the basis of the evidence that we are given. That is what I envisage. Such high-profile reports are the kind of thing that, from time to time, the Justice and Home Affairs Committee will have to produce if it is to do its job properly.

Pauline McNeill: We have been asked to consider two quite different projects. Maureen wants us to initiate a bill and you want to scrutinise the subject of prisons. I am against neither project, but, to go back to Gordon's point, with which everyone agrees, we do not yet know what our timetable will be like. Until we do know, I suggest that we allocate a slot for Scottish Women's Aid—perhaps an hour—and hear their case, then allocate some time for prisons in the following meeting and take the projects on from that basis.

The Convener: It is important to remember that at each committee meeting we need not deal only with one subject. It is entirely possible to break and to move on to a second subject.

Pauline McNeill: I am just anticipating the situation arising that Gordon raised. By next week we may well have something in front of us to consider. I would expect to see the bills, if not by Wednesday, at least by the following Wednesday. That needs to be taken into account.

The Convener: That can be fitted in. If we start to find that we have real difficulties, I am prepared, as I have said, to take up the issue formally, because the broader question about the ability of committees to operate independently has to be taken on board. This committee will not be able to operate independently if it ends up drowned by someone else's agenda.

Tricia Marwick: I agree with Roseanna entirely. Everybody recognised that the committee structure of this Parliament would be unique. The consultative steering group certainly envisaged that the committees would have a powerful role in holding the Executive to account, in considering legislation and, more important, in initiating legislation. For the committees of the Parliament to work, all the elements must be in place. I concur absolutely with Roseanna. We cannot allow ourselves to be in a situation where we are swamped with legislation—whether from the Executive or from other committees—and do not have the opportunity to put forward legislation that we consider to be important to the criminal justice system in Scotland. As far as I am concerned, Roseanna should be making those points forcibly to the Parliamentary Bureau.

The Convener: I want to interrupt you there as there is another issue that arises out of some of what was said by Gordon and, I believe, Kate: the issue of being able to give people notice.

We have allocated time for a committee meeting next Wednesday morning and on the following Tuesday morning. Arguably, even two weeks' notice is quite short for some of the people that we have to invite. If, on Wednesday or Thursday, the Executive refers one or both of the bills to us, those time constraints will still apply, even for the organisations that we want to speak to about the bills. However, if we wait until then to invite people to fit the meeting time, we still have the same difficulties with the time scale. If the bills are referred to us at the end of this week or the beginning of next week and the invitations go out, it may be that people cannot come before the committee for another fortnight or so in any case. I do not want us to end up with empty slots in the meantime.

Gordon Jackson: I want to press you on something, Roseanna, as I want to understand. If we consider something, such as the report on prisons, which I am happy to do—it is a major issue and it is our job to scrutinise everything—what comes out at the end? I am still trying to work that out.

The Convener: This committee produces a report in which we can, if we wish, make recommendations.

Gordon Jackson: So, the committee produces a report that represents the majority view of this committee.

The Convener: Yes.

Gordon Jackson: We would produce a report, drafted by the committee, which would go to the Executive.

The Convener: Yes.

Gordon Jackson: That is what we would do in that sort of situation?

The Convener: Yes. I hate to use the W word, but at Westminster what happens is that there are two styles of committee. There are select committees, such as the Scottish Affairs Select Committee, which choose a subject—tourism in Scotland, for example, to name but one recent and highly controversial example. The committee went around, took evidence, came to a view and produced a report. The report went wherever reports go, but the committee's purpose was to produce the report, come to majority conclusions and make recommendations. That is what select committees do for a wide range of subjects, sometimes involving long and exotic junkets, which unfortunately in the main will be denied us on this committee. The other kind of committee is a standing committee, which is set up to scrutinise legislation line by line.

16:45

The committees of this Parliament combine both functions, and that—you are right—is a problem in years when there is a heavy legislative work load. We combine both functions. If you like, when we are looking at the prisons report we are wearing the equivalent of the select committee hat, and when we are looking at the abolition of feudal tenure, we are wearing the equivalent of the standing committee hat. The combined effect of that is to make a committee which cannot be compared to either of the committees in Westminster.

Pauline McNeill: I do not think that my suggestion was contradicting that. I was suggesting that we should allocate a slot next Wednesday for Scottish Women's Aid to put the case for legislation. It seems that we would have to go down that road anyway. That would leave time to move on to any legislation that we might have in front of us, and it would strike a balance. The following week, we could allocate the first half-hour or hour to the prison service in Scotland—let us not assume that everyone understands what the problem is. Then perhaps the case might be made to take that further, as you suggest. That leaves time, to anticipate Gordon's point, to play all these roles.

The Convener: That is what I said. A committee

meeting does not have to have only one subject on the agenda.

Euan Robson: One of the perceived weaknesses of the select committee system in Westminster is that it produces well-argued cases and excellent recommendations which may have all-party support, but the reports disappear on to a Government shelf. I would like us, if we are doing something along that select committee line, to offer the Executive a period in which to respond to the recommendations that we make, and then to call the relevant ministers here to speak to what they have done about those recommendations, or why they are not pursuing them. The problem with Westminster is always that once a report is produced it disappears into a void and nothing happens. That does nothing for the committee process and nothing for the problems that have been identified. I would like us to go that stage further, and I am sure that is what is in your mind.

The Convener: I think that that is what I said. Describing it in terms of the Westminster committees does not completely describe what our committees are about. Our work involves both functions which, in Westminster, are dealt with by different kinds of committees. We do not have that here. We have one kind of committee, and it is us.

Christine Grahame: Because our business will all be taking place in public, the debate, as it should, will go out beyond these walls. That is another safeguard against a report gathering dust.

Euan Robson: They do at Westminster.

Christine Grahame: I do not think that the Scottish people are in the mood for that to happen to their committees. I quite agree with you that we need an agenda after a report is remitted. We have already decided in the public petitions committee to have something like that, in that we will attach notes to our recommendations. I also wanted to say that it is important not to have too many things before us at any one time. It is a lot to have someone from Scottish Women's Aid, or family law groups, or the police superintendents, appear before us in one session and present their different views of the impact of current legislation and any suggested amendments.

The Convener: We must also try not to have it too bitty. In future, we will probably try to suspend the committee meeting about halfway through, because this room became intolerably hot and I think that a natural break might be one of the things that starts to build in.

Are we agreed that next week we will pursue the issue that Maureen wishes to raise? The week after we will begin to look at prisons. It may be that those meetings run shorter than the allocated time. Alternatively, depending on Executive decisions made, it may be that the second half of the meetings will cover some of the legislation that we can expect to have before us. That, to a certain extent, will depend on whether witnesses—if that is appropriate—are able to come to the committee.

I will make one or two small housekeeping points. I have asked everyone for a contact address or number—some people have given me umpteen. From the toing and froing that arose last week with Maureen, it suddenly became apparent that we needed a way of contacting each other. My intention is to collate the contacts. The list is not meant to lead to yet another person who, like a whip, drives you nuts with the pager, but will be used only where an issue arises that needs to be cleared quite quickly with the committee. Quite a few members have responded. I do not think that Gordon has responded yet.

Gordon Jackson: Do you want to use my phone number?

The Convener: Do you check your e-mail?

Gordon Jackson: I do but not every day—

The Convener: You need to check it about half a dozen times a day.

Gordon Jackson: It is because I have not yet collected my laptop.

The Convener: That is a problem that you need to resolve.

Maureen, you wanted to come in.

Maureen Macmillan: I wanted to go back a wee bit. After we have heard from Scottish Women's Aid and the family law group, how soon will we make the decision to proceed?

The Convener: It will be entirely up to members of the committee to indicate whether they feel that they have heard enough or whether they wish to allocate another session at which to hear more.

At the moment, we are going ahead with the meeting next Wednesday morning and we will consider domestic violence. We may also have the first session of one of the bills included in that, depending on what the Executive does between now and then. Is everyone happy with that?

Christine Grahame: I am happy with the groups that we are inviting.

The Convener: Those are Scottish Women's Aid, Family Mediation Scotland, and maybe other family law groups. If other members wish to raise specific things that are not Executive business, they should flag them up the minute they think about them so that we have the maximum opportunity to know what to get on to the agenda. I think that every couple of meetings or so we will try to have half an hour such as this to discuss the ongoing programme of committee business so that

everybody understands where we are going. Is everyone happy?

Members: Yes.

The Convener: Thank you. I declare this meeting closed.

Meeting closed at 16:51.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178