

JUSTICE AND HOME AFFAIRS COMMITTEE

Wednesday 8 September 1999
(Morning)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 1999.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

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

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 8 September 1999

	Col.
FAMILY LAW	69

JUSTICE AND HOME AFFAIRS COMMITTEE 3RD 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:

Miss Shona Smith (Family Law Association)
Miss Lynne Di Biasio (Family Law Association)
Ms Lydia Okruj (Scottish Women's Aid)
Ms Louise Sharp (Scottish Women's Aid)

COMMITTEE CLERK:

Andrew Mylne

SENIOR ASSISTANT CLERK:

Richard Walsh

ASSISTANT CLERK:

Fiona Groves

Scottish Parliament

Justice and Home Affairs Committee

Wednesday 8 September 1999

(Morning)

[THE CONVENER *opened the meeting at 10:33*]

The Convener (Roseanna Cunningham): Good morning everybody. Welcome to the third meeting of the Justice and Home Affairs Committee. Because of the difficulties with space in this room, we have reserved seats for the people who are coming to talk to the committee. We have only two hours this morning, so I do not intend to break the meeting halfway through, as happened at last week's meeting.

Family Law

The Convener: The first item on the agenda is the Matrimonial Homes (Family Protection) (Scotland) Act 1981. We are taking evidence from Scottish Women's Aid and the Family Law Association. I want to express the committee's thanks to the Law Society of Scotland for a briefing paper on this issue—it has been circulated to members—and to Scottish Women's Aid for the paper that it arranged to be circulated at short notice.

I also thank very much the people who have agreed to come and speak to the committee at such short notice. I hope, nevertheless, that the invitation was welcome and we hope to make some progress today.

We are joined by Ms Louise Sharp who is the legal issues worker with Scottish Women's Aid. She is accompanied by Ms Lydia Okruj. I welcome you both to the committee and thank you for agreeing to come at such short notice. The briefing paper has been circulated to committee members. Will you take a minute or two to give the committee members who might not otherwise know about Scottish Women's Aid a brief outline of the organisation and its role and function? If you then speak directly to paper two, I am sure that the committee will have questions that they wish to ask after that.

Ms Louise Sharp (Scottish Women's Aid): I will give a brief outline of the organisation. The Scottish Women's Aid network comprises 38 affiliated local women's aid groups. The local women's aid groups provide abused women and their children with a direct service. The services provided are information, support and refuge. The

national office of Scottish Women's Aid—or women's aid in Scotland depending on how people want to describe it—is in Edinburgh. There are 10 national workers there; both Lydia and I work there. We service and support the network of the local groups and bring issues to a forum, such as this, representing the network.

Service provision is restricted by lack of resources, about which members may already know. We are trying to get a funding strategy off the ground and to get support for it. I will give an idea of how much the service is used. Last year, 49,000 women accessed the service and Scottish Women's Aid provided them with help. Nearly 3,000 women who wanted and needed refuge did not get a safe refuge place because demand outstripped supply. Nearly 6,000 children and young people were accompanying those women; almost 9,000 women and children experiencing abuse in Scotland could not be found a safe place of refuge.

Funding is necessarily our priority, but protection and preventing abuse are secondary elements to resourcing the direct service work. We are here to outline one aspect of that in the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

The Convener: Perhaps you will now speak directly to the main issue.

Ms Sharp: Members have already been briefed on the technical aspects of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and its impact on abused women. The briefing notes the women who are not included in the scope of the 1981 act. The act was introduced in 1982—almost two decades ago, and in those two decades women have been killed by their abusers.

The briefing gives details of women who have been killed in Scotland in the past 12 months. The 1981 act was heralded as a major step in providing protection from abuse, but the statistic that, every week, two women in the UK die at the hands of their abusers has to be born in mind. We know that one in four women experience abuse at some point in their lives. Now, two decades after the act was introduced, we need to take urgent action to include those who are excluded from the protection of the act. There are categories and classes of women who are not provided with automatic protection under Scots law; that needs to be addressed urgently.

I will give a brief outline of which women are not included in the scope of the 1981 act and the technicalities of the act. The act relates the protection it provides to the occupation of the matrimonial home. A person who has the ownership or tenancy of a home possesses occupancy rights in relation to that home and the act attempts to regulate that occupancy.

If a woman marries a man, she is not an entitled person in terms of the house — he is the owner or tenant. By virtue of marriage, she automatically acquires a right of occupancy and it is that right of occupancy that gives her a passport to accessing the protections in the act—matrimonial interdicts and the right to exclude her spouse and suspend his occupancy rights if there is abuse.

The automatic rights of occupancy and access, and part of the right of protection, disappear after divorce. A matrimonial interdict can have a power of arrest attached to it. That gives the police discretion to arrest the perpetrator of the abuse should he breach the terms of the interdict. At the end of the marriage—through divorce or death—the power of arrest is completely lost, so a spouse loses vital protection. A matrimonial interdict without the power of arrest is not effective. That power is the enforceable and effective part of it.

The first group of women we would like to be included in the widened scope of the act are spouses after divorce. We know that the times during separation and following divorce are very dangerous for women. There is a widely held myth that physical or legal separation from the husband or partner offers some protection, but it does not. The risk of female homicides is increased during, and in the aftermath of, separation and divorce.

Cohabiting women and women who are joint tenants or owners are in the same position as spouses: they can apply for all the protections under the act and they can get a matrimonial interdict and an exclusion order if they satisfy the tests. The language makes the legislation more complex, but if a woman is a non-entitled cohabiting partner—not a joint tenant or owner—she is, to all intents and purposes, in exactly the same position as a spouse.

A woman who has no entitlement and lives with a partner who is either the sole owner or tenant of a property has no occupancy rights. Apart from the common interdict—which is similar to the prevention of a neighbour cutting down a tree and for which anyone can apply—a woman must first go to court in order to get a matrimonial interdict, or any of the protections in the Matrimonial Homes (Family Protection) (Scotland) Act 1981. She must get a declarator of occupancy rights.

For women who are not entitled—who are not tenant or owner—that process might take up to 12 weeks. The Family Law Association may say something different, but I can provide references to cases in which that has happened. A woman must wait for 10 to 12 weeks before she has occupancy rights and access to protection. During those three months and pending the action, a woman might choose to stay with the abuser. He will know that the woman is applying for those orders and that she may be trying to have him

excluded from his home. The woman will have to put up with whatever reprisals that brings.

Her other choice is to leave and to go into refuge—perhaps temporarily—until the orders come through and she is safe. She might go into temporary homeless accommodation provided by the local authority. That might be in a bed and breakfast or something equally inappropriate. The innocent victim of abuse and her children must leave the family home without their possessions and go into alternative accommodation while the perpetrator of the abuse is allowed to stay.

If the woman succeeds—and cohabiting women often do not succeed—in accessing the protections under the act, she might be able to return to the home and the abuser will be excluded. She will have an interdict with the power of arrest so that she can remain in the family home with her child with reinforced protection. That is very rare. It is very difficult to exclude men who have sole title to the family home, and in the experience of Scottish Women's Aid it happens relatively infrequently.

In addressing that problem, one straightforward suggestion has been to extend occupancy rights to cohabiting women in the same way as a spouse acquires them through marriage. By virtue of the cohabiting relationship, the non-entitled woman—who has no ownership or tenancy rights—can acquire that right of occupation.

10:45

Often, people find it difficult to accept that the woman would acquire rights on a property that does not belong to her, but we are not talking about her acquiring property rights: we are talking about her acquiring temporary rights to continue to occupy the family home, along with her children.

Married and cohabiting women who seek to exclude abusers face stringent tests to persuade the courts to oust a man from what is often perceived as his home. Despite the fact that they may have been systematically abused over a long period and despite the fact that there is good evidence, the tests are incredibly stringent. To exclude a man from his own home it must be necessary for the protection of the woman and/or child, and it must be just and reasonable. There is a long list of matters that the court must consider when coming to a decision about whether it is just or reasonable: the relative conduct of the spouses, whether alternative suitable accommodation is available, and so on.

Exclusion orders have not been mentioned by anyone so far, and I note that they were not mentioned in the family law review or the Scottish Law Commission's recommendations. We do not want to end up with the situation that they have in

England. There, the scope of matrimonial interdicts—which are called non-molestation orders—has been widened to enable cohabiting women, former spouses, former cohabitants, fiancées, same-sex couples and others, to gain protection against abuse. However, they also have occupation orders—similar to our exclusion orders—that allow only the people with occupancy rights to obtain an occupation order to exclude the other partner. That means that if someone shares their home with an abuser they can obtain an interdict with the power of arrest to try to stop the abuse, but unless they have occupancy rights they cannot exclude the person from the home.

We do not want the same situation to exist in Scotland, in which non-entitled cohabitants have an interdict that enables the police to arrest the offender if he breaches it, yet the abused person must continue living in the same home as him unless they can obtain an exclusion order. Currently, in order to exclude an abuser, the abused must have occupancy rights. It is absurd that in England a person can be in the same home as their abuser and they can have an interdict, yet they cannot exclude him from the home. In a relationship in which abuse is a factor, having an interdict with a power of arrest can only increase the difficulties.

Our other concern is that relating the degree of protection that is available to the lifestyle or relationship choice of the parties is now outdated. Cohabiting partnerships are as common as marriages these days. All sorts of complex family relationships exist: heterosexual and homosexual couples, married and unmarried and second families. By limiting the full protection to those who are currently in a state of marriage—divorced women are excluded from power-of-arrest provisions—we are behind the times. The act came into force almost 20 years ago. It is time that it was brought up to date with the social reality of human relationships and reflected their diversity.

The last main area that requires to be considered for reform is the enforcement of powers of arrest. If an interdict is breached, the police can arrest the perpetrator at their discretion. The discretion has been restricted somewhat by a circular from the Lord Advocate in which he said that all but the most trivial of breaches should result in arrest, but that does not happen in practice. Whether a breach is considered trivial depends on the subjective view of a police officer. We know of numerous cases where an interdict has been breached and the abuser has not been arrested.

To overcome that difficulty, we suggest that breach of interdict be made a criminal offence—along the lines of what happens under the Protection from Harassment Act 1997. If a civil

non-harassment order made under that act is breached, it is a criminal offence, the penalties for which can be severe. There is a two-tier system: if an interdict is breached, there is a relatively weak response from the criminal justice system; if a non-harassment order is breached, there could be severe criminal sanctions—we do not know how well it is working yet as the legislation is only two years old.

A lot of cohabiting women, who are not covered by the 1981 act, are accessing the 1997 act to secure non-harassment orders. The 1981 act deals with domestic abuse; the main aim of the 1997 act is to prevent stalking, not to deal with breaches of interdict, but it is being used for that purpose because it is far more effective than the other legislation.

Sometimes a strong criminal justice response is thought to be inappropriate, but we should bear in mind that strong enforcement of the orders will deter some offenders from reoffending. It will not eradicate recidivism, but anything that lessens the likelihood of offending behaviour recurring is worth considering.

Civil orders are essential because the woman seeks the order and retains an element of control over the process. She can remain in her own home with the abuser excluded. The alternative—minor sanctions resulting from breach of the peace convictions—is not as effective. The extension of protective civil orders, with appropriate enforcement, will provide one of the best forms of protection for women.

The committee might have heard of the three Ps: protection, prevention and provision. They are the central tenets of strategies to combat domestic violence. The Scottish Partnership on Domestic Violence has embraced them. Protection and prevention are well provided for by civil orders.

We ask that the committee consider the introduction of a protection from domestic abuse act that reforms the law to extend the class of people who can seek protection; to create a new offence of breach of a protective order; and to rename the orders, as the term “matrimonial interdicts” is irrelevant and does not describe the diversity of people’s relationships. We envisage that the act would involve a straightforward repeal and would remove the connection with the matrimonial home and marital status prerequisites. Those changes would widen the scope of protection to include everyone who needs it.

The Convener: Thank you. Your last point presented quite a wide-ranging set of proposals, and I notice that you outlined in your briefing your desire for a protection from abuse act. We also have a briefing from the Law Society of Scotland.

It broadly agrees with the kind of proposals that you are talking about; but equally it expresses concerns about taking a piecemeal approach and suggests that we should go for a thorough review of the 1981 act—which is, in a sense, what you are saying—or not do anything legislatively until we know the outcome of the Scottish Executive's current consultation.

This committee must decide how to proceed. Do we, despite some of the external advice, try to put together a fairly small piece of legislation of limited scope now, or do we institute a longer-ranging process to tackle the issue? The latter is being suggested by the Law Society of Scotland and, perhaps implicitly, by Scottish Women's Aid. A protection from abuse act could not be brought about simply on the basis of one or two meetings. Could you comment on that?

Ms Sharp: We were not seeking a complete overhaul of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. We are asking that the protective element be removed from the matrimonial framework and taken out of the marital sphere altogether. That would recognise the fact that relationships other than marriages exist, and the fact that women in such relationships need protection also.

The Protection from Harassment Act 1997 is relatively short and straightforward. I understood that there could be no amendment to the matrimonial homes act and that there would have to be a new bill. That is why we proposed a protection from domestic abuse act. There would be relatively few sections. All we are talking about is relating orders to the class of people who would be covered by them. We are not talking about regulating the other matters—property rights, for example—that are regulated by the matrimonial homes act.

The Convener: Are you involved in the Scottish Partnership on Domestic Violence?

Ms Sharp: Yes, we are.

The Convener: How would our proceedings in respect of what you are suggesting impact on the partnership's work?

Ms Sharp: I take your point. The timing of this discussion is perhaps a bit odd given that the partnership has reviewed family law. At the end of this month, the partnership will reconvene to consider responses to the work plan. You may or may not have seen it. One part deals with legislative reform. It proposes a review of legislation pertaining to domestic abuse, to see what needs to be revised. We expect that it could be a very long time before the partnership gets round to implementation, so this committee could take some of the onus off the partnership. For 20 years, women who are not married have not had

protection, so this reform is urgent. If we can get something simple and quick, we should go for it.

The Convener: At the first meeting of the committee, five or six members spontaneously raised this as an area in which they wanted to achieve something. Because of that interest, I know that a lot of members will wish to ask questions.

Maureen Macmillan (Highlands and Islands) (Lab): I understand what has been said about the need for a thorough overhaul, but I feel that we might wait for quite a long time to get everything we want. What I wanted was something simple and quick, such as a bill to amend the matrimonial homes act. Would you be happy if we did something simple and quick now, and perhaps worked towards an overhaul?

Ms Sharp: I have to say that I have been misinformed. I will not mention any names, but I was told clearly that we could not have an amending bill and would need a new bill entirely, which is not what we want. We want an amending bill to repeal the provisions that I mentioned and widen the scope of the act.

Maureen Macmillan: It would be a new bill that amends the act.

Ms Sharp: Okay, that is fine.

The Convener: Maybe we will have to introduce a matrimonial homes interdict amendment bill.

Ms Sharp: Sometimes acts are amended by way of a miscellaneous provisions bill—

11:00

The Convener: There has to be a bill that contains the amendment.

Ms Sharp: Under the new set-up, we have to have a bill that contains the amendments and nothing else. We would support that and it would be a perfect way to get this change through. There is cross-organisational support for the extension of all these things.

Christine Grahame (South of Scotland) (SNP): Initially I was in favour of a quick, simple solution. I was a practising family lawyer for many years. I recognise much of what has been said. I represented women who had been victims of violence. I presume that the figure of one in four is of people who contact Women's Aid—I have acted for women who did not do that.

Ms Sharp: That is the best available figure for women who have contacted an agency of some sort. A lot of women never do.

Christine Grahame: I now suspect that swift, simple legislation would not be a good idea. We have touched on cohabiting couples and a number

of other circumstances. It would be better to have a thorough review. Piecemeal amendments of legislation, rather than a good, solid act, can be difficult for solicitors. I suspect that, urgent though much of this is, there should be a thorough review.

Occupancy rates in cases where the sheriff has made an exclusion order have been mentioned. I would like there to be a power of arrest in such cases. I have never seen a sheriff giving a power of arrest when people are living together, because they ask, "Who would police it?"

I would like there to be an order for counselling. Sometimes the husband—it is usually the husband—needs more than a court order. He may never have behaved in that manner before, but he may be in the emotional turmoil of a divorce or separation and feel that the children are being taken from him, the wife is getting the house and his pals in the pub are telling him that she is doing this, that and the other. That makes him do things that he will probably never do again.

I have known persistent bullies of husbands, but I have also known cases where it is clear that a year or two down the road they will never behave like that again. I would like the sheriff to have the power to make an additional order for counselling so that the whole problem can be addressed and it does not seem that only the father is being punished and the children see only the father being excluded.

I said at our first meeting that we could do something simple with matrimonial interdicts, particularly after divorce, but I now feel that a really good family law bill is needed. We should see what the Family Law Association has to say about that.

Many solicitors have difficulty with legal aid in interdict cases as they have to drop everything on their desk to deal with them. I would like a change to the legal aid system that addresses really urgent cases in which there is no time to fax forms.

Ms Sharp: We would not disagree with that, but I do not think that we should doubt for one moment that a simple, urgent amendment is needed. Three women have been murdered by their former partners in the past 12 months.

Phil Gallie (South of Scotland) (Con): Sorry, would you say that again.

Ms Sharp: During the past 12 months, three women in Scotland have been murdered by their former partners. They had no effective protection. Do we keep waiting? Do we wait until more women die?

Gordon Jackson (Glasgow Govan) (Lab): I have practical reservations about whether we can undertake the comprehensive review that

Christine wants. I am trying to understand what is wanted and the practicalities of it.

We all recognise that change is needed and that we have to recognise not only matrimonial relationships. I have no problem with "former spouse" or with the fact that people live together and that cohabiting couples are entitled to protection. My difficulty, and I would like your help on this, concerns the point at which they become cohabiting couples. You have mentioned that, in a cohabiting couple, the man has the sole title to the family home.

Ms Sharp: Sometimes.

Gordon Jackson: If that is the situation, I do not have a problem with the idea that the woman should have the right to occupy the family home—and the phrase is "family home". I know cohabiting couples who live together in a family home, but how do we identify when that definition kicks in?

In relation to a married couple, it is easy—people make a commitment, they get married and it is clear that they are married. However, some people meet at the dancing, go home and start living together. If they start living together on Saturday, can the man find that, by Wednesday, the lady can say, "I live with you; get out"? That is a difficult problem. Can you help us to identify when the home of a couple living together with no marriage certificate becomes a family home? What is the test for that?

Ms Sharp: That is a fair and relevant point that has been considered by the Scottish Law Commission. Different options have been proposed, such as a cohabitation period of 18 months or two years. That will have to be agreed.

Gordon Jackson: Do you have a view on how we should tackle that problem? We would need to include that definition in legislation.

Ms Sharp: We preferred that occupancy rights should be obtainable after a period of a year to 18 months. That was seven years ago, so it might be worthwhile canvassing our network to ensure that that is still the preferred option. The Scottish Law Commission proposed a period of two years, which we thought was a bit onerous.

The Convener: Gordon was making the point that those are practical issues that we will have to take on board. They immediately raise more questions than we started with. It is not as easy as saying, bang, we can have this bill.

Phil Gallie: I had the same concerns as Gordon, but he is better equipped than I am to present the argument and he did so very well. How does the Children (Scotland) Act 1995 interact with the issues that Louise Sharp discussed? My understanding is that the interests of children are always put before those of

everyone else, especially since the Children (Scotland) Act 1995 was introduced. That would, perhaps, partly answer Gordon's question about cohabittees.

Ms Sharp: The welfare of the child is paramount. If the child is living in conditions where abuse and violence are an everyday occurrence and a social work department thinks that they are having a detrimental effect on the child and putting the child at risk, it can seek emergency protection orders to exclude the abuser from the home for the child's protection.

In the first two years of the application of the Children (Scotland) Act 1995, 10 exclusion orders were applied for and nine were granted. The courts are willing to give the exclusion order under section 76 of the Children (Scotland) Act 1995. However, local authority social work departments do not apply for them, owing to a fear of interfering with the personal liberty of a man by excluding him from his home. The protection of women and children appears to be less of a priority than a man's property rights. Suspending occupancy rights does not interfere with the man's property rights. It gives the woman and child a right to live there. Excluding a man under the Children (Scotland) Act 1995 does not suspend his property rights.

Scott Barrie (Dunfermline West) (Lab): When the Children (Scotland) Act 1995 came in, there was great hope that the exclusion provision would make matters easier. It has not really worked because caveats were built into the act. One such caveat is that the order does not apply if somebody is using the home as their place of work.

Louise Sharp is right: few exclusion orders have been applied for. The authority that I was formerly employed in applied for none in the first 18 months—although there were probably grounds to do so in some cases—because the procedure is phenomenally complicated.

We need something quick and easy to amend the current legislation. A full review would involve so many other aspects of the current legislation that we would probably be reviewing it for ever and a day. The Children (Scotland) Act 1995 is a good example of that point: legislation that everybody thought would improve the situation has turned out not to be particularly helpful.

Ms Sharp: I think we are missing the point. All the groundwork has already been done. The Scottish Law Commission looked into the matter in 1990 and reported in 1992. There have been responses to the family law review. We all have views on the subject and there is consensus on extending matrimonial interdicts and powers of arrest for spousal cohabittees. There is no

argument. It only remains to arrive at a definition of what a cohabiting relationship is.

The Convener: The proposal that you have brought us for a protection from abuse act is more extensive than the initial proposal that kicked off our attempt to deal with the issue in committee. We are in the very first stages of considering the matter and already we are contemplating a much wider proposal than was initially suggested. There is some concern that there may be yet more elements to consider.

We must find the right way of dealing with the proposal so that it is neither so narrow as to be unable to satisfy your basic requirements nor so broad as to pre-empt the work that may be done elsewhere.

Kate MacLean (Dundee West) (Lab): Louise Sharp and Maureen Macmillan have both said that women are dying. Should we amend the matrimonial homes act, as has been outlined, and then attempt a full-scale review? If we go for a full-scale review now, it may take months before any changes take place. Should we deal with one specific area now and then undertake the full review?

Ms Sharp: As far as we are concerned, a full-scale review is being undertaken. The issues that we are highlighting are the only three issues relating to the matrimonial homes act that are part of the review. An amending provision would deal with them. I reiterate that the only aspect of the legislation that needs to be agreed and refined is the definition of a cohabiting relationship. There have been suggestions; all we need to do is agree on the matter.

To put the rest of the legislation up for consideration would widen the scope of the review still further, along the lines of the English legislation. Right now, however, we need powers of arrest for the former spouses of divorced women and we need to bring cohabiting women who are in a defined category of cohabiting relationships within the scope of the legislation. That is the least that we ought to do now. The rest can be done in the future. We need a short, straightforward amendment to define cohabitation.

Pauline McNeill (Glasgow Kelvin) (Lab): What is meant by temporary occupancy rights? What sort of time scale are we talking about?

Ms Sharp: The man's rights are suspended and the woman is given occupancy rights for periods of six months at a time. Those rights are renewable every six months.

Pauline McNeill: Indefinitely?

Ms Sharp: Yes.

Pauline McNeill: You mentioned the women

who were murdered during that period. Were interdicts in force?

Ms Sharp: Two of them had civil interdicts with no power of arrest. They could not access a power of arrest because they were not married and did not cohabit in the matrimonial home at the time of the offending conduct. Those women were outwith the scope of the only protection that exists in Scotland aside from the non-harassment orders.

The Convener: Thank you for coming to answer our questions.

I ask the Family Law Association to take over at this point. The representatives of Scottish Women's Aid are welcome to stay on, and there may be another opportunity to respond to some of the questions that arise in the forthcoming discussion.

We are joined by Lynne Di Biasio, the Secretary of the Family Law Association. She is accompanied by Miss Shona Smith.

Can you tell us in two or three sentences what the position of the Family Law Association is? We shall then proceed to a question and answer session.

11:15

Miss Lynne Di Biasio (Family Law Association): The Family Law Association was formed 10 years ago on an impromptu basis at a meeting at which a number of family lawyers thought that it would be a good idea to start an association of people who practised predominantly family law. Our membership fluctuates but, at the moment, stands at about 200 and stretches across the country. We try to address as many family issues as we can and to give high priority to the consultation process. As a result, we have been involved with various consultation documents, which are important because people should know the practical effect of what is being examined. We are trying to represent the needs of the profession and the public as perceived through our experience.

The Convener: Therefore, the Family Law Association is an organisation of legal practitioners whose work is either wholly or mainly in the area of family law, which means that its members deal with issues of divorce, custody and access and other matters relating to children.

Miss Di Biasio: There is no test for the amount of family work that is done by association members, but they do wholly or predominantly family work.

The Convener: You have heard our discussion and the presentation by Scottish Women's Aid. Your association is no doubt well familiar not only

with that organisation's proposals, but with other proposals from the partnership's consultation on family law and from the Law Society, to which you will have had much input. Can you comment briefly on some of the points that have been raised about the proposals and give your views on the proposals in general?

Miss Shona Smith (Family Law Association): There is cross-agency agreement that extensions should take place and that there should be an interim measure extending the applicability of the power of arrest until after divorce. The consultation paper proposes that the power of arrest should be for a fixed period of three years; it would be worth introducing that measure prior to an overall review of family law legislation, including the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

The association also believes that, given our changing society, the power of arrest should be extended to cohabiting couples. However, there will be a huge practical difficulty in defining the word "cohabiting". Powers of arrest and exclusion orders are obtained not just against men, but against women, so it is not good enough to say that a cohabitee is a woman who has been cohabiting for two years. I have dealt with single-sex relationships in which people have desperately needed powers of arrest and have lost their home and their way of life because that remedy is not open to them.

How do we differentiate between a single-sex couple and a flat-share agreement? Such a practical difficulty will have to be faced if we are to change the law in that area. I have my suspicions that such change will not happen quickly, because the matter will have to be examined in some detail to make effective reforms. Apart from that, the association is keen for reforms to take place.

The Convener: I do not want to put words in your mouth, but do you think that the proposal to extend powers of arrest beyond divorce is simple enough and can be introduced quickly enough to have immediate effect? If we are to proceed on that basis, might it be better to reserve issues such as extending powers of arrest to cohabitees for a more general review during which the committee might want to discuss the matter further?

Miss Smith: Out of practical necessity, the measures should be extended to cohabitees as quickly as possible, because a huge group have no real rights. That would happen in an ideal world. In our consultation process, we have examined not just the issue of cohabitees' rights in that area but cohabitees' occupancy rights and rights in the estate. Although I think that such measures should be taken as quickly as possible, I have concerns about doing that, and I would rather that we dealt with the first part immediately.

Gordon Jackson: Could you help me with the solution? I had not thought of cohabiting and flat-sharing; my daughter shares a flat with people of the opposite sex. How can the categories be differentiated?

Miss Smith: I think that it is best to leave it to the discretion of the sheriff. Part of the consultation paper—not in relation to powers of arrest and exclusion orders—was about whether a cohabitee should have the right to claim on the estate of the former cohabitee. The paper said that a variety of factors should be considered, such as the length of the cohabitation, whether there are children of the relationship, and the size and nature of the estate. I do not see why many other factors, such as how finances are worked out and whether finances are being pooled, should not be considered to determine how a relationship operates. A sheriff should be given a list of factors and the discretion to deem whether a relationship has been a cohabiting relationship, or whether it is a case of two friends living in the same property.

The Convener: Kate MacLean?

Kate MacLean: No.

Maureen Macmillan: Kate said to me that the Department of Social Security does not seem to have any problems working out who are cohabitees and who are flat-sharers. It cannot be so difficult to work out a formula. I am keen to ensure that cohabitees are not excluded from this measure as it would almost be a waste of time doing it if we had to exclude cohabitees.

Miss Di Biasio: The difficulty for cohabitees is that occupancy rights are the starting point—as has been said—but cohabitation still has to be recognised by the court. The 1981 act says that for determining for the purposes of the exclusion orders whether a man and woman are cohabiting, the court shall have regard to all the circumstances of the case. The easy way for the legislator is to leave it to somebody else to make that decision, but the act says that those circumstances include the time for which it appears that a man and a woman have been living together and whether there were any children of the relationship. That is something to start with.

The problem is that there so many other issues to be covered. It should also be remembered that as soon as legislation is amended, it is open to interpretation. One should not do a half-baked job that does not do what it is meant to do. If we try to close a loophole, many more might be opened up, so it has to be done with care. Measures on cohabitees have to be taken quickly, but because the matter is so important, it must be dealt with properly.

Christine Grahame: I should declare an interest in that I was a founder member of the Family Law

Association—my membership probably lapsed ages ago, but I think that I was the sixth member.

If the urgent amendment is simply to widen the scope of the legislation post-divorce—a point that I raised at the beginning—that is fine, but I am concerned, as you are, Miss Smith, that in other areas we get the legislation absolutely right so that it is effective for women, mostly, and for some men.

Do you think that the breach of the power of arrest should be a criminal matter—I sympathise with that—and, if so, should the test have to be beyond reasonable doubt?

Gordon Jackson: If it is a criminal offence, it has to be beyond reasonable doubt—full stop.

Christine Grahame: That is why I am asking; if the breach of the power of arrest became a criminal offence, a higher evidential test would have to be applied.

Miss Smith: A breach of interdict is a contempt of court; it is a quasi-criminal matter. Sheriffs can impose stiff sentences for breach of interdict, and can reprimand people severely, but in practice they do not like to do so. It is a matter of changing practice.

Christine Grahame: Would you recommend that sheriffs should change their policy on breaches of powers of arrest or on interdicts generally?

Miss Smith: There are a number of issues for sheriffs in such circumstances. I wonder whether sheriffs sometimes take account of the fact that there is some financial support from the male, even though the relationship is breaking down—they should take that into consideration. However, the courts have the right to look at all the circumstances.

Christine Grahame: I do not want to hog this session—I have been asking these questions for about 12 years—but would the witnesses like sheriffs to make orders for counselling? I am not sure whether sheriffs can do that. There would have to be an agency for such counselling, but that power would ensure that the law was not simply regulating offending behaviour but was doing something for the party that was excluded from the property.

Miss Smith: Personally, I think that we are moving in that direction as we are obtaining referrals to mediation and other agencies. I do not see why such agencies should not include a counselling agency or an anger management course. The practical problems should be addressed, and I think that sheriffs are becoming more aware that they are dealing with families. We want the family—although it is divided—to be able to function in the future. Counselling or anger

management might help that happen and might reduce the need for the enforcement of powers of arrest at the end of the day.

Christine Grahame: My last question is whether the witnesses would like to see sheriffs dedicated to family law.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Thank you, Christine.

Christine Grahame: Sorry.

Miss Di Biasio: There would be opposition everywhere to that suggestion, because of the issue of burn-out. At present, sheriffs cannot sit for more than three days—

Miss Smith: My understanding is that there is a pilot scheme in Glasgow whereby four sheriffs are dedicated to dealing with family law matters, but I have no further knowledge beyond that.

Mrs McIntosh: Christine jumped to the point that I wanted to raise. I noticed that when dedicated sheriffs were mentioned, there was the equivalent of a sharp intake of breath from Louise Sharp. What were the reservations about dedicated sheriffs? Was it that they would need special training?

Ms Sharp: I am particularly worried about the amount of discretion that sheriffs have already when granting exclusion orders.

Mrs McIntosh: I noticed your reaction, and I was wondering whether you could clarify it.

Ms Sharp: One of the reasons why women frequently are not granted exclusion orders is that sheriffs are reluctant to exclude men from their homes—unfortunately, that is very common. Scottish Women's Aid is all for dedicated domestic violence courts, as exist in America, with trained, informed and aware judiciary and legal practitioners, fast-tracked cases, enforcement of breaches and efficient systems. The cost of domestic violence to our society is horrendous.

Mrs McIntosh: Can you put a figure on it?

Ms Sharp: I will send the committee figures from an interesting piece of research conducted by an eminent professor.

Gordon Jackson: Is your comment that sheriffs are not playing the game—that is, that they are not excluding men—based on anecdotal or statistical evidence?

Ms Sharp: There is no statistical evidence in Scotland.

Gordon Jackson: How do we know that that is true, as Christine does not think that it is?

Christine Grahame: No, I have to say that I have never—

The Convener: Please speak one at a time.

Ms Sharp: The data are not collected. The only evidence available is anecdotal evidence from Scottish Women's Aid, collected over 20 years from practitioners in the field who may or may not be able to access exclusion orders for their clients. There are no centrally collected data from the Scottish Executive or from the Crown Office on how many exclusion orders have been sought in Scotland since the 1981 act, or on the patterns of granting such orders. All we have is anecdotal evidence from women who have been regularly surveyed by Scottish Women's Aid over the years, that women are frequently refused exclusion orders.

Gordon Jackson: What is the Family Law Association's view on that point?

Miss Di Biasio: I have practised in family law almost exclusively for eight years now, representing both men and women in cases of exclusion orders with power of arrest, and that is not my experience. Lawyers must go to court with evidence of abuse. There might be a difficulty, of course, because such cases involve situations in the home and there will rarely be a witness to an assault, if one has taken place. However, often there will be medical evidence and friends who have seen the immediate aftermath of incidents, and such evidence can be relied upon. Sometimes, information can be obtained from the police.

Recently, I handled a case in which the domestic violence officer's report was sufficient to persuade the court that exclusion was appropriate. There will be cases in which women have not sought any help and have been isolated—I do not doubt that, but, to be honest, I also do not see that the answer lies within the court system. Such women withdraw because they are victims. I know that there are victims of domestic violence who are so insular that there is no one who is able to corroborate their position. In my opinion, that cannot be legislated for.

11:30

The association is whole-heartedly in favour of supporting women and of ensuring that protections are in place, but—and this has not been mentioned today—there is also the issue of abuse of those orders. There is no doubt that a minority of women fabricate information to obtain exclusion orders and powers of arrest. There are instances of the police being called out because of a breach of interdict, in which the power of arrest is available. Men are detained in custody overnight although there has been no abuse. That is undeniable. In my experience, there is no difficulty in getting an exclusion order if there is evidence

for one.

Some people are not protected. That gap must be closed, but it must be left to the sheriff, when the evidence is before him on the day, to make that decision. The tests must not be lowered.

The Convener: Are there any other questions?

Phil Gallie: This might sound hard and dispassionate and might meet with the disapproval of virtually everyone in the room.

Christine Grahame: Go for it.

The Convener: There is nothing new in that.

Christine Grahame: I hope it lives up to its preview.

Phil Gallie: There seems to be a problem with contracts. If any of us were to talk to people about establishing business relationships, we would make sure that there was a contract written in black and white. There is, compared with married couples, no protection for cohabitants. That is because of the lack of a contract. With that in mind, would you say that there was merit in anyone entering a partnership considering that, and in considering marriage as a way forward?

Miss Di Biasio: The problem is that we are talking about human relationships. People do not work on that basis. At the outset of a relationship, it is not thought of as a contract. People think, by and large, that they are in love with the person whom they have just met.

Christine Grahame: Is that the way it started with you, Phil?

Phil Gallie: No—I said, “Sign here, please.”

Miss Smith: We need a huge education campaign. I feel that people should have a certain amount of education before they marry, so that they know what they are getting into and what their legal responsibilities are.

I deal with many women who have been in long-term relationships and who have children. A recent example is a woman with three children who was in a 20-year relationship. She was a building society manager and gave that up to look after the children and to bring them up. Her partner has met someone else and has left her. She has given up everything. The house is in his name and he has walked away with everything. She is being harassed and has no real protection from that. She has no right to anything but aliment for the children. She wanted to know about common-law marriage. She is an intelligent woman, but she thought that she was a common-law wife. She was not.

This is a public misperception about the reality of the law. We must not say that people should

enter contracts until they are educated about their rights in various situations. Most people think that they have rights as a result of being in a long-term relationship.

The Convener: That is because the traditional form of common-law marriage in Scotland—marriage by cohabitation and repute—still has legal hurdles to overcome before it is officially recognised. Scots law, in many people's eyes, recognises cohabitation—but they do not realise that there are those legal hurdles.

Phil Gallie: I am happy with that response, and it seems to me that that response should be well publicised. It might help some people who are in similar circumstances. Miss Smith was talking about a long-term relationship that produced three children. I am disappointed to hear that in those circumstances the interests of the three children are not being taken into account to a greater extent.

Miss Smith: If there was a dispute over the children between the couple, the courts could decide where it would be best for the children to live, but there is no real dispute about residence or contact. Financially, the woman is entitled to aliment. The children have enjoyed a high standard of living over the past few years, and the reaction of her former partner has been to say that, because the Child Support Agency provides aliment at only a low rate and she can no longer provide that high standard of living, the children should live with him. When I said earlier that the review document must look at cohabitation in general, that is the situation I had in mind. There are huge areas where cohabiting couples need rights—not just on the issue of domestic violence.

Pauline McNeill: I was about to make that very point about the minefield of cohabitants and property rights. Not everyone wants those rights from the start. That is sometimes the reason why people cohabit, so that they can walk away without going through the trauma of divorce. I have not seen the report on family law improvement, but I am not confident that there will be much modernisation in terms of rights for people who want them, such as the single-sex couples you mentioned earlier. I think, however, that the issue is getting confused and I would like to narrow the focus a wee bit.

Scottish Women's Aid seems to be saying that the law should be extended so that more people are protected in the right way and that currently the scope is too narrow. Everywhere we look, however, there are loopholes that cannot be closed. If we say, for instance, that on divorce an interdict should not fall, the question remains as to why a person who is no longer married should get protection under the law whereas someone who is a cohabitee does not. There will be a

contradiction, whichever way we look.

Instead of getting into technicalities—and I realise that everyone is desperate to jump to that because it is a complicated piece of legislation—we must narrow our focus. We must focus not on property rights, but on protection. How can we best extend the scope of the legislation to protect the people without getting into the question of property rights for cohabitants and single-sex couples? I do not think that we can close the contradiction here—it exists.

The Convener: Did you want to ask a question, Gordon? Lynne, could you respond to that point and then Gordon can ask his question?

Miss Di Biasio: Sorry, I was not responding to Pauline McNeill's point—I wanted to raise another issue. It relates to the ability to access those protections from the court. It is a realistic issue, and I think that Shona knows exactly what I am going to say. I fail to obtain orders for clients subject to domestic violence more often as a result of the failure of legal aid than as a result of the weakness of my case. If a woman, whether she be married or a cohabitee, is doing her best to bring in some family income from a part-time job and is perhaps on family credit, she can forget it. She will be sitting in front of me having been subject to domestic violence for perhaps years—she might well be sitting there with a black eye—and I have to tell her that she will have to pay the first £500 of her bill. She will say that she cannot do that.

The Convener: Can you provide the committee with information about that, in so far as you are able? Every single one of us would like to take up that issue, even if it is separate from this inquiry. It is extremely important. Anecdotally, it has been my understanding that there is a major problem, and that is something that we would all want to pursue.

Gordon Jackson: I keep trying to get my mind round things. A couple are married; they separate; they do not want to live together; and in that situation the occupancy right operates and an interdict can be granted. On divorce, various things happen that can be done only at that point, not later. All the capital is divided up, somebody gets the house, they are no longer married and they do not cohabit—in that sense, they are strangers. What advantage does a continuation of such a matrimonial interdict give someone compared with taking out a normal court interdict for when somebody is pestering or abusing the woman, breaking her windows or being a nuisance?

Miss Di Biasio: The remedy is the power of arrest.

Gordon Jackson: The power of arrest?

Miss Di Biasio: Yes.

Gordon Jackson: So why not just add the power of arrest to the whole business of when people are interdicted in such situations?

Miss Di Biasio: Do not forget that when a power of arrest is attached to a common law interdict, which is what you are talking about, Gordon, the areas in which interdicts are available must be examined. I might be able to get an interdict to prevent my next-door neighbour from building his fence 2 ft higher, but why should I be able to get a power of arrest to stop him doing that? That is going into a minefield.

Gordon Jackson: Is there a remedy? Does the power of arrest give that?

Miss Di Biasio: The simple way in which I look at it is that an interdict is an interdict and the power of arrest gives the interdict teeth: it gives it a remedy, and the person has somewhere to go. With an interdict without a power of arrest, the remedy is to raise a further action, which is a breach of interdict action.

Miss Smith: The other difficulty with such interdicts is that the police's assumption is that anyone living in a cohabiting relationship, or a married couple, will automatically get a power of arrest. I would say that, at least nine times out of 10, if someone telephones the police, they will come and probably suggest that the man leaves the house at that point for a few hours or overnight. They will advise the woman to see her lawyer the next day and get an interdict with power of arrest.

In so many cases, that is not possible. Gradually, the police are starting to get educated about the matter. Representatives of both the Family Law Association and Scottish Women's Aid go to the Scottish Police College at Tulliallan and run training days and courses. This is the practical difficulty for a woman in distress: the police think that the power of arrest can be attached to every interdict involving people who are cohabiting, so the police will actually not do anything about the situation.

Christine Grahame: I am glad that the problems with legal aid have been raised. I was at war with the Scottish Legal Aid Board for about a decade, and I am glad that I am going to continue—we should have it along. *[Laughter.]* Yes, really: it prevents justice because of the way in which it operates.

Do the witnesses agree that not just are there problems with the financial test, but there are the burdens on practising solicitors of the paperwork that must be delivered at every stage? That inhibits them, because they are running two things. If they are dealing with several interdict

matters, they are up in court for long periods, getting important medical evidence. Would the Family Law Association like to see the regulations changed with regard to what was called emergency legal aid?

Miss Smith: Yes. There is a difficulty with emergency legal aid—apart from financial matters—for people who do not know how it works. For matters such as that which we are discussing, an SU 2 form may be submitted. Within 28 days, the full legal aid application must be launched. If a woman comes to see a solicitor with a black eye and, obviously, is extremely upset, the solicitor takes a statement, obtaining corroborative statements, and gets various bits and pieces of paperwork done before submitting the form to the Legal Aid Board. The difficulty is that the woman also has to sign something called the statement and declaration, which will be available not on that same day, but on a different day.

The woman will be at a traumatic stage in her life and might decide to go into a refuge or into hiding to get away from the violent person for a few weeks. If the legal application is not submitted in that 28-day period, the solicitor is not being paid. That is one thing that should be redressed, and the time limit is far too strict. Frequently, the woman is just not strong enough to come back and deal with lawyers again; she has various other things on her mind to resolve.

The Convener: The committee is likely to want to examine the legal aid aspects separately. I do not want us to go too far down that road today because we need to refocus the discussion—both today and at other meetings—on the potential for a restricted bill, initiated by the committee, and on the practicality of drawing up that bill.

Are there any other points that the witnesses wish to raise about those two narrower points: the potential bill, and the practicality of how far it can be extended without getting us into a bigger minefield, as Pauline indicated?

11:45

Ms Sharp: The convener has identified the correct issue. We are trying to remove protection from the matrimonial arena—from the framework of marriage and the matrimonial home. I fail to understand the difficulty in getting these amendments through. By taking the amendments out of the 1981 act and putting them elsewhere, we are seeking protection and not regulation of marriage or the matrimonial home. Women who lose the power of arrest on divorce—this is not the best solution, because they would have to pay for a new action—could access a protective order that had nothing whatever to do with the marriage. The

evidence of a prior interdict for the power of arrest would presumably be sufficient to get that. We are trying to deal with women who are not in marriage.

I take the point that men are excluded and abused, but abuse is perpetrated overwhelmingly by men on women and children. With the two amendments, we could move the focus of the act away from marriage. We should not—even though it affords immediate protection—extend the power of arrest to spouses and enhance what is already enhanced protection. Cohabitees are in a bad enough position as it is: to enhance the protection of spouses and not the according position of cohabitees would not be a fortuitous route.

I will briefly mention legal aid, which we both raised in our briefings. Last year, there was a consultation on “Access to Justice—Beyond the Year 2000”, and presumably the civil servants still have it. If the responses have been collated or if there has been any progress, we would love to know, as we all responded to the consultation.

The Convener: Our difficulty is that there is an excess of three pages of various consultations sitting as a backlog that is waiting to overwhelm the committee.

Miss Smith: Because of my concerns about not defining cohabitation correctly, I believe that the simplest way forward at this stage would be to say that any power of arrest that people can currently obtain—and that applies to some cohabiting couples—should be for a fixed period of three years unless it is recalled earlier; it can be reapplied for at the end of that three-year period. That would apply to everyone who currently has a power of arrest. It would seem to be quite a simple revisal, which would be quite easy to introduce. The other matters would be left for full consideration, so that any reforms that were introduced were done properly.

The Convener: Thank you.

The meeting is not closing now because we must discuss what we have heard and what we want to do now. Do we want to hear more from people about how we will proceed? People are welcome to continue listening as this continues to be an open and public part of the committee's discussion. Several issues that were raised this morning need to be addressed, and we might wish to hear from some other organisations before we make a final decision.

Given the work that has been done by other organisations, it would be helpful to hear directly from the Scottish Law Commission, particularly on occupancy and cohabitation, as that might help us to clarify what has been done already in that regard. We do not want to spend time reinventing the wheel if someone has already done that work. Equally, we might want someone from the Law

Society of Scotland to speak to us. It might also be appropriate to ask somebody from the Scottish Partnership on Domestic Violence to the committee to tell us about the work that that organisation is doing and to get their view on how they would feel if the committee pre-empted a portion of the work that it was doing.

We need to have a preliminary discussion about the extent of a bill. We are all keen to get something on the statute book, but there might be practical limits on what we can do.

Maureen Macmillan: Obviously, for me the issue is the definition of "cohabitee". We need to find an appropriate form of words. We all know what a cohabitee is, and I cannot imagine that we will not be able to describe one in law. Not being a lawyer, of course, I am probably quite wrong in saying that.

The Convener: Unfortunately, yes.

Maureen Macmillan: It is important that the issue is dealt with in the bill. I am interested in the idea put forward by Scottish Women's Aid—that we do not amend the current legislation, but present something new. I am not sure that I understood whether SWA is asking for something a bit different. Would it be simpler to take the issue out of the 1981 act and go for stand-alone legislation? Perhaps we can discuss whether that would work better than what we had thought of already—amending the 1981 act.

The Convener: Any stand-alone legislation that was extended to some or all of what is proposed—and I have some reservations about one or two things that are being included at this stage—would necessarily involve wholesale repeal of some sections of the 1981 act. I do not think that there is any way in which we can avoid referring to the 1981 act. We would need to refer to it in the context of the legislation that was being introduced.

The Law Society of Scotland has suggested that the whole of the 1981 act should be up for grabs, so to speak. We would be proposing the repeal of certain sections of the 1981 act and their replacement by a bill of much more limited scope. That is the issue to start with. If we want to talk of repealing sections of the 1981 act, we need to determine how many we want to repeal, how far we want to go and the areas that we want to move into. We probably all agree that we want to extend the act's provisions beyond the point of divorce and to examine the issue of cohabitation.

Maureen Macmillan: Those are the two issues that we want to deal with. We do not want to get into something that is too complicated—the time for that will come later. We are looking for something that will make an instant and crucial difference.

The Convener: Do other members of the committee want to discuss how we should proceed?

Christine Grahame: It would be useful to hear on the matter from the Sheriffs Association, which will be able to see the problems of definition that lie ahead.

I would also like to hear the views of the Association of Scottish Police Superintendents. We want to put good legislation in place, and we must decide whether we want to make a couple of simple changes, tweaking existing legislation—I am with the Scottish Law Commission on that—or whether we want to take things further. There are dangers in the second course; it would be better to have a really good revision in due course. However, in the meantime I would like to hear from the two bodies that I mentioned.

The Convener: The Association of Scottish Police Superintendents would be through the door tomorrow morning if we invited it, so there will not be any difficulty in timetabling that. Equally, the Scottish Law Commission has shown itself to be perfectly willing to respond at short notice—and we must think about how quickly we can act. I am not sure about the Sheriffs Association.

Gordon Jackson: It will come.

The Convener: I am sure that it will come, but the timetable might be more difficult.

Phil, you wanted to comment on this general issue?

Phil Gallie: I wanted to make exactly the same point as Christine. As she said, the Association of Scottish Police Superintendents has already made a submission in which it states that it would like more effective police powers. Having heard what has been said today, I should be interested to hear what powers the association feels that it needs.

Ms Sharp: We go to Tulliallan once a month to talk to operational officers at the front line; it is a common and consistent complaint that they cannot enforce their powers.

The Convener: Now that the officers have been convinced and a change in culture has started, many of them are frustrated by the difficulties that they are encountering.

Tricia Marwick (Mid Scotland and Fife) (SNP): We came into the Parliament aware of the problems of women who are abused, and we recognise that the law simply does not protect women in those circumstances. The tension is between moving too quickly—in which case, we might not afford women the protection that we want them to have—and more detailed consideration, which will take time. If we move forward quickly in the way in which most of us

would like, it is important that we have a bill that will stand up and will offer the maximum protection until there is a further review. I am taking on board some of Christine's concerns, but I am inclined to think that we need to do something, and to do it quickly. We have to ensure that whatever we do is good.

Pauline McNeill: I agree with the suggestions that have been made; let us hear some more evidence. Like Gordon, I am trying to get my head round what we are trying to do. I want us to be clear about that; Maureen might like to come back on it. My reading so far—and somebody will shout me down if I am wrong—is that when somebody is trying to leave their partner because there is a history of violence, we try to protect them whether or not they are married. The non-entitled spouse bit—trying to protect people in a home that is not theirs—gets complicated for me. Before we decide whether it is a case of just making an amendment, can we focus on what we are trying to achieve? Maureen, am I right in saying that it is not the right to occupy that we are trying to protect, but the safety of the person who is trying to leave?

Maureen Macmillan: Yes, we are trying to protect the woman, but in the act as it is now, those rights are tied up with rights to occupancy of the matrimonial home. That is why it has been so difficult to disentangle it.

Pauline McNeill: Do you want to keep that entitlement?

Maureen Macmillan: I am more interested in finding a way to protect women from a partner, whether he is a cohabitee or a spouse.

The Convener: The difficulty is that we want to extend protection beyond divorce and to cohabitees. We need to take more technical advice on how that can best be achieved without creating more difficulties elsewhere. We might still be of a mind that we want to proceed on the basis of a committee-initiated bill. We might want to take more evidence to ensure that the bill emerges in the best possible form and achieves as much as it can. It should be practical and should not cause more difficulty.

It has been suggested that we invite a number of organisations to another meeting—or meetings—of the committee. Does anybody have anything to add to that? For example, is anybody aware of any individuals who have done academic research into the areas that we are now definitely concerned with? If any occur to members, ensure that you advise the clerk and we will add them to the list. This is an effort to ensure that whatever emerges from our deliberations is as watertight as possible.

Gordon Jackson: Have we decided which people we have still to ask?

The Convener: We will be asking the Scottish Law Commission, the Law Society of Scotland, the Sheriffs Association, the Association of Scottish Police Superintendents and the Scottish Partnership on Domestic Violence.

I remind members that the next meeting is on Tuesday morning. Clive Fairweather from HM inspectorate of prisons and representatives of the Scottish Prison Officers Association and the Scottish Association for the Care and Resettlement of Offenders will be attending.

Meeting closed at 12:00.

Members who would like a printed copy of the Official Report to be forwarded to them should give notice at the Document Supply Centre.

Members who would like a copy of the bound volume should also give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the bound volume should mark them clearly in the daily edition, and send it to the Official Report, Parliamentary Headquarters, George IV Bridge, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 17 September 1999

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Annual subscriptions: £640

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies: £70

Standing orders will be accepted at the Document Supply Centre.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £2.50

Special issue price: £5

Annual subscriptions: £82.50

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £2.50

Annual subscriptions: £40

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kings, London WC2B 6PQ
Tel 0171 242 6393 Fax 0171 242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 01232 238451 Fax 01232 235401
The Stationery Office Oriol Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 01222 395548 Fax 01222 384347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers