JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 4 April 2000
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
14th Meeting 2000, Session 1

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING MEMBER ALSO ATTENDED:

Angus MacKay (Deputy Minister for Justice)

CLERK TEAM LEADER

Andrew Mylne

SENIOR ASSISTANT CLERK

Shelagh McKinlay

ASSISTANT CLERK

Fiona Groves

LOCATION

The Chamber

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 4 April 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:34*]

The Convener (Roseanna Cunningham): Good morning. We will get started now, since we are already four and a half minutes late, owing to my late arrival. There are no apologies, so I assume that more members of the committee will join us shortly.

At last week's committee meeting, I said that judicial appointments would be on the agenda today. In the intervening period, the Executive has informed me that the judicial appointments consultation paper will not be published until 17 April, so that item has been put back to a later meeting.

During the Easter recess we will send information about the first meeting after the recess, on Wednesday 26 April, to members' home addresses. If members would like information to be sent to an alternative address during that period, please let the clerks know.

For members who do not already know, the Rural Affairs Committee has extended an invitation to members of this committee to join a fact-finding tour of the Highlands and Aberdeenshire from 9 to 11 April. The details were sent out with this week's committee papers. Members should let one of the clerks know as soon as possible if they want to attend. I assume that it will be possible for members to attend part of it. It looks like an interesting tour, but if members go for the three days, it will involve two nights in Inverness.

Gordon Jackson (Glasgow Govan) (Lab): Everything has a downside.

The Convener: I say that for the advice of people like Pauline McNeill, who find the concept of staying in Inverness—[*Laughter.*] This fact-finding tour will be extremely useful if members have time to go on it. I will have to see whether I have the time. Members need not go for the entire three days. I am sure you could join part of the trip. Please let the clerks know as soon as possible if you want to go. We will put the requisite request for authority, in terms of the finances of it, to the conveners liaison group, which must clear all those matters.

Legal Aid

The Convener: Item 1 on the agenda is the three statutory instruments on legal aid. The Deputy Minister for Justice is at this committee again. I am sure that he thought that he had seen the last of the Justice and Home Affairs Committee for a wee while, but it was not to be.

The three statutory instruments have been allocated up to 90 minutes on today's agenda, although I do not think that this will take anything approaching 90 minutes, not even if Phil Gallie contributes.

The minister will now make his initial comments. Members can then make comments or ask questions.

The Deputy Minister for Justice (Angus MacKay): It is lovely to be here again with the Justice and Home Affairs Committee. This is turning into Groundhog Day.

I will rattle through my speech as quickly as possible, in the hope that it will be of benefit to the committee and myself. First I will give a brief explanation of each of the three legal aid regulations that the committee is considering this morning. While those are the first legal aid regulations subject to the affirmative resolution procedure that I have dealt with, and the first such legal aid regulations put before the Scottish Parliament for approval, the financial conditions regulations are part of a regular cycle of review of the qualifying levels in the legal aid regulations. I expect that a minister will appear before the committee in a year's time to consider what further increases might, at that stage, be appropriate.

The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000 provide for the uprating of financial eligibility limits in relation to advice and assistance. We propose that, from 10 April 2000, the lower weekly disposable income limit will be raised from £75 to £76 and the upper limit will be raised from £178 to £180. As a result of those upratings the regulations also revise the contribution bands, which determine the level of contribution paid by those applicants who receive advice and assistance. The eligibility upratings represent a 1.1 per cent increase on the 1998-99 limits. That matches increases proposed in the level of income-related social security benefits, which take effect from 10 April, and will ensure that people on low and modest incomes will continue to have access to advice and assistance when they need it.

The Civil Legal Aid (Financial Conditions) Scotland Regulations 2000 are similarly concerned with uprating the financial eligibility

limits for civil legal aid. With effect from 10 April 2000, they raise the lower disposable income limit—below which civil legal aid is available without contribution by the assisted person—from £2,680 to £2,723 a year, and raise the upper limit—above which civil legal aid is not available—from £8,370 to £8,571 a year. Those changes represent a 1.6 per cent increase on the 1998-99 eligibility limits. Like advice and assistance, the uprating matches social security benefit increases, which are a matter for the UK Government.

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000 make two changes to the legal aid rules for assistance by way of representation, which is a form of advice and assistance.

First, they extend the availability of assistance by way of representation to proceedings before the immigration appellate authorities. Under immigration legislation, if an asylum seeker or foreign national is refused entry to the UK, he or she has a right of appeal in the first place to an adjudicator, who has powers to overturn the decision where it is not in accordance with the law or immigration rules. If this appeal is unsuccessful, leave to appeal to the Immigration Appeal Tribunal may be sought. It may also be possible for the Home Office to appeal to the Immigration Appeal Tribunal against the decision of an adjudicator.

Following concerns in England and Wales about unscrupulous advisers giving potential asylum seekers incorrect and inaccurate advice, the Lord Chancellor agreed that legal aid, in the form of assistance by way of representation, should be made available for appearances before adjudicators and the Immigration Appeal Tribunal. We are not aware of similar problems in relation to the Immigration Appeal Tribunal that sits in Glasgow, but it appears appropriate to provide a broadly equivalent cover for appearances before the immigration appellate authorities, regardless of where they sit. Those regulations will bring Scotland into line with England and Wales.

Secondly, the regulations provide for assistance by way of representation to be made available without reference to an applicant's means for all proceedings under part V of the Mental Health (Scotland) Act 1984. In Scotland, there is at present a requirement for the financial eligibility and contributions tests to apply to mentally disordered persons in mental health proceedings. That is not the position in England and Wales, where applicants before a mental health review tribunal are exempt from the financial eligibility test and are not required to make a contribution.

To bring Scotland into line with England and Wales required primary legislation. The previous Administration promised to correct this anomaly when a suitable legislative opportunity arose. I understand that no such opportunity presented itself. However, using the vehicle of the Access to Justice Act 1999, Scottish ministers now have the power to prescribe proceedings where the financial eligibility and contribution tests will not apply.

The regulations that the committee is considering make provision for useful improvements to the legal aid system in Scotland and for the uprating of eligibility limits. I therefore commend them to the committee.

I move,

That the Committee, in consideration of The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000, recommends that the Regulations be approved.

Motions moved,

That the Committee, in consideration of The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000, recommends that the Regulations be approved.

That the Committee, in consideration of The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000, recommends that the Regulations be approved.—[*Angus MacKay*.]

The Convener: Thank you, minister.

The Subordinate Legislation Committee has reported on those statutory instruments. In its view, the attention of Parliament need not be drawn to any of them. Do any members want to ask the Deputy Minister for Justice a question?

Phil Gallie (South of Scotland) (Con): I will start off by asking about the Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000. It has always been of concern that, in respect of civil legal aid, the thresholds exclude a heck of a lot of people from participating in the process. The very wealthy are okay and the poor are okay, because the thresholds allow them support. Those just above the thresholds are virtually excluded from the system. It frequently works in favour of big business and against the interests of small business. Does the Executive have any plans to examine this problem? If so, how will he address it without raising the thresholds substantially?

Can I also ask the minister why, in respect of the retail prices index, housing elements should be excluded in relation to civil legal aid? Advice and assistance regulations take account of housing elements, according to the Executive note, because that brings simplification. If it brings simplification as far as advice and assistance regulations go, why should it not bring simplification as far as civil legal aid is concerned? I shall hold fire at that point to hear what the minister has to say.

09:45

Christine Grahame (South of Scotland) (SNP): My questions follow the same tack as Phil Gallie's. As a civil lawyer who has done a lot of civil legal aid work, I would like to raise some points. The increases are, to use a limited word, modest. Do you have any plans to review financial eligibility limits in civil legal aid and, separately, in legal advice and assistance? The limits are currently very low and, as Phil has said, one must be either on benefit, or pretty close to it, or rich, if one is to do anything in civil proceedings.

Do you have any plans to review the probable cause test in civil legal aid? It is quite often applied by the Legal Aid Board on a policy position, which is difficult for lawyers to find out. I found it increasingly hard to get cases up and running. I almost had to establish the case on the test for court, which required far too high a level of corroboration, particularly in interdict proceedings.

Do you have any plans to publish separately the cost of civil legal aid and civil advice and assistance? I appreciate the height of the criminal legal aid bill, but I am concerned that the cost of civil legal aid and civil advice and assistance is often blocked in with it. That gives the wrong impression. There is recovery in civil proceedings. When you are publishing those costs, will you give more prominence to the net cost, taking into account expenses recovered, contributions and capital recovered?

Do you have any plans to increase the scope of civil legal aid? I welcome what you have done on assistance by way of representation in mental health proceedings, but do you have any plans in the pipeline to increase ABWOR for industrial tribunals, fatal accident inquiries or children's panel hearings, for which there is no representation?

Do you have any plans to apply a more robust test for applicants in interim interdict proceedings? I have had difficulties in cases where interim interdict has been awarded, and the probable cause test appears to be slack in such cases.

Maureen Macmillan (Highlands and Islands) (Lab): At the moment, the working families tax credit is taken into account for civil legal aid in cases such as interim interdicts with powers of arrest, which particularly affect women who are trying to get some remedy from domestic abuse. The working families tax credit is not taken into consideration when legal advice and assistance is applied for. I would like to make a plea for the working families tax credit to be disregarded for civil legal aid as well, as that would make quite a difference to a lot of people at the lower end of the income scale.

The Convener: I have only one question to add. Where stands the "Access to Justice—Beyond the Year 2000" consultation that took place about 18 months ago? I do not remember exactly when it was published, but I remember sending a submission. Everything seems to have gone quiet. It would be useful to know what is happening with that.

Pauline McNeill (Glasgow Kelvin) (Lab): It is clear that we need to have a general discussion at some future date about the scope of civil legal aid and the rules that govern it. As I understand it, incapacity benefit is not disregarded for the calculation. Are there any plans to change that?

The Convener: That exhausts the questions.

Angus MacKay: The questions came thick and fast. I shall attempt to answer them as best I can.

The first point that I must make on the availability of legal aid relates to the cost of provision. In attempting to uprate the financial eligibility levels, we must take account of the burden that legal aid already places on the public purse. To take decisions blithely—and I use that word carefully—about extending the availability of legal aid or about the level of uprating has dramatic and sharp consequences for the overall legal aid budget. That is not to say that we are not broadly sympathetic to some of the areas that have been mentioned.

With these changes, we are trying to ensure that those on income support and equivalent levels of income continue to receive legal aid and advice and assistance free of any contribution. Those on modest incomes above income support level also receive that, albeit subject to a contribution that is directly related to their disposable income.

The contribution level, if any, that a legal-aided person is required to pay depends directly on that person's disposable income. That is the income that is left after allowance has been made for certain essential living expenses. In determining that, all sources of income are considered when carrying out the calculation. Only in a small number of cases is a legal-aided person required to pay a contribution from their capital.

In some circumstances, people whose disposable income falls just within eligibility for civil legal aid will have to pay a contribution. That simply reflects the fact that the resources that are available for expenditure on legal aid have to be targeted as closely and efficiently as possible towards those who are least able to pay. In addition, it must be borne in mind that the contribution payable is a maximum, which is not exceeded, no matter how much a legal-aided person's case costs.

In 1998-99, the average value of a contribution, where payable, in civil proceedings was £653. The

average cost per case for family or matrimonial proceedings in the sheriff court and in the Court of Session was £1,562 and £8,630 respectively. If the case costs less than the maximum contribution, the contribution is restricted to the actual costs. Nor does the contribution mean that the assisted person is out of pocket in all cases. If he or she wins a case, expenses and damages may well be awarded that will effectively provide a partial or total refund of the contribution.

The Legal Aid Board has carried out a short pilot scheme to allow applicants who are required to pay a contribution in excess of £500 a period of 12, 15 or 20 months to repay it. We are awaiting the board's final conclusions and recommendations in relation to that pilot scheme. Jim Wallace recently indicated, in response to a parliamentary question from Maureen Macmillan, that information on the conclusions of that pilot scheme will be made directly available to all MSPs. That will give us an opportunity for further discussion about how the existing regulations might be developed and refined to assist in cases in which hardship might otherwise occur as a result of the requirement to repay contributions.

I know that there is criticism because the working families tax credit is included in the calculation of disposable income in relation to civil legal aid. In making financial assessments, the Scottish Legal Aid Board makes allowance for the dependent children of an applicant. Family responsibilities are already taken into account to some extent in attempting to assess a person's financial eligibility for civil legal aid. I am sure that the responses that I have given so far will not wholly satisfy members of the committee, but I hope that they go some way towards explaining the purpose and intent behind the regulations.

Pauline McNeill: I have lodged some questions about why incapacity benefit is not disregarded. You have answered the point about the working families tax credit, but I cannot for the life of me work out why incapacity benefit is included as disposable income. Based on what you have said, it seems that the principle should still apply. Are you prepared to consider that?

Angus MacKay: Which principle should still apply?

Pauline McNeill: That benefits should not be included in the calculation of disposable income.

Angus MacKay: The amount of incapacity benefit payable will vary according to individual circumstances. The detailed financial circumstances of people receiving incapacity benefit will also vary widely, but will probably be comparable to those of other people on low or modest incomes. The present position is that it is not regarded as right to disregard incapacity benefit entirely in the calculation of entitlement to civil legal aid or advice and assistance.

Phil Gallie: The minister omitted to comment on the RPI links for civil advice and assistance. Perhaps he could reflect on that.

The other point that strikes me is that, although the minister suggests that those on income support could be guaranteed free legal support, the intention behind Government policy is to ensure that someone who earns is always better off than someone who does not earn. On that basis, will the thresholds that have been set always ensure that those who are just above the income support bandings will remain better off than those who get legal aid because they get income support?

Christine Grahame: When were the allowances for children and other dependants last reviewed? Passing reference was made to capital limits, but those can be quite devastating to older people who are above the level for making no contribution, but who may have capital. Their capital may be all that they have, but the disposable capital limit for advice and assistance remains unchanged at £1,000, which would exclude a lot of people, particularly older people.

I appreciate that the minister may not be able to answer those questions right now, but I would appreciate a reply if I were to write to the minister about them. I may also think of others in due course; he has opened up a war wound for me.

Phil Gallie: Before the minister begins his answers, I would like to reiterate the point that Christine Grahame has made. The limit of £1,000 discriminates against people who are saving for their later years, and that is something that the Government says it is trying to encourage.

Maureen Macmillan: Some people are turning down offers of legal aid because they feel that they cannot afford the repayments. Women who are in danger from violence often feel that they cannot afford the protection of the law. I would like an assurance that the minister will consider that.

Angus MacKay: Phil Gallie, if I understood him correctly, was asking whether there is a poverty trap. I am not persuaded that people make decisions about remaining on benefits or moving into employment on the basis of whether they would have access to legal aid. Perhaps that is not what you meant.

Phil Gallie: It is not.

10:00

Angus MacKay: Our intention is to create a level playing field in court. It is difficult to give a uniform answer on the specific circumstances of

someone who is on income support compared with someone who is not. Circumstances will vary discretely from case to case, depending on the benefits or other forms of income that apply. I am not sure that there is a single, clear answer to the question.

On the point about RPI, as I understand it, no deductions are made for rent, council tax and so on in means assessments for advice and assistance. The limits for advice and assistance already contain built-in average allowances to simplify the means assessment carried out by the applicant's solicitor. The corollary is that advice and assistance limits should be uprated by an index that includes housing costs, which is the RPI. That is the logic that applies.

Phil Gallie: The question is why there should be a difference between the index used for civil legal aid and that used for advice and assistance. The Executive's note on advice and assistance says that the RPI housing index is used for reasons of simplification. If that is the case for advice and assistance, why is it not the case for civil legal aid?

Angus MacKay: Because, as I understand it, the means assessment used by the Scottish Legal Aid Board in civil legal aid applications enables allowances to be made for rent and council tax.

Phil Gallie: But why?

Angus MacKay: Let me come back to that point in a moment, once my brain has had the opportunity to deal with it.

Maureen Macmillan raised the issue of refusals of offers of legal aid. I know that there are concerns about the circumstances in which people refuse offers of legal aid. However, the number of people who refused offers of legal aid fell from 1,974 in 1997-98 to 1,704 in 1998-99, which is a drop of around 300.

It should not be assumed that people refuse an offer of legal aid purely on the ground of the contribution required. A number of other factors come into play. Refusal of legal aid may occur because the case has been settled, because the dispute has reached a resolution in some other way or because the person to be assisted decides that the benefits of a legal judgment would not necessarily outweigh the demands of the contribution.

I am cognisant of the sensitivities surrounding the availability of legal aid, given the group of people targeted and the circumstances in which some of them apply for legal aid. That is why the Scottish Legal Aid Board's report on the pilot scheme will provide a useful starting point for a broader debate around some of the sensitive issues to do with the take-up of civil legal aid and the tapers and contributions that are required.

Phil Gallie mentioned the distinction between civil legal aid and advice and assistance. I have been advised that solicitors grant advice and assistance and that one of the important elements when advice and assistance is sought is that there should be a simple and quick assessment so that advice can be given there and then. A distinctive regime operates for civil legal aid for that reason. If that explanation is not sufficient, I am more than happy to pick up the point in writing.

I accept Christine Grahame's offer to put in writing my response to her question and to any others questions that may arise.

Christine Grahame: I have one final comment. People give up work to get access to legal aid—I have seen it done. It is disingenuous to believe that it does not happen. I know men—clients of mine—who have done it so that they could get access to civil legal aid. It happens.

Angus MacKay: I am sure that it occasionally happens. My general point about poverty traps was that I do not believe that people make a decision about employment on the basis of whether they will be eligible for civil legal aid. There may be circumstances in which people do, but I am sure that those are the exception rather than the rule.

The Convener: I believe that Phil Gallie wants to come back in on the third statutory instrument.

Phil Gallie: Yes. That is the one about mental health. I totally go along with the regulation as far as adults with incapacity go. It seems to tie up with our recent deliberations. However, why is there no element of means-testing for asylum seekers, some of whom come to this country with reasonable amounts of wealth and others of whom earn while they are here? The wealth that they possess should be taken into account when we consider their situation.

I also query the statement in the Executive's explanation that

"there could be claims of unfairness if Scottish Ministers did not provide broadly equivalent legal aid cover for adjudicators".

That suggests that there is no scope for differences between Scottish and English and Welsh law, which seems to cut across the principles of devolution on which this Parliament is founded.

Christine Grahame: Keep going, Phil.

The Convener: Can we move on please? We have a long agenda.

Phil Gallie: Okay.

If it is indeed wrong for the Scottish system to

differ from the system in England and Wales, how does that affect other European states, given the implications of the European convention on human rights? Do other states apply the regulation in a similar way to England and Wales?

Angus MacKay: I thank Mr Gallie for the opportunity to defend the legal systems of the entire European Union but, if he will forgive me, I will not take him up on that point.

My understanding is that asylum seekers who are represented are subject to the same tests and are on a level playing field with other applicants for legal aid. The advice that I have received is that the same tests apply.

Phil Gallie: I could take comfort from the minister's comment if that were the case, but that is not clear in the document. It does not seem to be what the regulation says.

Angus MacKay: My advisers and I are having some difficulty grasping the question.

Phil Gallie: It is about means-testing.

Angus MacKay: For asylum seekers?

Phil Gallie: As far as I can see, asylum seekers would be exempt from many levels of means-testing with respect to advice and assistance and representation. If asylum seekers have some form of wealth behind them, they should pay their share.

Angus MacKay: My understanding is that they are not exempt from the tests that apply to other applicants.

Phil Gallie: Perhaps I have misread the regulation. It appears that I have.

Angus MacKay: I can understand why the original might be slightly confusing. I can reassure Mr Gallie that there is a level playing field for all applicants.

Phil Gallie: In that case, I am satisfied on that point, but that leaves the minister with the devolution aspect to deal with.

Angus MacKay: It is not correct to say that there cannot be circumstances in which the regime in Scotland operates differently from the one in England and Wales. Members may be aware of the media coverage at the weekend about the availability of legal aid for personal injury in England and Wales. The system down there is now entirely different from that in Scotland. The point is that we are trying to create a level playing field where we feel that that is appropriate, as we feel it is in this circumstance.

The Convener: We appear to have exhausted the questions. Minister, do you want to make any final comment or can we move straight to a decision?

Angus MacKay: I see that the committee has a busy agenda so I am happy to conclude.

The Convener: I will put the question on each of the three motions individually.

The question is, that motion S1M-668, in the name of Angus MacKay, be agreed to.

Motion agreed to.

That the Committee, in consideration of The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2000, recommends that the Regulations be approved.

The Convener: The question is that motion S1M-667, in the name of Angus MacKay, be agreed to.

Motion agreed to.

That the Committee, in consideration of The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2000, recommends that the Regulations be approved.

The Convener: The final question is that motion S1M-666, in the name of Angus MacKay, be agreed to.

Motion agreed to.

That the Committee, in consideration of The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000, recommends that the Regulations be approved.

The Convener: All the motions have been carried. The committee must report to the Parliament on its deliberations. There are two options. The first is that we agree to report in simple terms, namely to recommend to the Parliament that the draft instruments be approved and draw the Parliament's attention to the *Official Report* of today's meeting, which could be done within the next couple of days.

The second option is for the committee to consider a draft report at the first meeting after the recess, on 26 April. That is worth doing only if the committee wants to make a point of substance about the instruments. I allowed today's debate to range much more widely than I should have, because I know that people have concerns about legal aid as a whole and that it is an issue to which the committee has said that it wants to come back. However, the report is on the three instruments that were before us today. If members want to go for the second option, we will need to consider how we will deal with the matter on 26 April. My instinct is to go for the first option and report in simple terms to the Parliament. Are we all agreed?

Members *indicated agreement.*

The Convener: We will go for the first option.

I thank the minister, who is welcome to stay and listen to the rest of our proceedings.

Angus MacKay: I was going to suggest that we end with a chorus of "We'll meet again", as we undoubtedly will.

The Convener: I am sure that we will. I thank you, minister, and your team for coming along.

Police Grant (Scotland) Order 2000

The Convener: Item 2 on the agenda is the Police Grant (Scotland) Order 2000. Members will recall that we considered the order very briefly last week but deferred the substantive discussion to give members an opportunity to establish their concerns about the funding of the police. Members ought to be aware that there will be an opportunity to consider equivalent figures for the 2001-02 budget under agenda item 3.

The order is a negative instrument, so there is no motion before the committee. Members should indicate if they have something to say. Do not tell me that you have all had an entire week and have nothing to say.

Phil Gallie: Certainly not. We should take note of the fact that there is a considerable reduction in police numbers across the country. There are also questions about the levels of funding for the various police forces. The objective of this Parliament was to ensure increased police numbers across the land. There does not appear to be any provision for that in the budget figures. I therefore have great concerns about police funding.

I do not want to attempt to prevent this instrument from going through, because it is important to ensure that the police have next year's funding in place as early as possible. However, I give notice that it is the intention of the Conservative group in Parliament to raise the question of police funding at a later opportunity. We feel that the police are being underfunded.

Christine Grahame: I have a brief comment, which I know is not really within my patch. Kenny MacAskill has raised the issue of the impact of the Parliament on policing in Edinburgh. That issue will have to be addressed, if not in a debate, then at least by the Executive. There are special and onerous financial consequences for the police in Edinburgh now that the Parliament is located here, which should not fall solely on the heads of Edinburgh citizens.

Pauline McNeill: That goes beyond what we are entitled to debate.

The Convener: We have just spent 40 minutes going beyond what we are supposed to debate.

Pauline McNeill: That is why I do not feel that I cannot comment on what Christine Grahame has just said. I could go on for ever making the case for Glasgow, our biggest city, which gets no special additional funding for policing football matches and so on. Glasgow police know the difficulties only too well. I want to ensure that that

is on the record for any future discussion about policing.

Phil Gallie made a comment about police numbers. I see again that Strathclyde police crime figures are down.

Phil Gallie: Convener, that is another debate. I will not be tempted into responding to that point.

Pauline McNeill: You started it, Phil.

The Convener: Does anybody else want to say anything? If not, we will move on.

Budget Process 2001-02

10:15

The Convener: Strictly speaking, we will not be considering the Executive's expenditure proposals at this stage of the proceedings. This item is on the agenda because, as members may be aware, we are required—as are all committees—to input to the whole budget process. Although we will have difficulty finding time to do that within the time scale, we must at least make some effort.

I have already notified the Executive that its finance officials are likely to be required to give evidence after the Easter recess. I did that before a formal decision of the committee today simply to put the Executive on notice. Once the committee has made up its mind which witnesses it might want to hear from about potential budget issues, we can go on from there.

Members may wish to think about whether they want to invite witnesses from other interested bodies, because we would need to issue the invitations in the second week of the recess. It would also be helpful if members could identify their general areas of interest at today's meeting—for example, legal aid or police funding. If that is not possible, members should notify their interest to the clerks during the second week of the recess so that witnesses who may be able to attend in May—time permitting—can be identified.

This process will continue over a period—it should end around the end of the first week in June, at which time we are meant to make our final report.

Gordon Jackson: We need to consider this issue. There is a breakdown of the whole budget in the budget papers. The figures for justice are broken down into different spending areas. I have to confess to not fully understanding it—I cannot quite work out where all the figures come from. I can see the £571 million, but I do not understand where the other £300 million or so comes from.

If I am correct, we are entitled to consider the justice department's spending priorities and how it has broken down its budget between, say, the police, legal aid and so on. I would have thought that we would want the Minister for Justice to talk to us about how he has allocated his spending priorities—

The Convener: Within the budget.

Gordon Jackson: Within his own budget. I should, as always, declare an interest, in that a bit of the justice budget normally goes into my pocket.

The Convener: Via legal aid, we hasten to add.

Gordon Jackson: It is important that the

minister comes to the committee to explain how his internal priorities are broken down. I would not feel able to query his overall figure, but I could argue about how he spends it.

The Convener: At the moment, we have simply put the Executive's finance officials on standby. What you say is useful, Gordon; it is something with which we would probably all agree.

Michael Matheson (Central Scotland) (SNP): I would welcome an opportunity to have someone along from victim and witness services. In some parts of the country, there is concern about funding for those services. There seems to be inequality in the way in which money is distributed to organisations.

I note from page 64 of the document that between 1999-2000 and 2000-01, the budget estimate for victim and witness support is due to decrease, although I concede that that is an estimate at this stage. Given the concerns that have been highlighted to me, I would welcome an opportunity to hear from someone from Victim Support Scotland or another organisation on the implications of this issue for them and about the specific problems that they are encountering.

The Convener: That is helpful at this stage.

Christine Grahame: At the risk of being highly unpopular, I want to raise a couple of issues relating to the profession itself—solicitors. There was a report in the paper about a criminal practitioner who packed it in because of the fixed fee payments. It would be interesting to hear from the profession about the impact of legal aid payments on access to justice.

Secondly, we should hear from someone representing the sheriffs—it would be interesting to find out how budgeting for the courts is affecting access to justice. I found that useful last time.

Euan Robson (Roxburgh and Berwickshire) (LD): I would be grateful if someone from the Scottish Prison Service would come and explain the differences between the outturn figures, the estimates and the plans—they represent some of the most marked differences in the budget headings. It is important that we find out why there is such a difference between the outturn figures and the estimates.

The Convener: We are compiling a long list of potential witnesses here. Does anyone have any bids at this stage?

Mrs Lyndsay McIntosh (Central Scotland) (Con): The District Courts Association?

The Convener: The District Courts Association.

Mrs McIntosh: The list is becoming huge now.

The Convener: Yes it is. Given the time that we have available, we will have to rationalise this and decide how to allocate space for those witnesses.

Gordon Jackson: I do not want to make the list too long, but if we are now inviting organisations along to see whether they think that they are underfunded—

The Convener: They will all say that they are underfunded.

Gordon Jackson: They will all say that. However, I would like to hear from the Crown Agent about the funding that is given to the whole fiscal Crown Office system, which has historically been badly underfunded. I do not know whether the Crown Agent will say that but, as we are carrying out such an exercise, he would be an obvious choice.

The Convener: The papers that were sent out contain lists of questions to which we are supposed to supply answers. They include questions about whether the aims and objectives are clear and unambiguous and so on. There are more general issues that we require to deal with.

This could be a detailed piece of work. I am concerned that the committee's ability to input to it will be constrained by the amount of other work that we are doing. Whatever we manage to do on the budget scrutiny, I will be asking the committee whether it agrees that, owing to the rest our work load, we cannot do this the justice that it deserves. That is a concern. We could probably spend the whole of the next two months doing this—and quite rightly too, because it is extremely important—but we will not have the capacity to do that.

As I said, we will take away the list of potential witnesses. It may be that some of the individual organisations can submit in written form the information that we require. We will do our best to timetable as much as possible into the agenda. However, we are constrained by some of our other work, at least one aspect of which is coming up on the agenda later.

Phil Gallie: We are constrained because of the heavy legislative programme that we are trying to push through the Parliament. To some extent, we are trail-blazing. I recall that, last year, convener, you got a bit shirty with me because I suggested that we were overloading. The capacity of individuals to take on board all this information and to deal properly with bill after bill is limited. People cannot absorb all the information. If we take written information, we have to read through it and understand it.

There comes a point when we have to say to the Executive, "Sorry, but the legislative programme is too heavy for one committee to deal with." I do not know whether something can be done about that

within the committee structure, but if the Parliament is to work and if we are to have good scrutiny and good legislation, proper time and effort has to be allowed for each task.

The Convener: You will not find any disagreement from me or, I suspect, from anyone else on the committee. Each of us is aware of the impact of the work load on the committee. I regret that it will not get any less. With the introduction of a new bill that was not previously announced, it will get worse rather than better.

It is entirely appropriate that the committee should make its views known. There are already concerns in the conveners liaison group about timetabling and dealing with the work loads that some committees are developing. In the next week or so, the Rural Affairs Committee will be in much the same state as us.

Christine Grahame: My point is ancillary to Phil's. Obviously, we have to deal with the Executive's legislation—I have no problem with that. However, my concern is that the balance of the committee is tipping and we are now unable to take forward programmes that we took on. Very early on, the committee committed itself to initiating its own work. We have done a great deal of investigation into prisons and a lot of work on domestic violence—we are coming to that later. We have a duty to hold the Executive to account in other ways, for example, over the budget. Matters that we wish to consider on the justice budget go to the heart of justice in Scotland. If something is deserving of full scrutiny, I would like the committee to give it that scrutiny. I am unhappy about the way that we are unable to get on with other matters. I would give the convener my full support in making that plain to the conveners committee and to the Executive. Things are getting worse—we should do something.

Michael Matheson: My concerns are broadly similar to those of Phil and Christine. I am concerned that an issue such as the budget consideration is effectively having to be squeezed in when, as Christine rightly pointed out, it goes to the heart of the justice system in Scotland.

I recognise that this matter has been raised at the conveners liaison group. My concern is whether anything is actually happening. We have to be clear with the Executive—if the committee is to function properly, we cannot sustain the work load that it is passing on to us in the current legislative programme. Action should be taken on that if we are to function properly. I am concerned that, although we can continue to moan about this, nothing will actually happen in response—these things are continually put on to the back burner. Convener, I would like to record the fact that we have to say clearly to the Executive—through your own offices or through those of the conveners group—that we cannot continue as we are at present.

Phil Gallie: We have to remind the Executive that this Parliament, unlike Westminster, has a rolling programme. We are not tied into meeting deadlines by the summer recess or by an October adjournment of Parliament. The Executive must recognise that and the fact that we may be trying to squeeze too much into the pot.

The Convener: As a result of this meeting, it may be worth while our drafting a letter to the relevant authority to state our concern about the fact that we are having to squeeze in the budget scrutiny because of the rest of our work load, which is not satisfactory. I will write, saying that the committee is seriously concerned about its ability to function as it is supposed to.

We have a helpful list to be going on with. That is useful to the clerks, because if we are to establish how to schedule things, we need a clear steer right from the start. It might be useful for the clerk to notify all the organisations that we have mentioned that they will receive a formal request at some point and that they might want to get themselves ready to give evidence. This formal scrutiny process will be new to all the organisations as well. We must remember that they will not necessarily be prepared for the process going through in the present time scale.

Domestic Violence

10:30

The Convener: Item 4 on the agenda is the issue of domestic violence. Maureen Macmillan finally secured a meeting with the minister, at the crack of dawn one morning last week. She will report briefly on the outcome of that meeting, after which we will have a brief discussion on the committee's proposed actions.

Maureen Macmillan: The meeting was at the crack of dawn, at 8.30 am on 30 March—the day after I returned from an extremely arduous visit to Brussels.

The Convener: Excuse us if we are not entirely sympathetic.

Maureen Macmillan: I did not expect any sympathy. The meeting was quite brief, and I did not have to argue my case particularly strongly as, right from the outset, the ministers said that they were supportive of the principle of the proposed bill. They cannot, however, commit themselves entirely until they see the detailed draft. I met Jackie Baillie and Jim Wallace, who said that they wanted to be inclusive of as many categories as possible. The committee had discussed the need to ensure that as many cases of abuse as possible would be covered by the bill.

In May, the Executive will publish a white paper on the proposed reforms to family law. The ministers are still quite keen to proceed with their reform of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 at some stage, but that would be connected with occupancy rights and property, which our proposed bill would not address. They saw no problem with our bill fitting in with the legislation that they would introduce. In addition to the white paper in May, the report of the Scottish Partnership on Domestic Violence is due in June.

There was no suggestion that the Executive would take over our bill—it would still be our bill, and the Executive would be happy for it to proceed as a committee bill. The ministers agreed that money would be available for drafting the bill; I presume that time would also be available for its scrutiny in Parliament.

The Convener: Did you get that on tape?

Maureen Macmillan: No.

The Convener: Do you have witnesses?

Maureen Macmillan: There were no witnesses either. They were very cunning in having me there all by myself. I hope that that is not on the record.

The Convener: Did you receive any clarification of what the minister was referring to when he talked about domestic interdicts at the time of his statement in the chamber on family law? Some of us were puzzled by that.

Maureen Macmillan: No, he did not clarify that, although he obviously appreciates the difference between existing interdicts with powers of arrest—which are attached to an occupancy right—and what the committee proposes, which would be accessed if there was violence, abuse or harassment. The ministers want the bill to be as inclusive as possible, and definitely do not want it to deal solely with domestic violence; it could also deal with violence between people who are not living together.

The Convener: Pauline, do you want to speak or are you just waving your pen around?

Pauline McNeill: Both. What Maureen has told us is great news, and she has done a good job. It is relevant in the context of our previous discussion about the committee's not having enough time to pursue what it wants to pursue. For all sorts of reasons, it would be good to start drafting the bill as soon as possible; apart from anything else, it would do the Parliament a power of good to consider a piece of legislation—perhaps the first—that has been initiated by a committee. What timetabling options are available to us?

The Convener: If the committee agrees—and I get the impression that we do—that we should proceed with a committee bill, we must make a report to Parliament, setting out the need for the bill and its contents. We probably have enough discussions on the issue on the record to draft a report. I will not set a timetable for the clerks, as I know how busy they are, but we should try to get a draft report for the committee's consideration. We can then examine and finalise it.

If a draft bill is available when the report is sent to Parliament, we can attach it to the report. I am advised that that is not strictly necessary, but we might find it useful to do that nevertheless. That would mean ensuring that a draft bill was available, and I am not sure how we would get around that. Andrew Mylne will be able to advise us. We will consider the time that would probably be needed to produce a draft bill, and we will fit the draft report in around that. If we send a report to Parliament, it would be better to attach a draft bill. That may mean that we will have to wait a while before submitting the report to Parliament, but it would make the process more concise if we attached a draft bill.

Committee bills are covered by a standing order that states that the bureau must appoint a time scale for consideration of the proposal by Parliament. In effect, the timetabling of the bill as part of the committee's business is no longer a

matter for our agenda; the item moves on to the parliamentary agenda. At this stage, the only concern is the time that it will take the clerks to carry out the background work.

If everybody is agreed on that course of action, we will proceed on that basis. Is everybody happy with that?

Members *indicated agreement.*

The Convener: The proposed bill would be an extremely useful one for Parliament to debate, and I look forward to finalising the report.

I thank Maureen Macmillan for her excellent work.

Remand Prisoners

The Convener: Members have received a copy of the chief inspector's report, "Punishment First—Verdict Later?", although I do not know whether they received it in time to read it. I have read it, and feel that we must comment on it at a preliminary stage, at least; the overall impression—which would bear out our own experience from visits to Longriggend and Low Moss—is that remand prisoners in Scotland are being held in worse conditions than are convicted prisoners. That is not satisfactory.

The report contains much detail, and I was reminded of the young man to whom Scott Barrie and I spoke when we visited Longriggend. He had been remanded in custody four times but had yet to receive any form of custodial sentence; whether he was acquitted when his case went to trial, or whether he was found guilty and given non-custodial punishment, he had been in Longriggend four times. We are in danger of using remand as a form of punishment.

Scott Barrie (Dunfermline West) (Lab): That is a fair point. I have flicked through the report only briefly. It is divided broadly into two parts: one part deals with the conditions under which people are being held, which are appalling in certain institutions; the other part deals with the way in which remand is used. The report does not explore the latter in great detail, but those of us who have worked in the criminal justice system have suspicions about the way in which remand is used by various sheriffs and courts. That is an important point, to which we must return; we will not be able to do it justice today. The issue is not only the way in which people are held in custody—concerning though that is—but the way in which remand is used and the possible alternatives to remand.

The Convener: We might want to consider that issue in the context of the budget process.

Gordon Jackson: I have three points. First, it is difficult to argue that we abuse the remand system as Scott Barrie has suggested. We used to do that; sheriffs used to be guilty of giving people four weeks on remand to teach them a lesson, whether or not they were guilty, but that does not happen much any more. People are remanded, by and large, in the public interest. The courts release people on bail unless there is good reason to keep them in custody. I suspect that some people—Phil Gallie may be one of them—might argue that people are sometimes released who ought to be remanded.

Secondly, provision is patchy. I have visited the unit for remand prisoners in Saughton, which is mentioned in glowing terms in the report; it is a

marvellous facility. It is wrong to suggest that everywhere in the country people are being remanded in conditions of squalor. I understand that Longriggend will begin to shut down this week, and that prisoners who appear in court from this week onward will not return to Longriggend—that institution is finished.

Thirdly, there is a problem with remand. In Scotland, there has been a culture in which the best facilities have not been allocated to remand prisoners. All my life, the culture has been to say that people who are on remand are in prison for a relatively short time and that, therefore, it does not matter what happens to them, whereas people who are in prison for a longer term must be provided with facilities. The latter is true: if people are in prison for years, a level of facility must be provided—it is a management issue to provide facilities. However, in C hall at Barlinnie, which has been the remand hall for the whole of my professional life, people were just locked up for 23 hours a day and nobody cared much about it because of the culture that I described.

We need to emphasise that, if that has been the culture—and I believe that it has—it must be changed. We should point to Saughton, and to what its governor—who has just left—did in allocating resources to remand prisoners. If any member of the committee wants to see the way in which a remand unit can be run, they should ask to be shown around Saughton. It is a fabulous example, and is worth having a look at.

The Convener: The patchiness of provision is an issue, but the problem that we will face after 3 October is that the variation in provision will be a ground for a claim under the European convention on human rights. That matter must be addressed with some urgency.

What alarmed me most about the report was the indication that nobody in the Scottish Prison Service is employed to look into the issue of remand prisoners—there is no national strategy for those prisoners and no individual with whom the buck stops. The Scottish Prison Service must address that.

Christine Grahame: That is right. I was unable to get into the body of the report in the time that was available, but I had the opportunity to read the introduction, the summary of recommendations and the questionnaire. Paragraph 8.24 states that

"there is no written policy for remand prisoners, though we understand that SPS HQ is in the process of preparing one."

There is no standardisation, which is important. Also important is the fact that remand prisoners are regarded as category B prisoners—that surprised me—and as a threat to the public, although they are not often that. I am sure that the fact that they are housed in the worst conditions, because they are in prison only for an interim term, will give rise to ECHR claims.

We should also bear in mind the increasing number of young women who are on remand, and the changing culture that Clive Fairweather described. Many people who are on remand have drug problems; that is a social issue that gives rise to a different kind of criminal behaviour. Remand is obviously not the answer for people in that situation. Finally, in all this mess, there is the cost to the public purse that need not be there. That money could be used differently, to provide alternatives to the expensive remand system, in which the average cost is £28,000 per prisoner.

The Convener: Before I call Pauline McNeill, I will bring in Michael Matheson and Euan Robson, as they indicated earlier that they wished to comment.

10:45

Euan Robson: I was interested in the report's comments on the categorisation of prisoners. When we visited Longriggend, we heard that all remand prisoners are in category B; they are viewed as being a danger to the public, despite the fact that some of them have been remanded for shoplifting offences. That point is brought out in the report. It is interesting that the report suggests that there could be some management flexibility if the categories were split, with the majority of remand prisoners becoming category C prisoners. The report also suggests that that would lead to a reduction in costs in the longer term. That is an important point, as that proposal would deal with different issues: costs, proper management and the fact that different types of prisoners mix together. Prison officers at Longriggend told us that it was most unfortunate that dangerous prisoners mix with genuine category C prisoners when they are in the two dining halls for meals.

The other point that struck me forcibly was that some of the facilities for access to lawyers were not good. I suspect that that will be challenged under the European convention on human rights because of the provisions of article 6, which deals with defence preparation. If prisoners have difficulties in preparing their defence because they do not have adequate access to their lawyers, the Executive must take that on board. A number of other issues are raised in the report—one could do a good day's work just spending some time on it. It might be interesting to hear from the report's authors, if that were possible.

Michael Matheson: Quite a bit of the report focuses on the difficulties of remand prisoners' living conditions and so on, but I am particularly troubled about the provision of services to remand

prisoners, which the report also highlights. I note with particular concern paragraph 3.28, which refers to prisoners with mental disorders and the fact that there appears to be a lack of support systems for mentally ill prisoners. Obviously, staff are concerned about that, as they do not have the necessary skills to deal with those prisoners. That was reflected in an earlier paragraph that referred to the way in which remand prisoners are seen by a doctor when they arrive and thereafter by a nurse—

The Convener: Are you speaking about Barlinnie prison?

Michael Matheson: Yes. Prisoners must indicate by 6.30 am if they wish to see the doctor on the same day. I am particularly concerned about the number of people who are sent to prison who have a mental disorder; I am concerned not only about the services that are provided in prison, but about preventive measures for people with mental health problems. Given that the report contains more than 17 recommendations for the SPS, we have a duty to ask the service what it will do to tackle the issues that are raised in the report. We should consider the wider issue of services for people with mental health problems; if need be, we should take evidence from organisations that are specialists in that field on what action the SPS should take.

The Convener: Lord McLean is conducting an inquiry into mentally disordered offenders, and information from his committee may well be published quite soon.

Michael Matheson: I am aware of that report, but there is an issue within the SPS on the provision of medical services to prisoners who have mental health problems. It is inevitable that we will continue to lock up people who have mental health problems, and we must ask whether the mechanism by which services are provided is the most appropriate one.

The Convener: Do we know whether the McLean committee's remit extends to post-conviction treatment of prisoners, or is it looking into the pre-conviction scenario only?

Gordon Jackson: I am not positive. I understand that Lord McLean is examining the whole area of how we deal with—in the broadest sense—mentally disordered offenders. He and his committee have been all over the world—they have been to America and all over Europe. He has not just spoken to prison services, but has looked at best practice worldwide. We will get a full report from him, at which time I hope that we will be able to consider this issue.

The Convener: We will contact the McLean committee to establish its remit and to find out whether it is examining the situation both in prisons and in courts. That would be useful information.

Pauline McNeill: I have not had a chance to read the report in detail, but from what I have read, it appears that the system is quite shocking.

In general, the underlying philosophy on remand prisoners must change. We must shift the emphasis more towards the fact that prisoners on remand are innocent, as at the moment they are not separated from other prisoners at all. Changing that philosophy will be a hard task.

I agree with Euan Robson's comment that reading the report would probably be a good day's work; perhaps we should set aside more time for it. I would be in favour of that.

We should make one or two recommendations on areas that we feel strongly about. For example, I feel strongly about the treatment of remand prisoners. There has also been growing media interest in that—a piece on the practice of slopping out in Barlinnie was shown on BBC about two weeks ago. If we were to make recommendations, I would highlight that issue; ending that practice for remand prisoners should be a priority. One way or the other, we should spend some time at a future meeting on this report. We should make two or three recommendations that we feel strongly about and that we can put to the Executive, to try to turn around the position of remand prisoners.

Phil Gallie: I am concerned that we should try to temper our justice system to the facilities that are available. I remind members that, just a few weeks ago, the Minister for Justice took £13 million out of funding for prisons. Much of that money was geared towards improving facilities in prisons—that is the basic problem.

Gordon Jackson and Pauline McNeill commented that it was ridiculous that people who have not been found guilty of crimes should be subject to the worst prison conditions; something is wrong with the system and that should be addressed.

I do not want to take a step back, but Euan Robson referred to people being remanded who were charged with offences such as shoplifting. If he were to talk to retail organisations, he would find that shoplifting is a multimillion-pound business and that the people who are involved in shoplifting are hardline crooks. Everyone—the old, the disabled, people who cannot look after their own affairs—is persecuted when groups of such criminals move into an area. Shoplifting is a serious crime that affects everyone, and just because someone is on a shoplifting charge should not mean that they are not remanded.

Only yesterday, an individual who had been on bail was found guilty of murder. I am concerned

about Gordon Jackson's suggestion that the courts are not applying bail properly and that they are sometimes reluctant to put people on remand. I take a slightly different view on that point.

I was astounded by Mr Fairweather's comments when he attempted to defend the prison service's meek acceptance of the £13 million reduction in funding.

I want to examine the report in more detail before commenting further, but I am sure that all committee members are concerned about the situation.

Maureen Macmillan: I have not yet read the whole report—a copy is still chasing me round the country and has not quite caught up with me yet—but Fiona Groves kindly photocopied the section on HM prison Inverness for me. That reminded me that the same point on the importance of good induction programmes for remand prisoners was made in a previous HM chief inspector of prisons for Scotland inspection report, which was one of the first issues that the committee considered. Inverness prison has a good induction programme, which has been held up as a model, yet when I asked about such programmes during our consideration of that report, the witnesses said, "Oh, well—they are up there in the Highlands, where everyone is very nice and the prisoners do not give much trouble." That attitude was possibly a little patronising. If Inverness prison is being held up as an example of good practice, other prisons should examine what it is doing.

The Convener: I direct members' attention to paragraph 1.26 of the report, which indicates that Scotland sends

"a significantly greater proportion of people to prison on remand than any other European country".

The report indicates that not much research has been done internationally on remand prisoners, but such statements about Scotland and imprisonment continually surprise me. I do not understand why that sort of disparity arises.

It may be that, because we have a strict time limit on remand, the courts take a more relaxed view of putting people on remand than do other European countries. For example, the system in Spain is generous, with a fixed limit for custody on remand of four years. It may be that judges in Spain think very carefully indeed about putting people on remand, as they know that they will spend a lengthy time in custody. The short, 110-day rule in Scotland may lead to it not being regarded as a particularly big deal to put someone on remand—perhaps that is what is beginning to happen.

That does not take away from the point made by Phil Gallie. A journalist telephoned me yesterday about the case that Phil mentioned, and I pointed out the irony of the situation. We have a report that talks about the fact that over one third of the people who are remanded in custody are charged with crimes of dishonesty—most people would not categorise those prisoners as dangerous—yet someone who was found guilty of murder was out on the streets. That raises questions about the where the balance lies.

Scott Barrie: Ironically, I wanted to raise the same point about us having more people on remand than is the case in most European countries.

Phil Gallie glossed over the fundamental point that less than 50 per cent of people who are remanded end up with a custodial sentence; we should debate that point further.

It is clear from members' comments that the committee has many views about this subject and that further work must be done, arising not just from the report but from other investigations into the prison service. We must return to the subject, given that the report also talks about the huge increase in the number of unruly certificates for 14 to 17-year-olds that have been imposed during the past few years. Members will remember that I wanted to discuss youth custody; we will talk about that subject when we submit our bids for future work. The committee should consider a number of issues that arise from the report.

The Convener: We have not yet commented on the important chapter on "Alternatives to Remand in Custody". Perhaps we should focus on that subject, as the provision of alternatives to custody is patchy. Magistrates and sheriffs often feel that they have no alternative but to remand, although they might have considered a rather different approach had alternatives been available within their area.

We are having an interesting discussion, but we must focus and decide where we want the debate to lead. I hesitate to suggest that we might want to consider to whom we should issue invitations to come to talk to the committee. We cannot fix a specific date, as we do not know when time might be available.

11:00

Christine Grahame: I referred to the misuse of resources—the money spent on remanding people could be better spent elsewhere. Following Scott Barrie's comments, I am wondering how we can focus the investigation. We could spend for ever on the work that we have already done on women prisoners and young offenders, which links neatly with remand and the use of resources for alternatives to custody. I feel that we have lost the impetus that we gained from the questions and

research that we carried out earlier. We now have the opportunity to make use of that work and draw it into a report on our views.

Gordon Jackson: If we are going to take any sort of evidence on the matter, we must focus on two issues. First, there is an issue for the Prison Service about how to treat people who are remanded. Secondly, we must consider the basis on which we remand people. We do not seem to be in agreement on whether we remand too many people or even whether we remand the wrong people. That decision has nothing to do with the Prison Service or the Executive—it is a 100 per cent judicial decision. The Prison Service will simply tell us that it has no control over that.

If we are interested in whether the right people or the right numbers of people are remanded, we must ask the judges to come and tell us the basis on which they remand people. I would go to the top of the house; I would invite the Lord President to come and tell us the basis on which people are remanded. The decisions that he makes on remand prisoners are tempered down through the system. Every person who is refused bail can, and often does, appeal to the High Court against that decision. The culture of remand is decided down the road from the Parliament. Usually, one would go to the other top judge, the Lord Justice-Clerk, but as he is conducting the Paddington rail inquiry, I suggest that we hear from the Lord President.

In the first instance, we should write to the Lord President and ask him or someone similar to come and justify why people are remanded. Anyone else that we ask will just pass the buck and say that it is the decision of the Lord President, so we might as well go to the top of the house.

The Convener: Gordon Jackson's comments are very useful. At the very least, we should write to the Scottish Prison Service and the Minister for Justice to ask them to put their preliminary response to the report in writing to the committee. We might also want to consider the issue of the remand culture to which Gordon referred. It might be difficult to organise evidence from the Lord President because of his commitments. However, we should at least indicate our desire to hear from someone on the matter. Andrew Mylne has just reminded me that the Executive response is printed in the report.

We need to flag up our immediate concerns. There is some difficulty because of the time. We cannot currently say when we might want to take evidence from people on the matter. We can only compile a short list of potential witnesses and make progress as and when the time becomes available. As members will recall from the way in which we went through the Adults with Incapacity (Scotland) Bill at stage 2 and the Abolition of Feudal Tenure etc (Scotland) Bill at stage 2, time can become available at short notice.

Christine Grahame: When you write to the Scottish Prison Service, could you ask it to advise us when its report will be available? We will want to take evidence from the SPS after reading that report. Paragraph 8.24 of "Punishment First—Verdict Later?" says:

> "Currently, there is no written policy for remand prisoners, though we understand that SPS HQ is in the process of preparing one."

It would be useful to know when that will be ready.

The Convener: That is in respect of policy; I would like some administrative recognition that there should be a specific desk at which the buck stops. Nobody in the central office of the SPS appears to be responsible for remand. That is a cause for concern.

Phil Gallie: I would like to look over the previous *Official Reports* of the Justice and Home Affairs Committee, which I have not yet done. I would like to see what Mr Fairweather said in defence of the Prison Service when we heard evidence from him and compare it with the comments in the HMI report. The report has not been produced overnight. There could be some conflict between his evidence to the committee and what is said in the report.

The Convener: You can do that.

Pauline McNeill: I am clear about the direction that we should take. Of the two distinct areas of concern, one is more urgent than the other and that is the conditions of remand prisoners. Euan Robson mentioned prisoners not being able to get access to solicitors, not being free to move about and not being allowed to watch television and so on. That is an urgent matter and I would like it to be prioritised. As Gordon Jackson suggested, we must also tackle the whole remand culture from the top. We can approach those distinct areas in tandem. If we write to the Minister for Justice, we should indicate that those are the two distinct areas that we want to consider.

The Convener: It is important that we keep the issue moving, even if we are not able to devote vast amounts of time to it. There are only two more items on the agenda, so we have time to discuss the matter further if members wish. However, as members need time to read the report in more detail, it might be preferable to come back to the matter at a later meeting.

We will consider a draft prison report at the first meeting after the recess. Does the committee agree to consider that report in private, as is our normal practice with draft reports?

Members *indicated agreement.*

Proposed Regulation of Investigatory Powers Bill

The Convener: Item 6 on the agenda relates to intrusive surveillance. The proposed bill has caused a certain amount of puzzlement, because there has not been much information about it. Today, I would like to have a preliminary discussion on potential witnesses for either stage 1 or pre-legislative consideration of the bill.

Members have received a note from the clerk on the background to the bill. The Scottish bill will effectively mirror part II of the Regulation of Investigatory Powers Bill that is currently going through the House of Commons. I have e-mailed the URL of the relevant website to the clerk. Has anyone looked at that? I see that Scott Barrie is waving his copy of the Westminster bill.

The Scottish bill is being introduced rather quietly. There has not been a huge fanfare to announce it. That means that there has been a certain amount of speculation in the press. I know that the Executive is considering including in the Scottish bill provisions that are unrelated to those in the UK bill and that are also unrelated to intrusive surveillance. I am being careful with my comments because I am not very sure whether that is widely known.

This item is extremely difficult to handle as there have been no press releases or announcements about the bill. However, I know that a bill will be introduced in mid-May. The committee is being asked/required—I say "asked" because the Executive cannot do anything other than ask, and I say "required" because that is how the request has been put—to have the bill turned around and completed by the summer recess. I have advised the Minister for Justice that, to achieve that deadline, we would require to do some work on the legislation before it was introduced, which is why we are discussing it now. Although the Executive has at least made a commitment to provide us with a memorandum on the bill, if not the draft bill itself, it is obviously not available today.

Finally, I have also advised the minister that standing orders will have to be suspended to remove both two-week gaps between stage 1 and stage 2 and stage 2 and stage 3; otherwise, the Executive's timetable for the bill's passage will be unachievable. That is assuming that the committee can begin consideration of the bill at our meeting on 2 May, which means that we might have to start taking evidence without a draft bill before us. Even if we start on 2 May, standing orders will need to be suspended to achieve the bill's passage through Parliament by the summer recess. However, there is pressure on the committee to meet that deadline.

I have already said that we will not be doing any bill work at the meeting immediately after the Easter recess, and the first potential meeting at which we can discuss the bill in any detail will be on 2 May. I want to ensure that we will not be having a preliminary discussion at that meeting and that we make a decision now about which initial witnesses we should invite. We should certainly ask the Minister for Justice and the appropriate bill team to attend that meeting. Furthermore, in view of some of the issues covered by the bill and outside comments on what the bill might do, we should ask someone from the Scottish Human Rights Centre to attend. Committee members might have other suggestions about people to invite.

Michael Matheson: I suppose that I should be careful about what I am saying in case someone else is watching or listening.

The Convener: It is all on the record, Michael.

Michael Matheson: I am aware of that.

There is obviously some suspicion about this bill, not only because it was never really announced, but because we have been somewhat deprived of information about it. I understand that Scotland has an unenviable reputation for direct and intrusive surveillance and that, compared to other countries, we have an outstanding record on a number of those areas. As a result, I have particular concerns about the bill's possible provisions, and I support your recommendation to invite the Scottish Human Rights Centre as I am sure that the organisation has a lot of background information to support its own potential concerns.

Furthermore, we should expand consideration of the bill to include a more international perspective and ask the Scottish Human Rights Centre to examine our position on this bill in relation to other European countries.

11:15

Phil Gallie: As far as I can see, the clerk's briefing note covers two issues: first, the Westminster bill, which I have no difficulty about letting the House of Commons get on with and on which we will be having a debate later this week; and secondly, the Scottish Executive's own bill. Although I sympathise with your difficulties, convener, we are trying to decide on a time scale for the consideration of the bill when we have no idea what the Executive has in mind. The whole thing is absolutely ridiculous. For example, you have suggested a suspension of standing orders before we have any idea of the Executive's proposals.

The Convener: I cannot disagree with you, Phil.

We are in an extremely odd position. Although we must make some preliminary decisions about witnesses to get ahead of the game, we do not yet know what they will have to give evidence on.

Phil Gallie: Complying with that wish and having made my earlier comments, I think that we have to consult consumer associations, business organisations and even churches, as the Executive's intention behind the bill probably has moral implications. We might also need to take evidence from victims organisations; indeed, many people might be influenced by this legislation. We should certainly invite members of business organisations, on whom the impact could be quite considerable.

The Convener: On Thursday, there will be a 45-minute debate in the chamber on a motion that has come to be known for reasons that no one understands as a Sewel motion—which I presume refers to Lord Sewel—on the Regulation of Investigatory Powers Bill. Although the bill is going through the House of Commons, aspects of the bill—over and above the part of the bill that will be mirrored by the Minister for Justice's bill—should be arguably dealt with in Scotland, because they affect criminal justice here. Thursday's Sewel motion is basically to allow Westminster to legislate on devolved areas.

I am trying to explain the situation clearly because, as Thursday's motion concerns the Westminster bill, which the Scottish bill will partially mirror, there is a danger that we might get confused about the subject for debate. We could invite an endless number of witnesses to give evidence on the bill; for example, it will directly impact on organisations such as the Internet Service Providers Association. However, although I appreciate Phil Gallie's comments on that point, we should not replicate the consultation on the Westminster bill, because the Scottish bill will not mirror the whole of that bill. We must focus in—as much as we can, given that we have so little information—on what we need to do about the Scottish bill.

We have recommended inviting the Scottish Executive and the Scottish Human Rights Centre; I think that it would also be helpful to invite the Law Society of Scotland, which has already submitted evidence on the Westminster bill and obviously has views on such legislation.

Christine Grahame: I actually have something from the Law Society of Scotland that I printed off from one of my e-mails this morning.

Everything surrounding this bill has been very top secret. I should read the newspapers more often. I am concerned about the fact that the Westminster bill creates offences in the area of Scots criminal law, which means that it impinges on devolved areas and, as such, raises very serious constitutional issues. For example, are we being bounced into conceding principles that require careful examination? The areas of reserved powers, such as national security and so on, are very clear; however, I am concerned when legislation intrudes on and erodes the independence of Scots criminal law.

The Convener: I have had a memorandum from the Executive about the Regulation of Investigatory Powers Bill and Thursday's motion. Have other members received a copy? It seems not. We will try to get copies circulated to everyone today.

My understanding, from the conversations that I have had, is that the motion on Thursday would be to allow Westminster to go ahead and legislate with respect to HM Customs and Excise and the intelligence services. Matters concerning those bodies are reserved, despite the legislation covering criminal justice in Scotland. I think that that will be Thursday's debate. I may be wrong—I am just as confused as everyone else, and have not had time to read everything.

We clearly want to take a view on some of the issues concerned before Thursday. I am concerned to establish at this stage who we are going to invite to our meeting on 2 May. We will have the Minister for Justice and representatives of the Scottish Executive, the Law Society of Scotland and the Scottish Human Rights Centre coming along, but my biggest concern at this stage is not knowing whether I will have further, better information about what we are inviting them to talk about by 2 May.

I also have concern about other sections of the bill, which effectively have nothing to do with intrusive surveillance. It could mean having to invite other witnesses as well.

Pauline McNeill: I agree, convener. I feel a bit confused about this issue at the moment, because I do not really understand what it is about. The first thing that we must do as a committee is to ensure that we know exactly what it is that we are being asked to consider. It might be useful to get more detailed briefing before 2 May, even if that is during the recess. I would certainly welcome that.

I would like to pick up on a point that Phil Gallie made right at the start of the meeting: it is not just a question of time, but one of sorting out the business so that we can all absorb what we are being asked to make decisions on. I think that Phil's point was important because we have had one or two meetings in which we switched between three different pieces of legislation. I confess that I found that a wee bit difficult.

We also have to consider preparation. We have to think carefully about the subjects that we slot in.

Are we able to say at this stage what other subjects we will be discussing on 2 May? It would help us now to know that. My feeling is that, until this is cleared up, I would not want to hear too many witnesses. I want a starting point, and ideally it would be the witness who comes along first who is the most helpful in giving us a grasp on what we are being asked to deal with.

The Convener: That will be the minister and the Executive team. At the moment, the agenda for 2 May will include this item and, potentially, budget evidence. I am sorry that I cannot be more helpful about this, but I am slightly in the dark.

Mrs McIntosh: It is not your fault, convener.

The Convener: My biggest concern is about getting invitations out. We need to do that so that people are aware of the date. I will certainly write to advise the Minister for Justice and the Executive that we want to address this matter substantively on 2 May and that, for us to do so properly, we will really need to know some of the detail before that date. Even if the draft bill is not available, I would like the Executive to give us at least the memorandum before 2 May, so that we have some way of focusing on that date. We do not want to end up with witnesses in front of us without our having much of a clue what to ask them about, and then having to ask them back when we are clarifying the situation.

Is it safe enough to leave it at that at the moment?

Phil Gallie: I have a number of suggestions about the people who could come along. This bill is all about police powers, and I think that it would be essential to find out the police views on the requirements for change.

The Convener: The problem with the police is that three different organisations could potentially be asked: the Scottish Police Federation, the Association of Scottish Police Superintendents and the Association of Chief Police Officers in Scotland. We could invite all three, or we could start at the top.

Phil Gallie: I would opt for ACPOS.

Pauline McNeill: Could we open the list of witnesses? I might want to make some suggestions.

The Convener: Absolutely. All I am trying to do now is to anticipate the most obvious choices on which we can all agree and which will require no real forethought. Let us get the invitations out for 2 May.

Christine Grahame: This is about how we go about selecting witnesses. Some are dead obvious choices, but, in the course of our evidence on prisons, we omitted the prison visitors, which really was not our fault.

Is there some way that we can get this into the public domain? We are not committed to taking the witnesses, but if we are taking evidence, it would be interesting if any interested party or group contacted us. I can see inherent difficulties with that, but there are problems with our relying on each other to come up with ideas.

For the Adults with Incapacity Scotland Bill, people came to us, saying, "We didn't know." I appreciate that this is out in the public domain, on the internet, but not everyone has access. I wondered if we could think about some other approach.

The Convener: I will speak to the clerk about this: it is entirely up to us if we want to put out a press release dated today, making the general invitation. The problem is that we cannot guarantee that the newspapers will print it. We would be entirely in the hands of editors. It is the only way that we can go about doing this, however.

Christine Grahame: That is fine.

The Convener: Given the nature of the Regulation of Investigatory Powers Bill, and given some of the comments from lobby organisations about their concerns, I find it extraordinary that I have not been getting lobbied like mad already—I have not been. To an extent, we are also in the hands of interested organisations' keeping abreast of changes in their areas of interest and coming to us with their concerns.

I know that there is concern about some of the overall implications of the bill among internet companies, web design companies and companies involved in e-commerce. That, however, is more about the Westminster bill. I am finding it a little difficult to focus on whether there are separate, different considerations applying specifically to part II. That is where we should focus.

Christine Grahame: I was suggesting a general procedure for dealing with something that requires witnesses. Perhaps it is just a matter of publicising it in the papers and doing the best we can.

The Convener: It is already publicised. Every time that we have such a procedure, it goes in the business bulletin, on the net—everybody knows that that is the first call for information. We are able to put out a press release from this committee to invite interested parties to contact committee members, but there can be no guarantee that that will get the kind of widespread coverage that we might wish.

Short of compiling our own list of potential interested organisations and writing to every single one of them ourselves, which I do not think we can

be in the business of doing, all we can do is rely on interested organisations' being up to speed and approaching us. We are all, as is only appropriate when discussing surveillance, completely in the dark. [*Laughter.*]

Michael Matheson: Maybe the story should be that the Justice and Home Affairs Committee is looking for help from anybody who knows anything about this bill. [*Laughter.*]

The Convener: Okay. We have enough potential witnesses to get us through the meeting on 2 May, assuming that we know what to ask them by then.

I propose a five-minute adjournment before we proceed to the final item on the agenda—not least because I have drunk 250 ml of water.

Mrs McIntosh: A comfort stop.

Christine Grahame: That is on the record.

The Convener: We will then move on to consider our draft Carbeth hutters report. That item will be taken in private, as previously agreed.

11:29

Meeting continued in private until 11:56.

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