JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 27 June 2000
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
24th 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

ACTING SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 1

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 27 June 2000

(*Morning*)

[THE CONVENER *opened the meeting at 09:32*]

The Convener (Roseanna Cunningham): Good morning, everyone. We are hoping to get through today's business as quickly as possible—most of today's amendments to the Bail, Judicial Appointments etc (Scotland) Bill are concessions to the committee, so I hope that there will not be too much disagreement. I have received no apologies for absence, but I am aware that Christine Grahame is likely to arrive late.

Scott Barrie (Dunfermline West) (Lab): Kate MacLean is a victim of crime—her car has been broken into.

The Convener: Will Kate make it to the meeting?

Scott Barrie: She is waiting on the police.

Michael Matheson (Central Scotland) (SNP): I saw Pauline McNeill crossing the road—but in the wrong direction.

The Convener: No one else has submitted apologies, and I am working on the assumption that people will appear at appropriate moments.

The Finance Committee report on the Executive's budget proposals for 2001-02 has been published and may be obtained from the document supply centre. Members may have seen newspaper coverage on it this morning. The Justice and Home Affairs Committee report will be an annexe to that document.

Item 1 on the agenda is a decision on whether to take item 3, consideration of a brief draft committee annual report, in private. Are we agreed to take that item in private?

Members *indicated agreement.*

Bail, Judicial Appointments etc (Scotland) Bill: Stage 2

The Convener: Item 2 is stage 2 consideration of the Bail, Judicial Appointments etc (Scotland) Bill. The procedures should by now be familiar. I will not read through them again, as we had stage 2 consideration of the Regulation of Investigatory Powers (Scotland) Bill last week and people's memories do not need to be refreshed.

Section 1—Consideration of bail on first appearance

The Convener: With that, we come to amendment 1, in the name of Phil Gallie, which is grouped on its own.

Phil Gallie (South of Scotland) (Con): Amendment 1 would insert, in proposed new section 22A(3) of the Criminal Procedure (Scotland) Act 1995, after

"If . . . the sheriff or judge has not admitted or refused to admit the person accused or charged to bail, then"

the words:

"unless there is a good reason to the contrary".

The text of the subsection continues:

"that person shall be forthwith liberated."

Section 1, which would add new section 22A to the 1995 act, leaves issues open. We seek to achieve flexibility in the bill in addition to the criteria that have been thrust upon us.

In some circumstances—after a car accident, for example—a sheriff may not be available to meet the 24-hour deadline under new section 22A, which could mean that someone who should not get bail would be allowed to go free after that 24-hour period elapsed.

I ask the Deputy Minister for Justice what would happen in such circumstances—if a sheriff was on his way back from court and intended to consider the bail application overnight, in the quietness of his home.

Is the minister listening?

The Deputy Minister for Justice (Angus MacKay): Yes, absolutely. I am listening intently.

Phil Gallie: I apologise. I thought that you were in deep conversation, minister.

I suspect that, if a sheriff were seriously injured, he would not be in a position to make the judgment in that 24-hour time scale. Would another sheriff automatically be appointed to fill in? If that time scale allowed for coming into work in the morning, would it be possible to keep to the deadline?

I think that the time scale could, at a later stage, be extended from 24 hours to 72 hours. However, the immediate concern is that someone could be set free without proper thought and scrutiny in the circumstances that I have described.

I move amendment 1.

Angus MacKay: The short answer is that another sheriff would be appointed under such circumstances. The matter would be dealt with within the proposed 24-hour period.

Phil Gallie: If another sheriff was appointed when the first sheriff felt that he needed the 24 hours to make a decision, the other sheriff would have to make the decision in a very short time. Surely that is not to the advantage either of the accused or of the sheriff. We seek flexibility. We want the law to be seen to be rational, and to be upheld reasonably.

Angus MacKay: We would expect any sheriff to err on the side of caution in such circumstances. Where a decision has to be taken within 24 hours, we would expect the sheriff, without necessarily having all the full facts at his disposal, to consider detaining the individual rather than releasing him.

Phil Gallie: With the greatest respect, minister, that seems to be merely an expectation. I would have thought that the bill should cover every eventuality. It seems that an interpretation is being offered on the spur of the moment and that—if I may be frank—a thoughtful reaction is not being given.

Angus MacKay: The bill provides for a decision to have to be taken within 24 hours. The judicial authority would have to decide whether to grant bail in the light of all the available evidence, but also with regard to the potential risk. It is clear that, in the bill, there is not only an entitlement to bail, but an entitlement to an examination of whether bail is reasonable in the circumstances. If the circumstances do not clearly indicate that it is safe for someone to be released on bail, they should not be released on bail. We would expect any person holding judicial office to exercise judgment and discretion in that way. That should provide an adequate safeguard to the public.

Phil Gallie: I am not convinced, minister. Let us take it to the wire: consider a situation in which someone's case has been heard at 10.00 or 11.00 in the morning. On the way back to court the next morning, at about 9.30, the sheriff has a car accident and is therefore not available. What guarantee is there that someone would immediately be appointed and ready to take over, especially given our current difficulties with the scarcity of sheriffs?

Angus MacKay: In the circumstances that you describe, the sheriff—whether the initial sheriff or a replacement one—does not have to assess the whole case as such when the decision is being made. The sheriff has to listen to the arguments and to make an independent judgment about what is fair and reasonable in the circumstances. The procedure is not necessarily protracted. Any replacement sheriff should be more than adequately placed to make a rational and fair decision.

Phil Gallie: If that was the case, I would have thought that a sheriff would have been able to make a rational and reasonable decision on the first occasion that the accused appeared. If a sheriff thought that he needed 24 hours to consider or to reflect, it seems a bit steep to make a replacement sheriff make a decision in a very short time.

Amendment 1 is loose, but it covers unusual eventualities. I think that it would be worth the minister's while to take this point on board and at least to consider the position further.

Angus MacKay: The bill specifies the period of 24 hours for two reasons. First, it is consistent with present practice. All parties—the court, the Crown and the defence—are used to operating within that time scale. We are therefore satisfied that the time scale is realistic and will not cause any problems in practice. Sheriff Wilkinson specifically confirmed that when he gave evidence to the committee.

Secondly, we think that 24 hours is the maximum reasonable period during which an accused person can be detained before a decision is taken on the merits and lawfulness of detention. Detention for a longer time without such a decision would probably be found to be in breach of article 5.3 of the European convention on human rights. We can discuss the requirements of that article if members feel that that would be appropriate. The 24-hour limit exists to allow information to be gathered, if that is required, so that the sheriff—whoever the sheriff may be and at however short notice he or she has been appointed—can simply hear that information and then make a judgment. The Crown has a right of appeal against any decision to release. If the Crown felt that a decision was being taken precipitately or without full information being at the disposal of the sheriff, it could, on various grounds, appeal against the decision to release. There are therefore a number of safeguards built into the proposals. In any event, the proposals, in effect, mirror the current system.

Scott Barrie: I do not want to prolong the debate; the minister has explained the current position adequately. The problem with setting time limits as long as 72 hours is that weekends and public holidays have to be considered but problems that may arise if sheriffs are late for court or if their cars break down are not really

resolved. If necessary, it is possible to get someone else to hear a case. The present system works reasonably well and we should continue with it.

Phil Gallie: The minister has explained the situation and given assurances that my fears are not well founded. Given those assurances and the practices that the minister has described, I ask the committee to allow me to withdraw the amendment.

Amendment 1, by agreement, withdrawn.

Section 1 agreed to.

Section 2—Bail and liberation where person already in custody

The Convener: We come to amendment 2, in the name of Phil Gallie, which is grouped with amendment 61, in the name of Michael Matheson.

Phil Gallie: With amendment 2, I am suggesting that, if someone commits an offence after a previous offence for which bail was granted, bail should not be allowed. I cannot see how someone who gets into a position of being charged once again while on bail should be permitted to have bail on the second occasion. Such an individual demonstrates a lack of respect for the law and shows a degree of contempt for the trust that has been extended by the court in granting bail in the first place.

There is already some scepticism about bail laws. Many victims have suffered at the hands of people who have been on bail. Without amendment 2, the bill seems to allow the release of people who have been in breach of bail.

I move amendment 2.

Angus MacKay: The Executive is absolutely clear that a provision along the lines of amendment 2 would be incompatible with article 5.3 of the ECHR and therefore outwith the legislative competence of the Parliament. The European Court has made it clear in two cases—Caballero v United Kingdom and TW v Malta—that article 5.3 requires access to a judicial authority who would review the lawfulness of detention promptly and automatically and who would have the power to grant release if appropriate. That is why the bail exclusions are in breach and have to be repealed.

Any new provisions that had the effect of precluding the court from considering bail in certain circumstances would almost certainly fall foul of the ECHR. It is worth making it clear that, even if bail is granted in respect of a further offence, the accused would not be released until the reason for the original custody had lapsed. If the person was already serving a sentence of imprisonment, the person would have to complete that sentence before being released on bail for the fresh offence. If the person is remanded in custody, that would continue unless and until bail was granted for that offence as well. That is made clear by section 2 of the bill and the new section 23A(3) to be inserted in the Criminal Procedure (Scotland) Act 1995.

09:45

Michael Matheson: As the minister is probably aware, amendment 61 relates to section 23(6) of the 1995 act. It would ensure that, when an application had been made for bail, the judge would either admit or refuse it within 24 hours. When answering the points on amendment 1, the minister talked about present practice. Given that what amendment 61 suggests already appears to be present practice, is it not appropriate to specify that in legislation?

Angus MacKay: We feel that amendment 61 is unnecessary because the existing Criminal Procedure (Scotland) Act 1995 already contains a provision that has exactly the same effect.

Michael Matheson: Would there be no benefit in including it in the bill?

Angus MacKay: Section 23(7) of the Criminal Procedure (Scotland) Act 1995 already provides that an application under section 23(6) has to be disposed of within 24 hours of its presentation to the judge. As Mr Matheson suggested, we have included a similar time limit in relation to the new automatic bail hearings that are provided for in section 1 of the bill. For any other bail application, section 23(7), as I said, provides a 24-hour limit. We therefore see no need for amendment 61, which, as far as we can see, replicates the existing provisions in relation to persons charged on complaint.

Phil Gallie: I accept the minister's answer in respect of someone who is in prison already or who has already had bail refused. However, my concern is with people who have a further charge levelled against them while they are on bail. That seems to show a breach of trust and a contempt for the court. Irrespective of whether the ECHR allows it, the most important thing for us is to ensure that people recognise the importance of the courts and realise that when they are on bail they are on trust. The bill as it stands cuts right across that.

I am aware of a number of serious offences that have been committed by people who have been on bail. I shudder to think that such individuals would be given a second chance. Irrespective of whether that is seen to be in breach of the convention, it would be better if ministers could find a way of living within the ECHR while satisfying the public that justice is being done.

Angus MacKay: If someone commits an offence while on bail, that is a breach of bail. People can be dealt with appropriately for such behaviour. The offence would be a ground, in itself, for revoking or refusing bail. I do not see that there is an issue about that.

Phil Gallie: Probably through poor communication on my part, my support for amendment 61 has been recorded. When the amendment was discussed—which may have been done over the telephone—my understanding was that the period of time mentioned in the amendment was 72 hours rather than 24 hours. I simply record that point, convener.

Gordon Jackson (Glasgow Govan) (Lab): Perhaps this is my fault for having hay fever and not working too well, but is not what Michael Matheson wants already included in section 1 of the bill, which says that anyone coming to bail has to have it done within 24 hours?

Michael Matheson: That is coming to bail when an application has been made.

Angus MacKay: It is the same time scale, but—

Michael Matheson: Amendment 61 refers to when an application has been made for bail and has to be accepted or refused within 24 hours. Apparently that is already covered by another piece of legislation.

Phil Gallie: I want to press amendment 2.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 1, Against 7, Abstentions 0.

Amendment 2 disagreed to.

Section 2 agreed to.

Section 3—Removal of restrictions on bail

The Convener: We come to amendment 3.

Phil Gallie: I am concerned that in section 3 we are underlining the principle that no rules can be laid down for judges. I would have thought it worth while to sustain some guidance in this area. Why should there be discretion when a life has been taken and the charge is murder? There is already a perception from past sentencing that life is cheap. The fact that someone who has murdered can be immediately set free is incomprehensible to those who look to the justice system for justice. We should consider the effects on the families of victims. There could be situations where an individual is set free at a highly emotive time, which could lead to other problems and troubles.

I move amendment 3.

Angus MacKay: The amendment would remove section 3 from the bill altogether, making the bail provisions almost redundant by reinstating the bail exclusions. It is a widely held belief that those exclusions are in contravention of the European convention on human rights. Whatever Phil Gallie's intention, the amendment would simply wreck that part of the bill and leave us in contravention of the ECHR. We are clearly proposing that the provisions should be repealed and therefore we must oppose any amendment that would retain them.

I know that the committee has taken evidence from the Executive and from individual experts, including Professor Gane and Sheriff Wilkinson. In its report, the committee noted that it was agreed on all sides that, in light of the two recent Strasbourg judgments, it was clear beyond any doubt that the bail exclusions are incompatible with the ECHR and therefore must be repealed. That is the purpose of section 3. Without the section, the law on bail would remain incompatible with the convention. I am fairly sure that the courts would find accordingly as soon as those provisions—if they were not amended—were challenged. In those circumstances, there is no option but to legislate to remove the incompatibility.

That does not mean to say that as a consequence individuals have an automatic right to bail. The abolition of bail exclusions does not mean that those accused of serious sexual or violent offences would have a right to bail or even an expectation of it. Common law in Scotland contains clear guidelines on the criteria that must be applied by the courts in deciding whether to grant bail, including considerations of public safety and the accused's previous convictions. Therefore, the courts would not release an accused person on bail if he or she presented a serious risk to public safety.

It is worth making the point again that the Crown has a right of appeal against a decision to grant an accused person bail, just as the accused person can appeal against a decision to refuse bail. If a person released on bail commits an offence and breaches the conditions of bail—or even if there are reasonable grounds for thinking that they have

broken or are likely to break bail conditions—that person is liable to be rearrested and brought back before the court, which can then revoke bail and/or impose fresh conditions.

We are clear that the law as it stands is challengeable in the courts. Not to amend the legislation would be irresponsible. Therefore, we invite Phil Gallie to withdraw amendment 3.

Gordon Jackson: I have no doubt that the minister is right. An automatic exclusion from bail is contrary to the convention and must go.

I tried to spell out the practical problem in last week's debate. At present, there are people on murder charges who get bail even though bail cannot be granted to people on murder charges. Although that may sound odd, there is a legal method of achieving it, which takes ages and is not convenient. I gave two recent examples from my own experience. The first involved a 13-year-old child who had a mental age of eight, who was never going to end up in jail but who was technically charged with murder. The second involved a woman who had been the victim of bad domestic violence over a long period. She was on remand and was 100 per cent blind—it was a horrendous situation. Again, there was never any likelihood of her being sent to jail in the long term. Although we managed to get bail for those two people, the procedure was cumbersome, because the law says that they could not be granted bail—and do not ask me to explain how it can be done.

All that section 3 of the bill allows is for such situations to be dealt with properly and efficiently. It does not mean for a minute that most people—the norm of people—who are charged with murder will get bail, because they will not. I suspect that section 3 will affect the same people, while allowing us to comply with the convention, as we should. The current system is simply cumbersome.

Phil Gallie: Gordon Jackson's comments demonstrate that our laws already conform with the ECHR if, despite the arduous hassle, people can be released under certain circumstances.

My concern comes down to the inconsistency in the judgments that are made by the courts. Irrespective of the minister's comments, he cannot foresee the judgments that each judge will make under specific circumstances. The law as it stands has withstood the test of time and has proved to be effective. It is unfortunate that we are being forced to go down a line that may allow difficulties to arise through the early release of individuals who are charged with as serious a crime as murder. I ask the minister to reconsider the history, to determine where there has been dissatisfaction and to reflect on the point made by Gordon Jackson, which was that there are already ways around the situation that meet the convention's requirements.

Gordon Jackson: I did not say that.

Angus MacKay: Convener, that is—

The Convener: I will bring in Pauline McNeill and then I will come back to you, minister.

10:00

Pauline McNeill (Glasgow Kelvin) (Lab): I know that Gordon Jackson will say that he did not suggest that that is a way around the ECHR. He was merely pointing out examples where there is a restriction—the removal of that restriction will allow those difficult cases to be dealt with.

I listened long and hard to the evidence that was given to the committee and, if one believes that evidence, it is quite clear that the law as it stands contravenes the ECHR. We do not have any choice in the matter if we do not want to be in breach of the convention.

I listened carefully to and questioned Professor Gane because, having no experience of the courts, I was also concerned about the meaning of the provisions of section 3. Having participated in last week's debate and having spent a bit of time on the bill, I am satisfied that the prosecution will have to make its case for refusing bail and that there are plenty of grounds on which it can do that. The prosecution will have to put more effort into the grounds that it puts forward if it wants an accused person to be refused bail. Grounds exist already to satisfy Phil Gallie's concerns about public safety and accused persons being released and interfering with witnesses.

I can understand why people might—as I was—be worried about section 3, but when one takes into consideration all the grounds that are available to the prosecution, the same result can be achieved. The case must be made by the prosecution—the underlying principle in Scots law is that one is innocent until proven guilty, irrespective of whether a serious crime is involved. I do not think that the net effect of the law will change substantially.

Angus MacKay: I am not sure whether I want to add much to Pauline McNeill's comments, other than to say that it is wrong to suggest that the circumstances that Gordon Jackson referred to in relation to appeals to the High Court mean that the existing law is compatible with the ECHR.

Gordon Jackson: I did not say that.

Angus MacKay: Absolutely. I think that Phil Gallie misrepresented Gordon Jackson's position.

Phil Gallie: I acknowledge that.

Angus MacKay: Perhaps Phil Gallie did so by

accident.

There is a potential danger if we fail to become compliant with the ECHR because, theoretically, any law that is not compliant with the ECHR is challengeable. The last thing that members of the public or the committee want is for people who are charged with such offences to challenge Scots law after 2 October under the ECHR. They might obtain a judgment that would not otherwise be available to them if we were to amend our law.

It is important that we ensure that our law is compliant with the ECHR and that adequate and strong safeguards are built into it. That is clearly the case, given that the Crown has the right of appeal and given that the courts, in making any judgment, are required to have regard to public safety and previous convictions. I cannot imagine the circumstances in which a court would not take all the available evidence into account before arriving at a decision. Certainly, the Crown would wish to examine closely any decision that it felt did not adequately reflect the requirement to safeguard the public interest.

Phil Gallie: I am sympathetic to what the minister said about not wishing people to escape justice because of a failure to comply with the ECHR. It is extremely unfortunate that we are forced into that situation, particularly given the good standing of the law in the past in relation to the retention in custody of people who have been charged with murder. I ask the minister to reconsider whether the instances that were described by Gordon Jackson would bring overall compliance—they might provide a tool with which the minister could tighten up the situation. I feel that there is evidence of inconsistency in judgments by individuals in court—perhaps that is the essence of our judicial system. The situation that relates to people who are charged with murder is too serious to be allowed to pass. Therefore, I do not intend to withdraw the amendment.

The Convener: Unless there is anything that the minister can usefully add, we will move to a vote.

Angus MacKay: I have nothing to add.

The Convener: The question is, that amendment 3 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 3 disagreed to (section 3 accordingly agreed to).

Section 4 agreed to.

Before section 5

The Convener: We move now to amendment 4, in the name of the minister, which is grouped with amendment 62, which is also in the name of the minister. Members will recognise that it is a substantial amendment. I hope that members have copies of the letter from Michael Kellet that sets out the Executive's reasons for lodging the amendment. In effect, amendment 4 adds to the bill a new chapter that deals with the appointment of Inner House judges. As I understand it, the amendment was lodged in response to a letter from the Lord President dated 26 May, which was after the minister gave evidence to the committee. The Lord President wants the facility for which the amendment provides.

I was required to determine whether amendment 4 was admissible because that question arises when an amendment suggests that a new chapter be inserted into a bill. On the advice of the clerks, I have agreed to admit it. The thought looms in my head that if I did not agree to allow amendment 4 at this stage, it would, I do not doubt, appear at stage 3, without members having had a chance to discuss it in any detail. I ask the minister to move amendment 4.

Angus MacKay: Although amendment 4 is a substantial amendment, I think that it is non-controversial. Given that the letter has been circulated, I propose to move the amendment without speaking to it.

I move amendment 4.

Amendment 4 agreed to.

The Convener: That was painless.

Section 5 agreed to.

The Convener: Temporary sheriffs are gone.

Gordon Jackson: And we are none the worse for that.

Section 6—Creation of part-time sheriffs

The Convener: We move now to amendment 5, which is grouped with amendment 6, both in the name of Michael Matheson.

Michael Matheson: Something that came across in the evidence that was given to the

committee was the need for uniformity in how part-time and full-time sheriffs operate, particularly in view of the case of Starrs and Chalmers. Amendment 4 is intended to create uniformity in the procedures for the appointment of part-time sheriffs and in the procedures for the appointment of full-time sheriffs. There is some concern that the fact that the bill proposes a different system for part-time sheriffs might give rise to challenges somewhere along the road, or to questions about the objective independence of part-time sheriffs. On that basis, it seems appropriate that the appointment of a part-time sheriff should be subject to the same procedure as the appointment of a full-time sheriff.

Amendment 6 is consequential on amendment 5. I might return to it, depending on what the minister says about amendment 5.

I move amendment 5.

Angus MacKay: As Michael Matheson says, amendment 5 puts the appointment of part-time sheriffs on the same footing as arrangements for appointing permanent sheriffs. There is an understandable desire to ensure that arrangements for the appointment of part-time sheriffs are seen to be fair and open but, in the Executive's view, the amendment goes too far in asking that part-time sheriffs should be appointed only by the Queen on the recommendation of the First Minister. Part-time sheriffs differ in some significant ways from permanent sheriffs. I touched on some of those at stage 1—when I mentioned part-time sheriffs daily rate of pay, there were gasps from certain members.

By definition, a full-time sheriff has a full-time commitment to the office of sheriff, which the part-time sheriff does not have. Most part-time sheriffs are drawn from those who have permanent jobs as solicitors or advocates, but others might be drawn from those who have retired from a branch of the profession. Part-timers can expect to be offered at least 20 days work per year, but are under no obligation to accept any business at all. They can choose when and where to accept assignments to suit their diaries. They can cancel an arrangement to sit as a part-time sheriff if other commitments arise before the date on which they are due to attend court and they have no responsibility for the general administration of the courts in which they sit. In the High Court case of Starrs and Chalmers, their lordships stated that they had no difficulty with the concept of ministers being responsible for the appointment of temporary sheriffs. We have tried to be guided by the views of the High Court on the scheme for the appointment of part-time sheriffs, who—by assisting the courts when permanent sheriffs are unavailable for any reason—perform the same general role as temporary sheriffs did.

For those reasons, we do not feel that it is either necessary or appropriate to have elaborate machinery for the appointment of part-time sheriffs that is on a par with that for the appointment of full-time sheriffs, as would be the case if amendment 5 was agreed to. Therefore, the Executive invites the committee to reject amendment 5.

Michael Matheson: Amendment 6 relates to the regulations that will be made in relation to the appointment of part-time sheriffs. If amendment 5 were accepted, some of what is proposed in section 6 would need to be deleted. Would the regulations that are being proposed be in line with section 95 of the Scotland Act 1998? As I understand it, the regulations for the appointment of full-time sheriffs are laid down in that section. Will the regulations that will be introduced by the bill be the same as those in section 95 of the Scotland Act 1998?

Angus MacKay: The short answer is that the procedure will be different.

Michael Matheson: In the light of your response to amendment 5, I presumed that that would be the answer.

Angus MacKay: I thought that it was a trick question.

Michael Matheson: It should be noted that concerns have been expressed that you would take a different route for the appointment of part-time sheriffs, although I acknowledge some of the reasons why you feel that that is necessary. There is concern about the possibility that the involvement of Scottish ministers and the Lord Advocate in the appointment of part-time sheriffs could bring into question the objective independence of part-time sheriffs in discharging their duties.

Gordon Jackson: We will be addressing the business of how we make judicial appointments. I cannot help but think that Michael Matheson is talking about adding another administrative layer. The minister is right to say that although part-time sheriffs do the same thing as full-time sheriffs, they are not really the same—they have a different place in the scheme of things. It seems unnecessary to involve the Queen every time a part-time sheriff is appointed. However, it is always a delight when a member of the nationalist party is keen for the Queen to sign things. Leaving that facetious comment aside, part-time sheriffs are totally different animals from full-time sheriffs.

10:15

Michael Matheson: I do not think that the Queen spends much time considering such matters when papers are put in front of her. She

probably has enough time to put her name to paper occasionally. If anything, keeping her busy is what motivates me.

Pauline McNeill: When we took evidence on the matter, Sheriff Wilkinson talked about sheriffs' concerns about the differences. When we pressed the witnesses about what restrictions they wanted removed, it emerged that as far as they were concerned, there would be little difference between part-time and full-time sheriffs. They wanted to remove the restriction on the number of days that part-time sheriffs could work. Perhaps they were making a case for having more sheriffs, rather than analysing the difference between the full-time and part-time sheriffs. I was concerned about that originally, but I did not appreciate that the jobs are not identical. If they were, I would support Michael Matheson's amendment—I could see the logic in that because the procedure for appointments of full-time and part-time sheriffs would have to be the same. However, as the jobs are not the same, there is nothing illogical about having a different appointments system.

Phil Gallie: I find it hard to see how the jobs are different once the sheriffs get into court. The level of responsibility in trials must be the same for part-time and full-time sheriffs. If past judgments were challenged because of the political involvements of temporary sheriffs, the same might apply to the part-time sheriffs. Michael has a point.

Angus MacKay: There is not a lot to add to the debate. There seem to be two slightly different ways of looking at the same issue. It is a simple point: we do not need such an elaborate appointments structure for part-time sheriffs. Ultimately, they do the same job as a full-time sheriff once they are in court, but the process by which they get there is substantively different.

As I have already said, part-time sheriffs will have the right not to take up work and will have a minimum number of days on which they operate. Full-time sheriffs have an entirely different set of obligations. This is about the procedure by which we appoint somebody to a full-time job with all its obligations and the way in which we appoint someone to a part-time and much less onerous version of that post. It seems over-elaborate—as Gordon Jackson said—to require the Queen to make such an appointment.

Pauline McNeill: Will the minister remind us what the breach of the ECHR turned on in the Starrs and Chalmers case? Was it tenure of office or independence from the Executive?

Angus MacKay: It was tenure of office.

Michael Matheson: I understand what the minister is saying, but there are some concerns about the issue. As Gordon Jackson pointed out, the issue of judicial appointments is being considered. It might be that there will be changes anyway and I would never wish to put undue pressure on Her Majesty the Queen. I seek the committee's permission to withdraw amendment 5.

The Convener: The question is, that amendment 5 be withdrawn. Are we all agreed?

Members: No.

The Convener: The question is, that amendment 5 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gallie, Phil (South of Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Robson, Euan (Roxburgh and Berwickshire) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 5 disagreed to.

Angus MacKay: There goes Phil Gallie's knighthood.

Gordon Jackson: God save the Queen.

Amendment 6 not moved.

The Convener: We move now to amendment 7, in the name of Michael Matheson.

Michael Matheson: In the course of the evidence sessions, Mr Gilmour and the Sheriffs Association raised the issue of the way in which it appears that temporary sheriffs have been used to shore up the system. The principle under which they were meant to be appointed—to cover annual leave, sick leave and so on—was contained in the Sheriff Courts (Scotland) Act 1971, which does not seem to be adhered to any longer.

One of the concerns that has been expressed is that the bill as it stands does not outline whether part-time sheriffs should be appointed for the same reasons, such as to cover illness or annual leave. In the Justice and Home Affairs Committee report, Jamie Gilmour made reference to that when he said that it was

"constitutionally fundamental that authority for part-time appointments should be given to cover only for illness, absence and sudden pressure of business."—[*Official Report, Justice and Home Affairs Committee,* 30 May 2000; c 1314.]

Some of those who gave evidence to the committee indicated that the bill should contain

explicit reasons why appointments should be made. That would ensure that we do not revisit the problems that we had with temporary sheriffs—who have been shoring up the system—with the new office of part-time sheriff.

I move amendment 7.

Angus MacKay: The amendment does not add benefit to the scheme for the appointments of part-time sheriffs. I accept that the reasoning behind the amendment is to try to ensure that part-time sheriffs are used appropriately and to ensure that there is no attempt on behalf of the Executive to cover up for a shortfall in the number of permanent sheriffs with excessive use of part-time sheriffs. However, the fact that the Executive has been prepared to recognise when permanent sheriffs are required is borne out by the decision to appoint another 19 permanent sheriffs since temporary sheriffs were suspended last November.

It would be for the sheriff principal to decide when he or she required the services of a part-time sheriff. They would do so only in the circumstances that are described in amendment 7. The amendment clearly derives from the wording in section 11(2) of the Sheriff Courts (Scotland) Act 1971, relating to temporary sheriffs. I do not think that the amendment recognises sufficiently the fundamental differences between the temporary sheriff regime and that which is proposed for part-time sheriffs in the bill.

Part-time sheriffs will be appointed on a five-year basis and are to be authorised to act throughout Scotland. Against that background, I do not think that tests to establish whether a sheriff is absent through illness or whether there is a vacancy in the office of sheriff make much sense when a part-time sheriff is appointed.

The circumstances that I describe are, essentially, short-term crises that might surface for one reason or another. What ministers are trying to do by appointing part-time sheriffs, however, is to provide a flexible resource that is useable anywhere in Scotland throughout that five-year appointment and which can cover for all manner of contingencies that might be expected to occur throughout that period. The possible over-use of part-time sheriffs is to be controlled by the provisions in the bill, which limit the number of appointments that can be made and the number of days in a year on which an appointee can sit. Those limits are built into the legislation already.

I therefore suggest that regulating the use of part-time sheriffs should be left to the judgment of the sheriffs principal, rather than requiring such regulation through the bill.

Michael Matheson: I note that the Executive seeks to use its power to appoint part-time sheriffs in an appropriate manner, given the recent appointments that have been made. However, the minister will be aware that Executives can come and go. At a future date, there may be another Minister for Justice, who might try to use those powers differently.

I do not know whether the minister's comments were an admission that the Executive plans to use part-time sheriffs to shore up the system, rather than for the reasons that we heard during evidence sessions. Although there are some safeguards in the bill in relation to time scales and the amount of work that a part-time sheriff can take on, the Sheriffs Association was not convinced that those safeguards were strong enough to ensure that the office of part-time sheriff would not be misused.

The minister also explained that the Executive does not consider amendment 7 necessary, because it wants to allow flexibility in the system for the appointment of part-time sheriffs. Paragraph (c) of my amendment allows ministers that flexibility. If there is a need to appoint further part-time sheriffs to avoid delay in the administration of justice in any sheriffdom, ministers can do that. I believe that my amendment would provide the necessary flexibility to cope with unforeseen circumstances not covered by paragraphs (a) and (b) of the amendment.

The evidence that we heard clearly indicated that there was a need to ensure that the purpose of appointing part-time sheriffs should be included in the bill to provide an additional safeguard and avoid future misuse.

Angus MacKay: I do not quite follow Michael Matheson's argument about future ministers or other Executives taking a different view. The legislation states what the legislation states, and anybody who wanted to take a different view would have to amend the legislation, unless I have misunderstood the point.

Michael Matheson: You said that the Executive had a clear commitment to ensuring that it would use part-time sheriffs appropriately, and I know that you have recently appointed 19 such sheriffs. However, the attitude of the Executive could change.

Angus MacKay: That is absolutely right, but we have a clear intention about how we want to use the part-time sheriffs. We have therefore written into the proposed legislation specific limitations that circumscribe the circumstances in which part-time sheriffs can be used and the extent to which they can be used. If we were to leave any loophole for abuse of the system, those safeguards would not be written in.

Amendment 7 tries to ensure that an individual

is appointed as a part-time sheriff only where

"a sheriff is, by reason of illness or otherwise, unable to perform his duties as sheriff".

That amendment either misinterprets or misunderstands the purpose of part-time sheriffs. The purpose is to provide a floating, Scotland-wide resource to cover a variety of circumstances. To try to peg the appointment of individual part-time sheriffs on the basis of crises that may emerge from time to time is not just to one side of the purpose of part-time sheriffs, but almost irrelevant.

Michael Matheson: Paragraph (c) of the amendment provides that flexibility.

Angus MacKay: In that case, what is the purpose of the amendment?

Michael Matheson: It still provides flexibility, but includes in the bill the reasons why part-time sheriffs should be appointed—reasons such as illness or vacancy. To avoid delay in the administration of justice in a sheriffdom, it provides that flexibility. I cannot see why you would not want to put that in the bill.

Angus MacKay: I cannot see any reason why one would want to include it in the bill. We will have to agree to differ.

10:30

Pauline McNeill: I think that Michael Matheson is right in saying that the evidence that we heard showed that there were concerns about the abuses that occurred when we had temporary sheriffs. There can be no doubt that the old system was abused, and I have some sympathy with Michael's case. It is important to note, however, that we are trying to create something different with this bill. We are moving away from temporary appointments to more permanent ones—which happen to be part-time permanent appointments. We have made a number of differences, including a five-year appointment which is more or less automatic unless the grounds of appointment are challenged.

From the outset, we are creating a different post. We are also trying to get the balance right—I was going to mention having part-time hours for part-time sheriffs while allowing them to be able to do a reasonable number of hours of work in their practice. The post of part-time sheriff will develop differently from that of temporary sheriff, and that is the important starting point.

Could Michael Matheson explain subsection (2A) of his proposed new section 11A of the Sheriff Courts (Scotland) Act 1971? It says:

"where . . . (b) a vacancy occurs in the office of sheriff".

Does that refer to vacancies in the office of a full-time sheriff, who could be replaced by a part-time sheriff?

10:30

Michael Matheson: Given that the wording does not exclude full-time sheriffs, yes.

Pauline McNeill: If a vacancy occurs in the office of a full-time sheriff, that could allow ministers to appoint a part-time sheriff in their place. Is that what the amendment means?

Michael Matheson: If ministers saw that as appropriate.

The Convener: I think that we have gone as far as we can with amendment 7.

Amendment 7, by agreement, withdrawn.

The Convener: Amendment 8, in the name of Michael Matheson, is grouped with amendment 9, in Phil Gallie's name, and amendment 10, also in Michael Matheson's name.

Michael Matheson: Amendment 8 takes us back to a point that was referred to when we were discussing amendment 7. In the bill as introduced, the minimum specified period over which a part-time sheriff can sit is 20 days. The amendment seeks to increase that to 40 days. The purpose of that is to allow a sufficient period for a part-time sheriff to become both proficient and experienced in the role. There are questions as to whether the present time scale allows that to be achieved sufficiently. The point was also highlighted in this committee's report, in evidence which it took from the Law Society, which had concerns about the time scales in the bill as introduced.

Amendment 10 is similar in its aim. It brings down the maximum number of days a year on which a part-time sheriff is encouraged to sit from 100 to 80. That was also highlighted by the Law Society, which had some concerns on the matter. As the bill stands, taking the figure of 100 days, a part-time sheriff would effectively be performing duties for about 20 working weeks. To all intents and purposes, the part-time sheriff would probably become heavily dependent on that work. It is hoped that lowering the upper ceiling would prevent them becoming fully dependent on their role as a part-time sheriff.

I move amendment 8.

Phil Gallie: I feel that Michael Matheson's two amendments in this grouping close the time band too much, with 40 to 80 weeks being a narrow band in which to work. My feeling is that 20 weeks is quite reasonable. There needs to be a minimum on the basis of honing and sustaining expertise—

The Convener: Can I butt in, Phil? It is not 20 weeks, but 20 days.

Phil Gallie: Sorry—I meant to say days. It would

be a bit difficult, even for a Tory, to get 80 or 100 weeks into a year.

I think that Michael Matheson made a good argument for his minimum time span over which a part-time sheriff will sit, with respect to honing and sustaining expertise. It is the upper limit to which I turn my attention. I would suggest that there is really no need for it. Those who undertake to be part-time sheriffs will determine for themselves how much time they wish to give.

I can foresee circumstances in which it may become expedient, both for the part-time sheriff and for the sheriffs principal, for an individual to extend their days of work to beyond 100 days. Could cases be abandoned because a part-time sheriff is nearing, or has gone over, that maximum time limit? If the provision were left entirely open, we would have a degree of flexibility that could prove beneficial.

Gordon Jackson: I may be wrong about this, but I do not read the proposed section 11A(7) as a rule; rather I read it as an aspiration, as the word that is used is "desirability". If a sheriff has worked for 100 days and it suits him or her to work for another five, there would be nothing to stop that. It is not a rule that says, "You must do a minimum of 20 days and a maximum of 100". The wording is

"have regard to the desirability of securing".

That is not a rule—it is the good practice that we anticipate. If someone sat for only 18 days, they would not stop being a part-time sheriff, and the same applies if someone sat for 105 days. It is not meaningless, as it is a genuine aspiration, but it is not a rule in any sense of that word, unless I have misread that subsection.

I would not like to go beyond 100 days. I have more sympathy for Michael Matheson's amendment, which brings the total down. Once one goes beyond 100 days, one runs the risk of people who have jobs retiring, taking up their pensions and then working full time as sheriffs. I have seen that happen in another context and I would not want to encourage sheriffs to retire and then become part-time sheriffs in order to work full time again, while at the same time receiving their pension. That is not a good idea.

Angus MacKay: Gordon Jackson is correct in his observation: the maximum of 100 days is not an absolute rule, it is a desirable maximum. However, it is also a visible maximum and the entire legal system and those who are responsible for it are accountable for the way in which that maximum is followed.

The Executive's objective is to try to set a minimum and a maximum number of sitting days for part-time sheriffs, principally to meet two concerns that arose from the judgment of the High Court in the case of Starrs and Chalmers. First, there was a concern about the possible sidelining of individuals—the possibility that the Executive would not offer work to a particular temporary sheriff. That is why an annual minimum of 20 days for part-time sheriffs has been inserted into the bill.

Secondly, there was concern about the Executive making excessive use of temporary sheriffs—we visited that argument in our debate on the previous group of amendments—with some temporary sheriffs sitting for as many days in the year as a permanent sheriff. That is the purpose behind the introduction of a normal maximum of 100 days for part-time sheriffs. The responsibility for ensuring that the minimum and the maximum are met lies with the sheriffs principal, not with ministers, to reflect the situation where the formal decisions on when a part-time sheriff is to be used lie with the sheriff principal in the sheriffdom in which the part-timer is to sit. Therefore, there is some distance.

The question of the level at which the minimum and the maximum should be pitched is a matter of judgment, but we believe that our proposals get it about right. The minimum of 20 days should ensure that every part-time sheriff is given the opportunity to sit for a reasonable number of days each year. The maximum of 100 days is less than half the number of days that a permanent sheriff would be expected to sit for. On that basis, the maximum figure of 100 days seems to us to be reasonable and, therefore, I invite the committee to reject amendments 8, 9 and 10.

Michael Matheson: I hear what the minister says, but there are some concerns about the minimum of 20 days, and about whether that will give a part-time sheriff sufficient opportunity to build up experience. There are even more concerns about a part-time sheriff working for 100 days a year. We will become fully dependent upon those sheriffs, which may have implications for further down the road. However, I note the minister's comments and seek leave to withdraw amendment 8.

Amendment 8, by agreement, withdrawn.

Phil Gallie: Following Gordon Jackson's arguments about desirability, I am quite happy that the system will be flexible.

Amendments 9 and 10 not moved.

The Convener: I call amendment 11, in the name of Michael Matheson, which is grouped with amendment 13, in the name of the minister, and amendment 14, also in the name of Michael Matheson.

Michael Matheson: Amendment 11 touches on a point that we discussed in relation to earlier amendments. There is concern about the way in

which the bill will make provision for a part-time sheriff to be in post for five years, which becomes a renewable appointment. Will that be compatible with the ECHR? One of the issues highlighted in the Starrs and Chalmers case was that of the tenure of temporary sheriffs' posts. In Mr Gilmour's evidence to the committee, he was strong on that point. Should part-time sheriffs not be given permanent contracts, Mr Gilmour suggested:

"If the bill is passed as it is currently drafted, as sure as sparks fly upwards, within three or four weeks that would be tested in the courts."—[*Official Report, Justice and Home Affairs Committee,* 30 May 2000; c 1317.]

Mr Gilmour was referring to the five-year contract.

I am sure that the minister is aware that reference was also made to that point by the Sheriffs Association, which was concerned that the right calibre of part-time sheriff may not be attracted as a result of the fact that the contract is for five years only. The committee addressed that point in its report. Although the Executive's legal advisers may say that they think that the five-year contract is compatible with the ECHR, it should be noted that sheriffs—that is, the people who would decide these matters—already are telling us that they believe that such contracts could be challenged.

Given that one of the bill's purposes is to ensure that we do not find ourselves being challenged yet again, we should err on the side of caution. Part-time sheriffs should be provided with permanent contracts as opposed to five-year contracts that are renewable.

I move amendment 11.

Gordon Jackson: I do not accept Michael Matheson's point. The Minister for Justice announced last week what he was going to do, and amendment 13 meets those concerns. I may be wrong, but I thought that the Minister for Justice said last week that, unless there were reasons to the contrary, a part-time sheriff would be reappointed.

I am puzzled by the use of the words

"and shall be entitled to be reappointed"

in amendment 13, which I would like members to think about. I do not see where that phrase takes us, as it seems ambiguous. Why does the amendment not say "and shall be reappointed"?

The Convener: Minister, could you deal with both Michael Matheson's and Gordon Jackson's concerns?

Angus MacKay: On Gordon Jackson's point, part-time sheriffs may not want to be reappointed.

Gordon Jackson: I accept that, but I wondered about the phrase

"and shall be entitled to be reappointed"

Perhaps it is strong enough, but someone might read it as a part-time sheriff being eligible for reappointment. However, if it is strong enough, it is strong enough. I just wondered whether the phrase "shall be entitled" means that a part-time sheriff definitely will be reappointed, if he wants to be. Perhaps I am nit-picking.

Angus MacKay: We feel that the wording is strong enough, but if there is a serious concern, we will reconsider the point in time for stage 3.

Gordon Jackson: In a sense, your statement about what it is intended to mean will become what it does mean.

Angus MacKay: On Michael Matheson's point, I understand that Mr Gilmour is content with amendment 13. Therefore, most, if not all, of those concerns are alleviated.

In order not to prolong the debate unduly, I will make two brief points. First, a five-year contract is quite long. In the private sector, a contract of more than three years is quite unusual these days, never mind a permanent contract.

The Convener: We are all on four-year contracts.

Angus MacKay: As you point out quite rightly, convener, we are all on four-year contracts and we do not receive £438 a day, which is the point that caused members to gasp in last week's debate.

Not only is there a five-year contract, which is quite lengthy in any event, but there is the presumption of reappointment, unless one of the four specific criteria is not met or is met, as the case may be. Even then, ministers are entitled to consider the circumstances—there is still the presumption of reappointment. The committee should take credit for raising the issue and the Executive should take credit for responding.

Pauline McNeill: I would like to ask about section 6(5)(b) in amendment 13, which says:

"a sheriff principal has made a recommendation to the Scottish Ministers against the reappointment".

I take your point from five seconds ago that the Sheriffs Association is happy with this, but I would like you to speak to this point specifically. The way I read it, the sheriff principal can, for any reason, make a recommendation to the Scottish ministers against the reappointment of a part-time sheriff. I would not want that to be so open.

Angus MacKay: We envisage that if a sheriff principal had a serious concern of any kind, they would bring it to the attention of ministers. Ministers would then examine the concern. If the concern was substantiated, that would be one thing; if not, ministers would take a different view.

10:45

Pauline McNeill: Would something particular have to be specified? Would the recommendation against a reappointment have to be substantiated?

Angus MacKay: A sheriff principal saying, "I don't like the look of him much," would not be sufficient. We would expect the sheriff principal to spell out the concern so that ministers could evaluate it.

Maureen Macmillan (Highlands and Islands) (Lab): I would like to ask about section 6(5)(c) in amendment 13, which refers to a part-time sheriff who

"has not sat for a total of 50 or more days".

What is the thinking behind that? Is that because they have been sidelined and sat for only 10 days a year rather than 20? Or is it because a part-time sheriff may have turned down the opportunity to sit?

Angus MacKay: There is no hidden agenda—this is quite straightforward. If we have a pool of floating part-time sheriffs who can be used across Scotland, we want to ensure that each individual has sufficient commitment and has sufficient time available. If they have been unable to demonstrate that in the preceding five-year term, we would take that into account.

Maureen Macmillan: So it is up to the part-time sheriff, and is not a case of him or her being sidelined by the sheriff principal?

Angus MacKay: Yes.

Phil Gallie: My name is down as a supporter of amendment 11, but that was prior to the minister submitting his amendment, which I had not seen until recently. It seems that the minister has moved along the lines that I would have expected, so I am quite happy with the minister's amendment.

Michael Matheson: The basis for the amendment was the evidence of the Sheriffs Association. Given that the minister has said that the association is now satisfied with amendment 13, I would like to withdraw amendment 11.

Amendment 11, by agreement, withdrawn.

The Convener: I call amendment 12, in the name of Phil Gallie, which is grouped with amendments 24, 25, 28, 32, 34, 36, 43, 44, 45, 46, 48, 49, 52, 53, 54, 56 and 58, all in the name of Phil Gallie.

Phil Gallie: It seems a lot, convener, but it is not really a major contribution. They are probing amendments. In all the parts of the bill referred to by the amendments, the term "Scottish Ministers" is used; it seemed to me that it would be preferable to use the term "First Minister". That would leave responsibility at the door of the First Minister, and all buck-passing would stop there—although he, of course, is responsible for the actions of individual Scottish Executive ministers, rather than Scotland Office ministers. I wonder if there is confusion as to whether the law officers, or indeed the Secretary of State for Scotland, would be seen as Scottish ministers. The whole batch of amendments aims to clarify that.

I move amendment 12.

Angus MacKay: We believe that the law is clear and refers to our Scottish ministers in the Scottish Executive. The Scotland Act 1998 places collective statutory responsibility on Scottish ministers in most cases, by which it means the Scottish Executive ministers. We therefore do not see any reason to breach that broad principle at this stage. In practice, the present First Minister has taken a pretty close interest in each of the judicial appointments across the board. Notwithstanding the Executive's position on that, Gordon Jackson rightly raised the point that there is a judicial appointments consultation exercise under way at the moment. It seems to us to be more appropriate that, if there are serious concerns on these types of issues, they can be addressed in the course of that consultation exercise and anything that may follow from it.

Phil Gallie: That is fine.

Gordon Jackson: It would be illogical to make that change here, as we have left the previous section on appointment by Scottish ministers.

Amendment 12, by agreement, withdrawn.

The Convener: Before moving to amendment 13, I remind members that if that amendment is agreed to, amendment 14 will be pre-empted.

Amendment 13 moved—[Angus MacKay]—and agreed to.

Michael Matheson: The primary purpose of amendment 15 is to address what could be an element of ambiguity in the way in which the bill is drafted. As it stands, a solicitor in practice cannot practise as a part-time sheriff in a district in which

"his or her main place of business as such solicitor is situated."

The amendment addresses a point of ambiguity by replacing those words with

"he or she has a place of business as a solicitor."

That makes it clear that the business is as a solicitor and nothing else.

I move amendment 15.

The Convener: Can I clarify that you think that the amendment is necessary on the assumption that solicitors might have other businesses?

Michael Matheson: Yes.

Angus MacKay: I understand what amendment 5 is trying to do, but our view is that it is too restrictive in its coverage. I will illustrate that with the example of a solicitor in Glasgow who practises wholly in civil business. We assume that it is not intended by amendment 5 that such an individual could never sit in criminal cases in another sheriff court district in Scotland in which that person's firm had an office. That individual would be expected to decline jurisdiction in any case in which their firm had an interest, but we have no clear objection to that individual sitting in another sheriff court district on cases in which their firm had no involvement. I believe that solicitors who have been temporary sheriffs have been assiduous in declining jurisdiction in any case in which there has been a conflict of interest. On that basis, we invite the committee to reject the amendment.

Michael Matheson: To clarify, it is your concern that the amendment might impede someone who is a solicitor in Glasgow—for example, with a practice that has offices across Scotland—from taking up the post of part-time sheriff elsewhere in Scotland.

Angus MacKay: Yes.

Amendment 15, by agreement, withdrawn.

The Convener: I call amendment 16, in the name of Michael Matheson, which is grouped with amendments 17, 18, 19 and 20, which are in the name of the minister, and amendments 21 and 22, which are in the name of Michael Matheson. If amendment 16 is agreed to, amendments 17,18,19 and 20 will be pre-empted.

Michael Matheson: The primary purpose of amendment 16 is to provide the same procedure for the removal of a part-time sheriff as that for a full-time sheriff. There is some concern about the compatibility of the provisions for the removal of part-time sheriffs with the ECHR. For reasons that are similar to why I think that part-time sheriffs should be treated in the same way as full-time sheriffs, although there some differences between them, I think that it would be appropriate that the procedure for the removal of part-time sheriffs should be similar to that for the removal of full-time sheriffs. Evidence on this point was provided to the committee by the Sheriffs Association, which was concerned that part-time sheriffs would be treated differently. Given that part-time sheriffs will have the same obligations and responsibilities as full-time sheriffs have, they should be subject to the same process for removal from office.

I move amendment 16.

Angus MacKay: Amendments 16, 21 and 22 would, among other things, remove the role of Scottish ministers in appointing the tribunal that may order the removal from office of a part-time sheriff. Executive amendment 19 is a response to the concerns expressed that the tribunal should be seen to be wholly independent of the Executive. The amendment would have the effect of removing the role of ministers, and ensuring that the Lord President was solely responsible for the appointment of the members of the tribunal that would decide whether a part-time sheriff should be removed from office.

The Executive amendment does not go so far as to pass the responsibility for carrying out investigations to the Lord President of the Court of Session and the Lord Justice Clerk, who currently have that role in the removal of permanent sheriffs, but the tribunal that we are proposing would have as its chair a senator of the College of Justice or a sheriff principal, plus one legally qualified member and one other member. That formulation is adequate to ensure that the members of the tribunal are sufficiently qualified and suitably independent of the Executive to be able adequately to carry out the functions that are being imposed by the statute. The Executive accepts that the tribunal for the removal of a sheriff must be independent of ministers, and the Executive amendment would achieve that aim.

Amendment 16 would also introduce a requirement on the tribunal to give the part-time sheriff in question an opportunity to be heard. I assure the committee that the regulations that the Executive will make on the procedure of the tribunal that will be authorised to remove part-time sheriffs from office will include a requirement on the tribunal to give the part-time sheriff who is under investigation an opportunity to be heard before decisions are taken.

With that assurance, I invite the committee to reject amendment 16. I ask members not to move amendments 21 and 22, and to adopt Executive amendments 17, 18, 19 and 20.

Euan Robson (Roxburgh and Berwickshire) (LD): Is the "one other person" in the proposed section 11C(3)(c) intended to be a lay member?

Angus MacKay: Yes.

Michael Matheson: I welcome the minister's point about regulations, because it is essential that any process that the tribunal uses is transparent to ensure that it is not challenged. Although this amendment is somewhat dependent upon an earlier amendment that has not gone forward, I am still unsure why part-time sheriffs should be treated differently from full-time sheriffs. Why does there have to be a different procedure?

Angus MacKay: Without wishing to re-enter our previous debate, which did not come to an agreed conclusion, one reason why it is appropriate to

treat them differently is that the two senior judicial officers concerned have an onerous set of other tasks to undertake. We can more appropriately, and just as adequately, deal with the position of part-time sheriffs through the methods that the Executive is proposing. There is no need to treat them on the same basis.

Michael Matheson: So it is not a point of principle; it is more to do with the work load of two senior members of the judiciary.

Angus MacKay: We can re-enter the debate about the difference between part-time and full-time sheriffs if Mr Matheson is intent on it.

Michael Matheson: In effect it is not that there is a difference in principle.

Angus MacKay: We see clear merit in the structure that we are proposing to deal with part-time sheriffs. We see no necessity from anything that we have heard so far to have the procedure on all fours with full-time sheriffs. We see no advantage in that.

Gordon Jackson: One could argue all day about whether there is a difference between full-time and part-time sheriffs. In a sense there is no difference, because they do the same work, but in another sense there is a difference, because a part-time sheriff can work or not work; it depends whether he wants to.

The issue, for me, is not that kind of philosophical difference, but whether the method that the Executive is proposing—different or not—is ample. The proposed method, which takes the Scottish ministers out of the process and sets up the tribunal, is ample and fair. It will have open regulations. The fact that it may differ from how other people are dealt with is not the issue; what matters is whether the proposed method is good. The method is good enough, it meets the requirements, and it is fair.

On that basis, I see no reason to disagree with the Executive's plan. We all disagreed with it before and made it clear that we wanted changes. We have got the changes, and I am content.

Michael Matheson: I have nothing to add.

Amendment 16, by agreement, withdrawn.

Amendments 17 to 20 moved—[Angus MacKay]—and agreed to.

Amendments 21 and 22 not moved.

Section 6, as amended, agreed to.

Section 7—Appointment of justices

The Convener: We come to amendment 23, which is grouped with amendment 59; both are Executive amendments.

11:00

Angus MacKay: Amendment 23 concerns the process of promoting or reinstating a signing justice to a full justice. It prevents a signing justice from being reappointed as a full justice if the signing justice has attained the age of 70. That is consistent with the existing structure of the District Courts (Scotland) Act 1975, which requires a justice to have their name entered on the supplemental list—in other words, to become a signing justice—if they have reached the age of 70. It is therefore also right that a signing justice should not be able to be reinstated as a full justice if they have reached the age of 70.

Amendment 59 is related to that. It removes the provision in section 15(7) of the District Courts (Scotland) Act 1975 that gives the Scottish ministers power to promote or reinstate a signing justice to a full justice by directing that their names should be removed from the supplemental list. In the scheme of openness and transparency that we hope to achieve under the bill, a signing justice who wishes to be reinstated as a full justice will have to be reappointed as such by Scottish ministers under the new section 9(2B) of the District Courts (Scotland) Act 1975. The existing section 15(7) power in that act is therefore now unnecessary.

I move amendment 23.

Amendment 23 agreed to.

Amendments 24 and 25 not moved.

The Convener: We come to amendment 26, in the name of Michael Matheson, which is grouped with amendment 60, in the name of the minister.

Michael Matheson: The primary purpose of amendment 26 is to seek clarification about the term "signing justice".

There is concern that signing justices may be able to act in a judicial capacity or to grant search warrants. Signing justices may not have any experience of the criminal justice system, so it would probably be inappropriate for them to sign for matters such as the granting of search warrants. If the minister could make his view on the role of signing justices clearer, that would be welcome.

I move amendment 26.

Angus MacKay: Amendment 26, in Michael Matheson's name, is clearly intended to set out explicitly the inability of a justice of the peace whose name is on the supplemental list to exercise judicial functions and sign warrants. We believe that such provision is unnecessary, because section 15(9) of the District Courts (Scotland) Act 1975 makes it clear that justices who are on the supplemental list can only

authenticate documents and declarations and give certificates of facts. The bill also makes that distinction clear by providing that a signing justice is qualified only to do the acts that are set out in section 15(9) of the District Courts (Scotland) Act 1975. That makes the role explicit. I ask Michael Matheson to withdraw his amendment.

The Convener: As a point of information, copies of relevant extracts from various acts have been circulated to members. Members will find the provisions to which the minister is referring on page 4 of those extracts, in section 15(9) of the District Courts (Scotland) Act 1975.

Angus MacKay: I turn to amendment 60. The committee will be aware that the bill tries to ensure that councillors who are justices can no longer exercise judicial functions. When the bill comes into force, councillor justices will become signing justices and will have their names entered in the supplemental list. We consider that there is real reason, in ECHR terms, to query the perception of the personal independence and impartiality of councillor justices. We think that there is a material risk of a successful ECHR challenge to a district court that is presided over by a councillor justice. We also believe that active politicians ought not to be judges in court, and that judges in court ought not to be politically active.

As a consequence of the provisions of the bill as presently drafted, councillor justices—by virtue of their being on the supplemental list, and in common with other justices on the supplemental list—will no longer be entitled to sit on the justices' committees that were established under section 16 of the District Courts (Scotland) Act 1975. As the committee will be aware, those committees are tasked with assisting and advising local authorities on the administration of the district courts, and with approving the duty rota and assisting with arrangements for training justices.

We have received representations from the Convention of Scottish Local Authorities and from Aberdeen City Council. They argue that, if councillor justices are not permitted to sit on the justices' committees, there will no longer be any councillors with a specific interest in the district court who are prepared to vote for scarce financial resources to be expended on the courts; as a result, the courts may fall into disrepair and experience staffing problems. They also argue that that would be counterproductive and could render the courts unable to improve the services that they provide to the public.

The Executive recognises the strength of those arguments. We agree that councillors have a role to play in the administration of district courts and we have considered what can be done to preserve the valuable non-judicial functions of councillor justices. Amendment 60 picks up on a suggestion that was made by COSLA and would allow signing justices who are councillors to participate in the work of the statutory justices' committees. I ask members to support the amendment, to allow councillor justices to continue with some of the valuable work that they do for district courts.

Michael Matheson: I take on board what the minister says. I have had an opportunity to consider the issues that arise from the District Courts (Scotland) Act 1975 about what signing justices will be able to do. The minister's comments have satisfied my concerns, so I ask leave to withdraw amendment 26.

Amendment 26, by agreement, withdrawn.

Section 7, as amended, agreed to.

Section 8—Removal, restriction of functions and suspension of justices

The Convener: We move to Executive amendment 27, which is grouped with amendments 29, 30, 31, 33, 35, 40, 41, 51 and 57 in the name of Michael Matheson, and with Executive amendments 37, 38, 39, 42, 50 and 55. If amendment 27 is agreed to, amendments 28 to 36 inclusive will be pre-empted. If members want to speak on this group of amendments, they should let me know now.

Angus MacKay: Executive amendments 27, 37, 38, 39 and 42 follow from the further consideration that has been given to the appropriate removal provisions for full justices. Instead of an investigation into unfitness for office being carried out by two sheriffs principal, we now propose that a full justice should be able to be removed from office only by order of a tribunal of three, to be appointed by the lord president of the Court of Session. We believe that that will ensure consistency with the proposed removal provisions for part-time sheriffs.

The tribunal will comprise a sheriff principal, who will preside, a person who has held a legal qualification for 10 years, and one other person. The tribunal may order a full justice to be removed from office or restricted after investigation. The investigation will require the tribunal to have found that the full justice is, by reason of inability, neglect of duty or misbehaviour, either unfit for office or unfit for performing functions of a judicial nature. The amendments also allow regulations to be made for the suspension of a full justice by the tribunal pending an investigation and for the procedure at the tribunal. The overall effect of the amendments is to provide greater security of tenure for justices of the peace who are carrying out judicial duties.

I turn now to Michael Matheson's amendments. Amendments 29, 33 and 35 are directed at giving justices more rights during the course of the

investigation into their fitness for office. In our view, those amendments are not necessary, because the investigation process by sheriffs principal would have to comply with the basic principles of natural justice envisaged by the amendments, without the necessity to write such procedures into the legislation.

We hope that Michael Matheson and other committee members would agree that those amendments are no longer necessary, in view of the Executive's amendments that introduce a tribunal to remove justices. We do not think it necessary to include any of the suggestions in our tribunal provisions. The tribunal procedure will be set out in regulation, and we will have an opportunity to examine those matters during the consultation process for the regulations. I wish to assure the committee that, as for part-time sheriffs, the regulations will include a requirement on the part of the tribunal to give the justice an opportunity to be heard.

Amendments 30 and 31 seek to allow sheriffs principal the power to commence investigations of their own initiative, rather than waiting for requests to do so from the Scottish ministers. We do not believe that that would be desirable under the bill as introduced, because it would open up the possibility of the sheriff principal being both the accuser and the judge under certain circumstances.

The sheriffs principal did not consider that they should have the role of instigating an investigation when they were consulted on the matter. In any event, amendments 30 and 31 are not necessary if the proposed tribunal amendments are accepted. The tribunal could not instigate investigations; it is an ad hoc tribunal, and will be set up as and when a case requires to be investigated. Scottish ministers will direct whether an investigation is to be carried out. In exercising that power, they would have regard to concerns that had been expressed by other parties as to the justice's fitness for office.

Amendment 40 picks up on the fact that the existing reference in new section 9A(10) of the 1975 act, to new section 9A(6), is wrong. As the amendment recognises, subsection (10) should have referred instead to subsection (7). Mr Matheson is absolutely correct in picking up that point. The drafting amendment is unnecessary, however, if our amendments about tribunals are accepted. We therefore ask Michael Matheson not to press amendment 40.

Amendment 41 requires Scottish ministers to send a copy of any removal order

"to the justice who is subject of the order."

We do not think that the amendment is necessary under the bill as it stands, or under the proposed arrangements by which the justice would be removed by a tribunal. It is inconceivable that a justice would not be informed that he had been removed from office, or that he would not receive a copy of the removal order. We therefore ask Michael Matheson not to press amendment 41.

Executive amendment 50 picks up on a minor point of drafting. Mr Matheson's amendment 51 appears to be directed at the same point and, on that basis, we ask him not to press the amendment.

Mr Matheson's amendment 57 picks up on a point of drafting. We are happy to accept that amendment, and we are grateful to Mr Matheson for his close scrutiny of such points at this stage of the bill.

I move amendment 27.

Michael Matheson: I am impressed by the Executive's humility in accepting amendment 57. [*Laughter.*]

I recognise what the minister has said, and accept that, broadly speaking, the amendments in my name have been superseded by Executive amendment 27. However, in the consultation exercise on the regulations, it will be important for the procedure for disciplinary matters and dealing with justices to be properly transparent, and for it to comply fully with the need for natural justice. I am sure that that will be examined.

Amendment 27 agreed to.

The Convener: As I previously indicated, amendment 27's being agreed to means that amendments 28 to 36 inclusive are pre-empted.

Amendments 37 and 38 moved—[Angus MacKay]—and agreed to.

The Convener: Amendments 39 and 40 are alternatives. Strictly speaking, amendment 39 does not pre-empt amendment 40, but if amendment 39 is agreed to, amendment 40 will become an amendment to leave out subsection (1) and to insert subsection (7).

Amendment 39 moved—[Angus MacKay]—and agreed to.

Amendments 40 and 41 not moved.

11:15

The Convener: If amendment 42 is agreed to, amendments 43 to 46 are pre-empted.

Amendment 42 moved—[Angus MacKay]—and agreed to.

Section 8, as amended, agreed to.

Sections 9 to 11 agreed to.

After section 11

The Convener: I call amendment 47, in the name of Phil Gallie.

Phil Gallie: Amendment 47 relates to section 9, which it suggests should not be brought into force until the minister has addressed the shortage of experienced justices in the district courts, which is a consequence of the suspension of serving councillors.

The issue must be examined in the long term. I recognise that there are good arguments about the politicisation of individuals who serve in a court. However, many very experienced councillors currently give a lot of time and effort to the work of district courts and their absence could cause problems. My amendment seeks to address those problems in the short term, without defeating the long-term objectives of the bill.

I move amendment 47.

Angus MacKay: Phil Gallie's amendment would allow ministers to select a date for the implementation of the provisions in the bill that remove councillor justices from the bench and that prevent them from being appointed to exercise judicial functions. However, the amendment makes it clear that Scottish ministers would have to conduct a comprehensive review of the operation of the district courts as a preliminary to such implementation. There is no prospect whatever of such a consultation and review being conducted and completed before 2 October.

As members will be aware, the bill is intended to ensure compliance with the European convention on human rights in certain aspects where it is thought that there might be a risk of non-compliance. The review of the district courts is about a variety of matters, extending beyond compliance with the convention. Currently available figures indicate that the business in district courts is falling off markedly.

The Executive does not want legislation on ECHR compliance to be put off to an unspecified date. As the amendment suggests, the review may focus on the operation of the district courts. However, interested parties have been asked to say what they think the review ought to consider and it may be that it will have a much wider remit. Our view is that the amendment is not necessary and that it may actually inhibit the review by restricting it to only the operation of the district courts.

I know that committee members have had doubts about the need to ensure that councillor justices are removed from the bench. We were certainly heavily criticised for not acting sooner and for not anticipating the challenge over temporary sheriffs. Some of the individuals and organisations that levelled criticisms at the Executive then are now suggesting that we should wait until there is a successful challenge before taking action to ensure that the district courts system is ECHR compatible. We want to avoid any such challenge; that is why we are acting now.

I will take this opportunity to explain to members the Executive's position on why it is necessary to ensure that councillor justices cannot sit on the bench. During the stage 1 debate, there was a lot of discussion about the position of councillor and ex officio justices. I want it to be clear that, in the Executive's view, the current arrangements do not comply with the ECHR. I will try to set out why we believe that.

First, councillors are paid allowances by the local authority, which is also a recipient of some of the fines that are levied by justices. That in itself could create a significant risk that a councillor who is a justice would not be perceived to be impartial. It is the perception that is important under article 6.

Secondly, justices who are councillors have no security of tenure. As members will be aware, the lack of security of tenure was a major factor in the temporary sheriffs decision in Starrs and Chalmers. There is an even greater risk of challenge in relation to ex officio justices, because they can lose their commission if they lose their council seat. They are liable to lose their commission simply as a result of the local authority withdrawing their nomination as a justice, for which no reasons need to be given. An ex officio justice is therefore totally dependent on the good will of the local authority for the initial nomination and its continuance.

Finally, there are no statutory arrangements governing the selection and recruitment of justices. Ministers rely on the recommendations of local advisory committees that are selected by Scottish ministers and that contain members who are recognised as supporters of political parties. There will be a clear perception of political influence over the composition of the committee that puts forward nominations for justices if that committee is recommending the appointment of people who are councillors. We do not think that there is a sufficiently clear element of independence to ensure that the system is compliant with article 6.

Taking all those factors together, we believe that there is a real risk of challenge to councillor and ex officio justices because of the perception that they lack the necessary independence and impartiality. We emphasise that no one has suggested any evidence of actual bias; we are talking about a perception. However, as the High Court has already made clear in relation to temporary sheriffs, perception counts for ECHR purposes.

Gordon Jackson: You may be right, minister—we may eventually surrender and admit that you are right about ECHR. However, most members of this committee do not care about that one way or the other, for the simple reason that we do not think that it is right that there should be councillor justices in any event. I say that not to be facetious; I say it to make the point that there are occasions where the issue is not compliance with ECHR but what we actually think we should be doing, even if we will then have to comply. I am neutral as to whether the present arrangements comply with ECHR. However, for a variety of reasons, the majority of members do not think that in the modern world councillor justices are a good thing. We accept that you are right, without being over-perturbed about the reasoning.

The Convener: Read into that what you will.

Phil Gallie: Most of us have been approached by external groups on this issue, and a lot of interest has been registered. One reason behind amendment 47 was to ensure that we had a debate on the issue. I have some sympathy with Gordon's points about political input. However, now that we have raised the issue, I am concerned about challenges that may arise on cases that have come up in the past year—especially given the minister's words today.

The convener made a very good point in the debate in the chamber about the position of the district court clerks, who are employees of the local authorities. Given what the minister has said today about his reasons for stepping down councillors, I must ask him whether he has a view on the clerks of the courts.

The Convener: We can have a brief discussion on that issue at the end of this morning's proceedings; however, the matter of the district court clerks is not relevant to the debate on amendment 47. Phil, do you mind if we finish the amendments and then give the committee an opportunity to discuss the issue at the end?

Phil Gallie: Not at all, convener. I said that the issue was about debate; provided that that debate is not suppressed, I am happy to do what you suggest.

The Convener: I think that, in the context of amendment 47, a discussion on district court clerks would not be in order.

Phil Gallie: Summing up on amendment 47, I want to say that we do not wish to delay the bill, because that could cause problems in the courts from October. On that basis, I will withdraw the amendment.

Amendment 47, by agreement, withdrawn.

Schedule

MINOR AND CONSEQUENTIAL AMENDMENTS

Amendments 48 and 49 not moved.

Amendment 50 moved—[Angus MacKay]—and agreed to.

Amendments 51 to 54 not moved.

Amendment 55 moved—[Angus MacKay]—and agreed to.

Amendment 56 not moved.

Michael Matheson: I move amendment 57 with gratitude.

Amendment 57 agreed to.

Amendment 58 not moved.

Amendments 59 and 60 moved—[Angus MacKay]—and agreed to.

Amendment 61 not moved.

Schedule, as amended, agreed to.

Section 12 agreed to.

Long title

Amendment 62 moved—[Angus MacKay]—and agreed to.

Long title, as amended, agreed to.

The Convener: I told Phil Gallie that we could take a minute or two to have a brief discussion about the bill in general, because I, too, want to flag up the issue of the district court clerks, particularly as the on-going case is against them and not the councillor justices. Minister, can you say a word or two about the position of the clerks and whether it is intended that a review of the clerks will be part of any subsequent review of the district courts.

Angus MacKay: We have certainly not ruled that out, because we have tried to be non-prescriptive about where we are going with the district courts. We want to take views on what individuals and organisations feel is appropriate to include in the review, in connection with district courts and related issues, such as the role of the clerks.

The Convener: Given that there is a challenge against the position of the clerks, why was there no mention of the clerks in the bill? I am concerned that, if the challenge is successful, the committee will end up back here next year with another compliance bill whose measures could have been dealt with in this bill.

Angus MacKay: The very short answer is that we do not believe that there is a serious risk of a successful ECHR challenge on those grounds.

Although we had and have concerns on the grounds that we have already discussed this morning, we do not think that clerks of court represent a serious threat in respect of an ECHR challenge.

The Convener: So the matter was canvassed in the run-up to the drafting of the bill.

Angus MacKay: Absolutely.

The Convener: Do members wish to raise any points on the bill?

Phil Gallie: You have pushed the point that I felt strongly about, convener. We all reserve the right to bring forward amendments later—that is the way in which the bill system operates.

The Convener: Minister, I have one or two questions before you skip off to lunch. Can you confirm that the Executive intends to schedule stage 3 of the bill for Wednesday 5 July?

Angus MacKay: Yes.

The Convener: Will that be in the morning or the afternoon?

Angus MacKay: I have no idea. That would be a matter for the whips.

The Convener: The closing date for stage 3 amendments is 5.30 pm on Monday 3 July; amendments should be lodged with the committee clerk team leader. On behalf of the committee, I thank the minister and his team for their work on the bill and particularly for taking on board a number of issues that the committee raised in its report. We are glad to find out that we are being listened to. I want to thank the minister generally for the good humour and patience with which he has gone through the proceedings. I say that mindful of the fact that he will be before us next Tuesday when we continue with stage 2 of the Regulation of Investigatory Powers (Scotland) Bill.

Angus MacKay: I want to take the opportunity to thank the committee for its forbearance in the face of the unfortunate timetabling of the bill and the short notice that was given, which we acknowledged at stage 1. I thank the committee for its tolerance and for facilitating the bill's development. Moreover, I thank members for their constructive suggestions throughout the committee stages of the bill, which, as you rightly say, convener, have been reflected in the Executive amendments.

The Convener: Thank you, minister. As agreed in item 1, we will now go into private session.

11:31

Meeting continued in private until 11:38.

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