

# **JUSTICE AND HOME AFFAIRS COMMITTEE**

Wednesday 6 September 2000  
(*Morning*)

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## JUSTICE AND HOME AFFAIRS COMMITTEE

26<sup>th</sup> 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

### WITNESSES

Angus MacKay (Deputy Minister for Justice)

Mr Jim Wallace (Deputy First Minister and Minister for Justice)

### CLERK TEAM LEADER

Andrew Mylne

### ACTING SENIOR ASSISTANT CLERK

Alison Taylor

### ASSISTANT CLERK

Fiona Groves

### LOCATION

Committee Room 2



## Scottish Parliament

### Justice and Home Affairs Committee

*Wednesday 6 September 2000*

*(Morning)*

[THE CONVENER *opened the meeting at 09:36*]

**The Convener (Roseanna Cunningham):**

Good morning, minister. Thank you very much for being patient for the first five minutes. There are problems with the trains this morning; one or two members have phoned to say that they will be 15 to 20 minutes late as a result. I apologise for being five minutes late for the same reason.

There are no apologies for absence. Nobody has said that they will not be here, although one or two members have phoned to say that they will be late.

### Scottish Executive Justice Department

**The Convener :** We will press on, so that we do not waste any more of the Deputy First Minister and Minister for Justice's time. I welcome the minister, members of the committee, the Deputy Minister for Justice and their officials back from the recess. We have allocated 10 minutes for the minister to make a statement. We look forward to hearing what he has to say.

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I thank the convener and the committee for the invitation to this meeting of the Justice and Home Affairs Committee on, as it were, our first morning back—although it seems as if we have never been away. The letter of invitation suggested that I might want to indicate our main policy priorities for the short and medium term. I welcome this opportunity to do so.

I will set out our key policy priorities and then comment briefly on the six topics that were mentioned in the letter, in the expectation that we will return to those topics in greater detail during the course of questioning this morning.

My primary objective as the Executive's Minister for Justice is to build a safe, fair and open Scotland. That should be a Scotland in which the law reflects the reality of people's lives today, not those of people who lived more than a hundred years ago. In Scotland, individuals and communities should feel secure and be free from the fear of crime. We are working with the police

and communities to achieve that.

We are attacking the menace of drugs, which blights the lives of so many of our young people. That determination is reflected in the Scottish Executive's drug action plan, which involves every Cabinet member. It is also reflected in the increase in resources for the fight against drugs. We have established the Scottish Drug Enforcement Agency, but we are certainly not neglecting treatment and rehabilitation. Preliminary estimates of Executive spending suggest that we spend more on treatment and rehabilitation than on enforcement.

We want a strong, efficient and well-resourced police force that is rooted in our communities and devoted to front-line duties. We have therefore increased the resources that are being spent on the police.

We want to support the victims of crime. We are doubling the number of witness support schemes and have made clear our intention to roll out those schemes to every sheriff court in Scotland. We plan to deal with the problem of the cross-examination of victims of rape.

We are dealing vigorously with crime and criminals. Part of that includes the promotion of programmes and facilities for offenders that are effective in changing offenders' behaviour, cutting reoffending and reducing crime. That is reflected in the introduction of more effective community penalties and an increasing range of programmes in prisons.

We want a fair and just Scotland that has laws and a legal system that the whole community understands and in which it has confidence. The law is there to protect vulnerable members of society; it should be accessible and comprehensible. We have already legislated to improve the law on adults with incapacity. In particular, we will continue with our programme of modernising the system of land ownership. We have already taken a significant first step in the Abolition of Feudal Tenure etc (Scotland) Act 2000. We have set up a Scottish land fund to support community ownership and we are developing draft land reform legislation. That deals with complex and technical issues, which is why we are taking the time to get it right.

We want an open Scotland. Openness is central to a modern democracy. The people have a right to know what their Government is doing in their name and in a modern democracy the Government must take the community that elects it into its confidence if it is to enjoy that community's support. That is why I attach considerable importance to freedom of information and the development of a genuinely open culture of government in Scotland. I have already

consulted on my proposals.

I turn now to issues that were raised in your letter, convener, the first of which is the forthcoming Executive consultations and legislation. The Executive's future legislative programme will be set out in a statement to Parliament later this month. It would be wrong of me to anticipate that, but our general intentions on justice legislation are fairly clear from the commitments that we have made and the consultations that we have undertaken. Decisions need to be made on priority and timing—bearing in mind, of course, the load on the committee.

In the past year, we have consulted on stalking and harassment, judicial appointments and the physical punishment of children. We are consulting on the report of Lord MacLean's committee on serious and violent offenders. We have made a statement on family law and will publish a white paper presently. In the near future, we plan to consult on cross-examination in cases of sexual assault; on the protection that is available to vulnerable witnesses in court; on police complaints; on the district courts and on the use of electronic monitoring. We are also involved closely in the Home Office review of the Sex Offenders Act 1997.

From last year's programme, we are still progressing our work on land reform and we plan to publish a draft bill next February. On stalking and harassment and Lord MacLean's report, we are committed to reviewing the law by 2001 and we plan, therefore, to publish our proposals next year. There will also be a read-across from Bruce Millan's review of mental health legislation. On the other issues that I have referred to, we will consider the need for legislation and its timing in the light of our consultations.

On our general legislative intentions, the United Kingdom is strongly committed to the establishment of a permanent international criminal court at The Hague—that is something that we wish to support. The ICC is now open for ratification. Implementation will require changes in Scottish criminal law, most of which will fall within the Parliament's competence. We are liaising with the UK Government about the matter and have decided to ask Parliament to legislate in parallel with the associated Westminster legislation. We will clarify the precise timing as soon as we are able.

The next subject that the convener raised was human rights. We are committed to ensuring that our law complies with the European convention on human rights. In the debate on human rights on 2 March, I explained that departments had reviewed the compliance with the ECHR of our legislation and procedures and that we had embarked on a detailed audit of the subject. ECHR compliance

affects all the Executive's responsibilities. We have identified a number of justice issues on which amending legislation is desirable to remove any doubt about compliance. I am sure that members will understand that that is a subject on which we wish to move fairly quickly.

Equally, we are not dealing with a static situation: as our courts begin to deal more widely with ECHR points and as the European Court of Human Rights at Strasbourg continues to develop ECHR jurisprudence, we must expect to have to respond to a need for change that it was not possible to anticipate. We will publish a consultation paper on the issues that are involved in the question whether a human rights commission should be established.

The convener raised the prison estates review, to which we drew the committee's attention last December. The purpose of the review is to identify pressures on the prison estates over the long term—10 or more years ahead—and to identify options for meeting those pressures. A number of what might be described as settled decisions on the role of specific prisons have emerged from the review process. In keeping with those decisions, the building of new house blocks at Edinburgh and Polmont prisons at a cost of around £18 million has been announced. Stopping out at HM Prison and Young Offenders Institution Dumfries ended this spring and the completion of the refurbishment of A hall at Perth prison will give 150 more places access to night sanitation. The possibility of increasing access to night sanitation in Barlinnie in the short term is under consideration.

09:45

On reform of family law, as I have mentioned, we plan to publish a white paper. At the same time, we want to discuss with Maureen Macmillan proposals for dealing with domestic abuse to try to reach an understanding on how best to progress those proposals in a way that takes account of the work that has been done by the Justice and Home Affairs Committee and its proposals for legislation. The Executive's objectives are the same as those of the committee and we want to co-ordinate our work with yours.

We are awaiting delivery of the Scottish Law Commission's report on title conditions, which it is expected will be published in the autumn. We hope to consult on title conditions during the winter. Looking further ahead, a bill on title conditions is planned to complement the Abolition of Feudal Tenure etc (Scotland) Act 2000 and we also have to deal with the Scottish Law Commission's report on the law of the tenement.

We have set up an independent commission to examine the law on charities, and that commission

has issued its first consultation document.

The convener asked about progress on the reform of the law of diligence. On 8 June, I announced to Parliament the Executive's intention to carry out a thorough and wide-ranging review of the diligence system. Work on the review has begun and is in its preliminary stages. I consider that to be a priority area for the department and I will monitor progress. We aim to consult widely with all interested individuals and bodies next year. Members of the committee who are not also members of the cross-party parliamentary working group on a diligence against movable property might want to know that that group held its first meeting on 6 July and has started work on its remit.

On legal aid and access to justice, the principle that underlies our approach is that justice should be accessible to all. To progress our policy on legal services in the community, we will hold discussions this month with key organisations such as Citizens Advice Scotland and the Scottish Consumer Council. In addition to those discussions, the Scottish Legal Aid Board has been asked to devise and introduce pilot schemes covering ways in which legal service in the community can be provided. I will make further announcements as we develop our proposals.

On criminal legal aid, we are committed to access to justice and have—as the committee will know—taken a number of steps to ensure that such legal aid is also affordable. We have noted the fall in civil legal aid and the Scottish Legal Aid Board is examining the reasons for that and considering whether that raises eligibility issues. I will be interested in the outcome of that work.

I trust that my short account of our position has been helpful. As I said at the outset, I am sorry that I cannot be more precise about detailed plans for legislation in advance of the statement that the First Minister intends to make later this month. Angus MacKay and I will be happy to try to provide further background to that or to other subjects in response to members' questions.

I am conscious of the demands that have been made on the committee in its first year by our full but—I believe—valuable legislative programme. I know that the committee has been concerned that it has not had as much time as it might have wanted to take initiatives of its own. I can offer no assurance that there will be a slackening of the pace, but Angus MacKay and I appreciate the patience and courtesy that the committee has shown us in the past 12 months, when we have all been learning new ways of working. We both hope that the experience and knowledge that we have gained while working together will be helpful in dealing with the challenges that we will undoubtedly face in the coming months.

**The Convener:** Thank you, minister. We are grateful for the time that you and Angus MacKay have taken to appear before us when we have asked for that. In particular, we are grateful for the occasions when your deputy had to sit through the stage 2 episodes of a number of bills. We all got to know one another well in that time.

I thank you for what you have said so far. A number of questions arise from it. From the committee's point of view, there are a number of practical questions. I understand what you say about not wanting to disclose terribly much in advance of a statement in the chamber, but there are a number of things that we know are definitely coming. It would be helpful to the planning of the committee's business if we could get a better handle on what will happen.

You referred to ECHR compliance. I have been advised informally that another ECHR compliance bill to cover a variety of subjects is imminent. Many of those subjects are expected to be fairly non-controversial, but arise from some of the decisions that have been made in planning law, for example. I ought to advise you that I spoke at the Glasgow Bar Association dinner on Friday night. Because of the rumours that are swirling around about the matter, I wonder whether the minister is in a position to confirm that there will be some such bill.

I am not asking for a precise timetable, but if there is to be a bill, is it likely to appear before Christmas or after Christmas?

My second question is on the title conditions bill. I would be interested in the minister's comments on the likely time scale for that. If I understand what the minister said, the Scottish Law Commission will report in the autumn—I understand that its report is expected in October. I expect that the SLC will publish its report along with the draft bill, which is normal procedure. I would have thought that thereafter the report would go to the minister's department for discussion. Would I be in the right ball park if I said that it is highly unlikely that we will see a bill being introduced on title conditions until a considerable number of months after Christmas and the new year? We know that those matters are coming. The fact that there will be such legislation is not a surprise, but I want to get a handle from the committee's point of view as to where we are on those pieces of legislation.

Mr Wallace kindly wrote to me about the bill on the international criminal court about a week and a half ago. I thank him for that letter. We know that that legislation is coming as well; I assume that it will be introduced at some point during the coming year. It would be useful if the committee had a vague idea of when we might expect it.

**Mr Wallace:** I will try my best. I was the speaker at the Glasgow Bar Association last year, so we have a shared experience.

**The Convener:** We can discuss that afterwards.

**Mr Wallace:** With regard to a further ECHR bill, I made it clear when we introduced the Bail, Judicial Appointments etc (Scotland) Bill that it was one that we had to fast-track. I repeat our gratitude for the co-operation that we got in doing that. I also indicated then that we would almost certainly need to have a follow-up bill, which would take into account the audit that we have done to put compliance in certain areas beyond doubt. Without treading on the toes of the First Minister, I can confirm that it remains our intention that there will be an ECHR bill, which will appear in the first half of the session. We will be able to give more details about that after the First Minister makes his announcement on the legislative programme.

As I said in my statement, the SLC will publish its report on title conditions later in the autumn. Members can take it that there will have to be further consultation on that. It remains our intention to legislate on that because it is an essential part of the follow-up to the Abolition of Feudal Tenure etc (Scotland) Act 2000, but we are more likely to get the bill late in 2001 rather than in the current session.

In my statement, I also referred to the law of the tenement. It is hoped that, once we have got the title conditions report and bill, some aspects of the law of the tenement can be simplified using the earlier SLC report.

**The Convener:** Is it still your intention to legislate separately for law of the tenement or is there a possibility that issues to do with tenemental law might be, at least in part, pulled into the title conditions bill?

**Mr Wallace:** No decision has been taken on that. We must wait and see what the SLC proposes on title conditions.

The final bill that Roseanna Cunningham mentioned was on the international criminal court. I wrote to her on that to coincide with the publication by the Foreign and Commonwealth Office of its consultation paper on the matter—a consultation paper that would welcome responses from Scotland. It is suggested that any response from Scotland should be copied to the Executive as well as to the Foreign and Commonwealth Office.

If I find it difficult to anticipate the Scottish Parliament's legislative programme, the committee will understand that it is totally impossible for me to anticipate Westminster's legislative programme. I think that it is important that, as with the Regulation of Investigatory Powers (Scotland) Bill,

we march in parallel with our counterparts in Westminster. That means that the timing of any Scottish bill will be dependent on the timing of the Westminster bill. As the consultation paper from the Foreign and Commonwealth Office makes clear, there is a degree of expectation and hope that we will be among the first 60 signatories to the treaty. The Scottish Executive shares that aspiration.

**The Convener:** We will keep an eye on what is happening with the Westminster bill, which might give us some clues.

Before I take questions from members, I would like to ask the minister what he means by session. Does he mean the coming parliamentary year as, strictly speaking, each session of the Scottish Parliament lasts for four years?

**Mr Wallace:** I mean the parliamentary year 2000-01.

**The Convener:** Thank you. That clarifies matters.

**Kate MacLean (Dundee West) (Lab):** I would like to ask about drugs. You said that the Scottish Executive spends more on treatment and rehabilitation than on enforcement. I would be interested to know whether you have ball-park figures on how that breaks down, because I find that quite surprising.

I would also like to ask about disposals of offenders. I know that Angus MacKay has been in America examining drugs courts, and I wonder whether there is any intention to consider different ways of dealing with offenders—not necessarily through drugs courts, but through disposals that involve more money for treatment and rehabilitation and special training for sheriffs.

My ears pricked up when the minister mentioned the law of the tenement—not that I was not hanging on his every word. That issue is crucial to the regeneration of inner-city areas. I listened to the minister's answer, but I do not think that he mentioned a time scale for legislation. When would Mr Wallace expect that legislation—which I think is crucial—to be introduced? If necessary, it could be dealt with separately from title conditions, because it is a huge problem in inner-city areas such as those in Dundee and Glasgow.

**Mr Wallace:** If the committee is in agreement, Angus MacKay and I will share out the questions based on which of us has been most involved in dealing with the issue at hand. As the committee knows, Angus MacKay has more detailed day-to-day involvement with issues such as drugs.

I will deal with the question about the law of the tenement. At the moment, there is no time scale for legislation on that. As I tried to explain, at the moment there is a Scottish Law Commission



report and a draft bill, but—without knowing the full details of the report from the SLC on title conditions—our expectation is that aspects of the title conditions report will simplify the bill that has already been proposed. Until we know the detail of that, it is impossible to give a commitment. Suffice it to say that we accept the point that Kate MacLean makes about the importance of the law of the tenement in Dundee and other cities. Over the centuries, Scottish law has pioneered the law of the tenement and it is something that we want to consider in the light of the title conditions report.

Angus MacKay would like to pick up the drugs questions.

**The Deputy Minister for Justice (Angus MacKay):** Examining the spending that is controlled by the Scottish Executive was one of the first priorities for the policy unit. We were concerned to establish what we are currently spending our money on, because we need to ensure that we are getting value for money from current spend before we start to consider expansion of spending.

The policy unit did some pretty extensive work and concluded—if my memory serves me correctly—that, in relation to drug misuse in Scotland, 47 per cent of the Executive-controlled expenditure is related to enforcement. The balance of 53 per cent covers areas such as treatment, rehabilitation and preventive education. Those are areas in which, it is argued, there is imbalance in that they are not sufficiently funded, because too much is spent on enforcement. The preliminary evidence is, therefore, that enforcement takes less expenditure than the other areas.

The report has been subject to further review. We wanted to ensure that it was reasonably robust and had some integrity. We have therefore been crossing the t's and dotting the i's. We intend to make the report publicly available within the next few weeks—certainly before the end of October. I know that Keith Raffan is particularly keen that the report should be released, so it will be made available.

10:00

Beyond that, the spending review is under way and there are a substantial number of cross-cutting bids for additional resources for tackling drug misuse. None of those cross-cutting bids relates to enforcement; all are for treatment, rehabilitation, preventive education, reintegration bridges and so on. I have been at pains in the past to say that the Executive wants to follow a balanced strategy. The current proportion of spend indicates that we have, broadly, a balanced strategy. To repeat a phrase I used at the Social

Inclusion, Housing and Voluntary Sector Committee on Monday, I hope that once the spending review conclusions are announced at the end of September, we will have an even more balanced spending profile than we have at present. Obviously, we will want to see what we come out of the spending review with before we make detailed announcements about how we will take matters forward.

I am extremely enthusiastic about drug courts and alternatives to custody, having seen one example of a drug court in the United States. Other disposals are and can be made available. Members will know that we are piloting drug treatment and testing orders in Glasgow and Fife and that there are other disposals, such as the use of some form of probation. We are keen to ensure that, where appropriate—when we are talking about drug dependency, but with relatively low-level criminal activity—there is the possibility of linking individuals more effectively with treatment and rehabilitation, rather than sending them to prison. We are keen to ensure that such alternatives are available to the courts and that they are used in the proper manner.

The Convention of Scottish Local Authorities, in conjunction with a number of other bodies, including Executive representatives, has been working on a model that resembles enhanced probation. I have asked Executive officials to pursue that model with a view to implementing it. The model would comprise appearances before a sheriff over a period of time—ideally, the same sheriff, as that is part of the drug court principle—mandatory regular drug testing for compliance and referral to treatment and rehabilitation centres, whether residential accommodation or outreach services. If we use the drug court model, that process could last 12 to 18 months.

It could be a working model, which would allow a number of things to happen. More meaningful and effective treatment could be put in place for people who need it and there could be greater coherence in the way in which people who have drug misuse problems come into contact with public agencies and are given the opportunity to rehabilitate. I am enthusiastic about the essential elements of the drug court model. The key thing is to avoid the bureaucracy while extracting the best rehabilitative elements, which is what we are working on at the moment.

**The Convener:** Thank you. I welcome the minister's comments about drug courts and I am glad that during the past year his views on drug courts have shifted slightly to become more positive than they were at the beginning of the first year of the Parliament.

**Angus MacKay:** I have always been enthusiastic about the work of drug courts.

**The Convener:** Yes, but perhaps not on the record.

**Angus MacKay:** I will seek out my comments from the chamber that are on the record and pass them to you.

**The Convener:** I, too, have particularly wanted to push the matter over the past year. I look forward to the proposals.

A number of members want to ask questions. I remind them, in case they are thinking about asking about a variety of different topics, that the Lord Advocate and the Solicitor General will come before us on 27 September.

When asking questions, please remember to keep them to the ministers' remit as opposed to that of the Lord Advocate.

**Maureen Macmillan (Highlands and Islands) (Lab):** I have three points on which I would like clarification. How far forward are the proposals for dealing with the problem of cross-examination of rape victims and when will something be brought to Parliament? What will be the time scale for the family law white paper—when will that become a bill that will be laid before Parliament? I was interested in what the minister said on civil legal aid. Can he give us any more information on the pilot schemes to widen access to justice, which have been proposed by the Scottish Legal Aid Board?

**Mr Wallace:** I will let Angus MacKay deal with the matter of cross-examination of rape victims. The family law white paper will be published later this month. I have already indicated that I hope that we will be able to meet before then as I am conscious that the work that Maureen Macmillan has been doing on behalf of the committee dovetails with what we are trying to achieve. I hope that we can find a common way forward rather than compete—our objectives are very similar. Following publication of the white paper, there will be an opportunity for further consultation, so it is unlikely that legislation will be introduced in 2000-01. The legislative programme for further years has not, of course, been determined. However, we have a white paper that will be the precursor of the draft bill—which shows that we intend to make the changes. Many of the proposals came from the Scottish Law Commission in, I think, 1989 and 1992, so that is unfinished business that we wish to take forward.

The work on legal aid has been undertaken only recently by the SLAB. A number of important contributions are being made on access to justice and community legal services. As I said, I am anxious for that work to be carried forward. It would be premature to say today precisely how it will be carried forward and there is still a lot of work to be done, but I hope that I will be able to

make an announcement on developments sooner rather than later. I will be only too willing, via the convener, to give more details of the SLAB pilot studies.

**The Convener:** If I can interject, I do not know whether the minister is aware that the committee has decided to undertake a review of legal aid. That is on our agenda this morning; we will be actively pursuing it. It would be useful if we can communicate with the minister on what is happening.

**Mr Wallace:** Indeed. Once we have developed our ideas and had more opportunity for consultation—the committee has begun the process of taking evidence—a meeting would be helpful.

**Angus MacKay:** Members will be aware that I made clear in the chamber the Executive's intention to end as soon as possible direct cross-examination by the accused of victims of sex crimes. Since then, officials have sought to hold a number of meetings with relevant organisations and some have taken place, including meetings with Victim Support Scotland, Glasgow Rape Crisis Centre, the Public Defence Solicitors' Office, the SLAB and others. Officials have yet to meet a number of groups, which include: the Zero Tolerance Trust; the Women's Support Project, Glasgow; and Scottish Women's Aid. A number of those bilateral meetings will be held.

There was an attempt in July to arrange an omnibus meeting with a range of representatives of rape victim support groups, but unfortunately that proved impossible because of the holiday period. Officials are hoping to try again to discuss how and in what detail to move forward.

I have said that we hope to produce a paper in the autumn that will clarify exactly how we intend to change practice in that area. We want to strengthen the prevention of cross-examination on the sexual history and experience of victims. Officials will consider that and progress has been made on changes in direct cross-examination. There are also broader issues concerning cross-examination of vulnerable witnesses.

It is fair to say that we have made good progress; I hope that we can continue to do so and that we will have public consultation and comment in the autumn. We would like, thereafter, to legislate as quickly as possible.

**Phil Gallie (South of Scotland) (Con):** The minister, in his opening address, used words that many of us associate with our justice system. He spoke of a system that seemed to be fair and safe, that gave people a feeling of comfort and that was comprehensible. That is important, especially given the recent technical difficulties with court decisions that seem to have allowed people to get

away with crimes for which they had been shown to be guilty. I am thinking about, for example, discrepancies in warrants. Does the Executive intend to address such issues?

**Mr Wallace:** I am not trying to duck the question, but matters relating to criminal prosecutions and warrants are—properly—matters for the Crown Office and the law officers. It would be invidious for ministers to comment on an individual judicial finding; it is not possible to make a learned comment without knowing all the facts that are before a judge. Apart from anything else, there is a matter of principle in the interests of justice. Judges are there to make judgments—our duties are different.

**Phil Gallie:** I do not disagree, but politicians have to lay down the foundation of the law so that judges can follow the wishes of politicians. I suggest that it is the politicians' task to make the law comprehensible to the majority of the people whom it is designed to protect. I asked the question on that basis.

I acknowledge the point that was made about the Lord Advocate. I will suppress the question that I had, just as I have suppressed a number of other questions.

**Mr Wallace:** I will forewarn the Lord Advocate—Phil Gallie will get his chance.

**Phil Gallie:** I will go on to a matter that the minister cannot duck—police numbers. In 1997, numbers were almost up to establishment levels. The figures in Strathclyde show that we are now about 350 officers light. I recognise that the minister has provided an allocation that will probably reduce that figure to about 200. However, I understand that recruiting officers are concerned because there is no guarantee that the cash allocation will continue in future to allow the numbers to be maintained. If the minister can give some words of comfort and an assurance that the cash injection will continue, that will bring some succour to chief constables as they go ahead with recruitment.

**Mr Wallace:** Mr Gallie will be aware that in May this year I announced £8.9 million in additional resources for the police, £1 million of which will go to the Scottish Police College at Tulliallan. Obviously, if we are recruiting, it is important that the training college has the facilities to deal with an increased number of recruits. The balance of the money was distributed among the eight Scottish police forces. It is important to remember that the way in which that money is used is an operational matter for chief constables—not ministers—to decide. From my discussions with chief constables, it is clear that many of them, perhaps all, want to use the resources for recruitment.

Furthermore, we have made additional money available to the Scottish Drug Enforcement Agency. That will lead to a total of 200 officers, split between local and national level.

10:15

The money that was announced on 8 May would pay for 300 additional officers, if chief constables chose to spend the money that way. That is quite a significant increase. Mr Gallie mentioned Strathclyde. Last week, I attended the end of the first week of the induction course for new recruits to Strathclyde police. There were 80 new recruits, which is the highest monthly intake in that force in a generation. The chief constable was enthusiastic because of the large number of applications that had been received. The recruits to whom I spoke were looking forward to a challenging career in the police. The fact that the force is recruiting in such numbers is encouraging.

On future resources, I am sure that Phil Gallie and the rest of the committee will understand that the spending review is going on—I do not see much merit in turning the tap on only to turn it off two months later. The committee will guess what my pitch has been in my discussions with Mr McConnell.

**Phil Gallie:** I welcome what the minister says. The figure of 80 new recruits falls into line with the suggestion that the shortfall in police numbers could drop below 200.

**Mr Wallace:** I said that there had been 80 new recruits in one month.

**Phil Gallie:** The point that I make is that the money that it takes to train those recruits is well spent only if their retention is guaranteed. Therefore, I take comfort from the minister's comments.

Down south, a superintendent's report has suggested that people's perception of the strength of the police relies on the presence of uniformed police officers in communities. The report pointed out that detectives often wear plain clothes unjustifiably and suggested that double manning of police cars was sometimes not necessary. Is the minister aware of that report? If he is, is he considering whether it has implications for Scotland?

**Mr Wallace:** I am not aware of that report. More important, such matters are operational details on which it would be wrong of me to comment. Those are matters for chief constables—I am sure that they are aware of the report. It is important that, as we have done, we make additional resources available not only for personnel, but for DNA testing and so on to ensure that the police have access to new technologies. I acknowledge that

many police officers to whom I have spoken say that a visible police presence can do much to reassure a community. However, questions such as whether police officers should be deployed one or two to a car, or whether they should wear uniforms should be left to the chief constables. That is their job.

**The Convener:** Phil, I want to say in passing that we need to remember that the English and Welsh police operate under laws of evidence that are different from those in Scotland. In Scotland, the laws of evidence require much stronger corroboration than does the law in England. That might sometimes dispose the police in England towards ways of deploying manpower that would not suit Scotland.

**Phil Gallie:** I recognise that, convener. I was asking whether it might be worthwhile doing a comparison while bearing in mind the differences between Scottish and English law. [*Interruption.*]

**The Convener:** Whose mobile phone is that?

**Mr Wallace:** Is it playing "The Flight of the Bumblebee"?

**The Convener:** Before I move on to the next question, I ask everybody to check that their mobile phones, pagers, Psion personal organisers and so on are switched off.

**Pauline McNeill (Glasgow Kelvin) (Lab):** I wanted to ask about two areas. On prisons, there has been a bit of speculation that a degree of privatisation lies ahead for the Scottish Prison Service—all MSPs have had letters from prison associations on the matter. Will the minister clarify his intentions in that regard?

The minister knows that the committee has done a good deal of work on prisons, which we will continue to do. Has he thought about taking any measures to increase the facilities that are available for drug rehabilitation in the Prison Service? We are aware that drugs are a serious problem in Scottish prisons.

**Mr Wallace:** I will let Angus MacKay deal in detail with the question about drugs in prisons. However, I would like to take this opportunity to pay tribute to the Prison Service, because considerable progress has been made recently in Scotland's prisons in tackling the problem of drug misuse.

Pauline McNeill asks about the privatisation of Scotland's prisons. It is well known that an estates review is currently under way, which is examining the likely long-term pressures on the Prison Service's estate. It is important to say that the full range of options is being considered, including a search for suitable sites for new prisons. I have said publicly that nothing is ruled in and nothing is ruled out. It is important that there should be value

for money and quality throughout the public sector. We must provide public services by the most economic, efficient and effective means that are available. In his recent report, the chief inspector of prisons said some interesting things about Kilmarnock prison, but that does not mean that there is a pre-ordained outcome to the estates review. That review is still being conducted by the Scottish Prison Service and, as yet, no submission has been made to ministers.

**Angus MacKay:** Recently, the Scottish Prison Service launched a new strategy for dealing with drug misuse in prisons and the drug misuse problems that prisoners have. That strategy has been widely welcomed, specifically by Clive Fairweather, as representing a major step forward and an innovative approach.

A number of elements will come into play as part of the new strategy. Every prison will have a drug co-ordinator who will oversee the development of a coherent policy for dealing with drug misuse problems. In addition, some prisons have appointed through-care co-ordinators to consider perhaps the most important issue—prisoners going back into their communities on release and encountering problems, either because they have become drug-free and drugs are available to them again, or because the drugs that they have taken in prison have been less pure than the high-concentration drugs that are available in the community. That exposes former prisoners to the possibility of fatal overdose.

The work of through-care co-ordinators will be essential. To back it up, the new prison strategy requires every prison in Scotland to engage with its local drug action team. That will not necessarily give it a perspective that is relevant to all its prisoners, because prisoners can come from any part of Scotland, but it means that prisons will be much more up to speed with the rehabilitation and treatment regimes that are available outside the Prison Service. In that way, improvements in quality and new developments can be fed into the way in which treatment and rehabilitation are delivered in the Prison Service.

Through the strategy, we require the Scottish Prison Service to enter into a proper partnership with external agencies, which should make for improved commonality of working. The Prison Service has found an additional £500,000 to invest in the strategy. We must await the outcome of the spending review before we will know whether and how additional resources might be made available for treatment in prisons and through-care provision, following prisoners' release.

In the longer term, the critical element is how successful we are with the diversion schemes that we discussed earlier, such as drug treatment and testing orders and probation. If those are

successful in reducing the number of people who go to prison for relatively minor offences, there will be two benefits. First, such people will be put into treatment and rehabilitation programmes outside prison rather than going to prison, which may reduce their chances of reoffending and reappearing in the system.

Secondly, such schemes reduce the volume of individuals in the Scottish prison service who have drug problems and allows the Prison Service to focus its resources and programmes on and provide sharper service delivery to individuals in prison who have drug problems.

**Pauline McNeill:** The second area I wanted to ask about is the administration of civil justice. I have asked a few questions before, the replies to which have been that the minister feels pretty satisfied that targets are being met. I want to raise the prospect of having a closer look at what is being done on civil justice. We will touch on that when we consider legal aid, but I am keen to find out when the minister will have the report on why there is underspend in civil legal aid and why people are not making applications. The minister said that access to justice is a big issue, so I feel that we need to look a wee bit more closely at what that means. It is not about targeting only the poorest and ensuring that the system exists. We need to look beyond that to see why people do not access the system, given that it deals with big areas of the law, such as personal injury and family law, which the minister touched on. In my experience, people feel that there are big delays in the courts and that such work has been deprioritised due to the teething problems with the European convention on human rights.

**Mr Wallace:** I welcome the question for the interest it shows in the civil side of the legal system. On delays, it is undoubtedly true that when the 129 temporary sheriffs had to be suspended, priority was given to criminal cases. Civil cases that involved children were another priority category. Inevitably, that meant that most of the delays were experienced in civil litigation. However, the two categories that I mentioned were the important priorities. Now, with the help of the committee and Parliament, the new legislation is on the statute book and I hope that a number of part-time sheriffs will be announced in the very near future.

**Pauline McNeill:** When is that likely to be?

**Mr Wallace:** I would like to say this month, but it may slip to next month. I hope that it might be possible this month. We also appointed 19 full-time sheriffs, a number of whom were so-called floating sheriffs. Priority has been given to identifying the areas where the logjams were biggest, and Stirling and Perth were certainly places where the backlog was growing. The full-

time sheriffs were allocated to tackle the most important bottlenecks.

On the Scottish Legal Aid Board's investigation into the reasons for the drop-off in access to civil legal aid, legal aid expenditure dropped for the first time in 1998-99. Some of the reasons are not necessarily to do with restricted access. We are seeing, for example, an increase in no-win, no-fee arrangements, insurance companies undertaking the costs of litigation and trade union assistance. However, the fact that the SLAB's most recent report—and it was relatively recent—showed a further decrease in the number of civil legal aid applications received has sparked the board's interest in undertaking research into the reasons for the decrease. I do not have any indication from the board of when it expects the work to be completed, but, as I said before, I will want to keep a close eye on it.

Modernisation of civil procedures continues through the Sheriff Court Rules Council, which is always open to ideas and proposals on how we can improve civil practice in the sheriff courts. I believe that I am right in saying that we are still waiting to clear up some of the points that would have changed the jurisdiction levels for small claims, with which the Justice and Home Affairs Committee quite properly identified a problem, which we are still trying to resolve. Once we are able to do so, that might also help to ease access to the civil courts.

We are taking a number of approaches—legal aid is not a single issue matter, as Pauline McNeill recognised. However, I hope that the Justice and Home Affairs Committee's investigation into access to justice and legal aid will bear some fruit, as they are important issues. I share the aspiration that we should ensure that people feel that our civil courts are accessible.

10:30

**The Convener:** Before I call Scott Barrie and Christine Grahame, am I right in saying that you need to be away by about 11 o'clock, minister?

**Mr Wallace:** We could go a bit past 11 o'clock, as I would hate for someone to sit with a burning question that they were not allowed to ask.

**The Convener:** In considering the number of members who have asked questions so far—

**Mr Wallace:** I will try to make my answers a bit crisper.

**The Convener:** I suggest that committee members try to keep their questions briefer than has been the case.

**Scott Barrie (Dunfermline West) (Lab):** I will make three points very briefly.

Minister, we all welcome your comments on the prison estates review and the improvements in night sanitation at some of the establishments. Could you say a bit more about the set-up at Barlinnie? When we discussed night sanitation previously, most concern was raised about Barlinnie, where you said there had been slight movement.

It is good to hear that the cross-party working group on diligence has met once already. Without holding you to time scales, can you indicate when you might be able to come back with concrete proposals on diligence?

On family law, you mentioned domestic abuse, but you are also consulting on the reform of divorce law and the possible extension of parental rights and responsibilities to unmarried fathers. Can you indicate when you might come back with legislation on those issues?

**Mr Wallace:** I indicated that we are considering the possibility of increasing access to night sanitation at Barlinnie in the short term. This issue is under review and, as I indicated in my statement, the prison estates review has brought about settlements in relation to a number of prisons, and those settlements have been communicated to the prisons concerned.

Detailed examination of the estate at Barlinnie is continuing. I think I am right in saying that, at Barlinnie, something like 77 per cent of prisoners do not have access to night sanitation. That issue must be addressed in the context of the prison estates review.

On family law—

**The Convener:** Minister, before you move on to family law, I will pick up on one issue in relation to the prison estates review.

That review was supposed to have been completed by May 2000, but it is now September—some three, if not four, months further down the line. I know that the relationship between ministers and bodies such as the Scottish Prison Service is a tad controversial at present, but I ask you please to put pressure on the chief executive of the SPS, if you are not already doing so, to expedite a review that is now more than three months late.

**Mr Wallace:** I recognise that the sooner we can make progress on the review the better. Equally, it is important to recognise that we are talking about a 10-year plus time scale and that we should not rush into decisions that are wrong or that are based on insufficient or inadequate information. It is also important to indicate that a number of settled decisions have been made already in relation to the following establishments: Aberdeen, Cornton Vale, Dumfries, Castle Huntly, Noranside,

Edinburgh, Glenochil, Greenock, Inverness, Kilmarnock, Perth and Polmont. As I said in my opening remarks, those settlements are leading to capital investment in both Edinburgh and Polmont.

I do not underestimate the uncertainty that the review causes; I am well seized of that. Members can be assured that, when I meet the chief executive of the SPS, I always ask him when I can expect to receive the outcome of the review. When I do so, he quite properly indicates that these are difficult issues and that a number of important pieces of information have to be ascertained when considering the range of options. The difference between May and the end of the year may seem significant now, but, as I have said, we are talking about a 10-year plus time scale, so it may not be all that significant. Our objective is to get things right.

As I have also said, in the vast majority of Scotland's prisons, settled decisions have been made, and the governors and staff are well aware of the position.

**The Convener:** We are all aware of the situation with prison staff morale, an issue that needs to be emphasised, especially when we are waiting for the outcome of a review that is now well overdue by the standards that the SPS set for itself.

On a related point, what is the current target for the ending of slopping out? We know that the target has slipped.

**Mr Wallace:** That will depend on the outcome of the review. If I say that Barlinnie has 77 per cent of prisoners without access to night sanitation and Peterhead has 100 per cent without access to night sanitation, it is clear that there is much work to be done. I want that work to be done at the earliest opportunity. It is not just a question of resources: it is also a question of where prisoners are put while one prison, or one part of a prison, is being refurbished. A number of other factors also have to be taken into account. I assume that I share with members of this committee the view that we want to make substantial progress towards ending slopping out. We will be in a better position to indicate a target once we have the outcome of the estates review.

Scott Barrie asked about family law. A white paper will be published later this month. I made a statement to Parliament in January on the provisions regarding divorce. We are dealing with a Law Commission report of some years' standing and I do not think that there will be any huge surprises. Following my January statement on paternal rights, many comments have been made that we will have to consider. I hope to be in a position to make a clear statement when I launch the white paper. That will probably be next week.

**Angus MacKay:** In response to the question on

diligence, I understand that work on the wider review of diligence is under way. We are considering the possibility of consulting on those diligence issues early next year. I presume that Scott Barrie is more interested in the position on poindings and warrant sales.

**Scott Barrie:** Yes.

**Angus MacKay:** The working group held its first meeting on 6 July. A second meeting had been scheduled for 12 September, but that date is difficult for some members so we are trying to change it. After just one meeting, it is not possible to say when we are likely to reach a conclusion. These are thorny and vexed issues. However, our agenda is to work towards reporting as soon as possible next year, to allow subsequent legislation to be introduced during the parliamentary year 2001-02. I will be happy, once we have more substantial information on which to base our estimates, to keep the committee updated on the progress that we make and on when we expect to reach our conclusions.

**Mr Wallace:** Convener, I have found a figure that relates to an earlier question. The new houseblocks at HM Prison Edinburgh and HM Young Offenders Institution Polmont will provide a further 550 places with access to night sanitation by 2002.

**Christine Grahame (South of Scotland) (SNP):** I have five questions: three on drugs, a short one on the estates review that was dealt with by other people and one on civil legal aid.

**Mr Wallace:** Fire away.

**Christine Grahame:** First, on drugs, I note what the minister says, but while customs is a reserved matter, there is extreme concern in Scotland about the closure of the customs operations centre here. Taking into account the loss of local knowledge, and given Scotland's coastline, can the minister advise whether the matter is done and dusted, or whether it is still under consideration, with that concern being taken into account at ministerial and joint ministerial levels? In order to prevent drug misuse it is essential that the matter be addressed.

Secondly, on the matter of drug rehabilitation in prison, Pauline McNeill and I visited Low Moss, where we saw Alba House functioning well. However, it is a drop in the bucket compared to what is required. The men there, all 10 of whom were self-referrals, told us that one of their greatest difficulties on being released from prison is returning to the communities where the dealers were waiting to meet them. Does the minister's drug rehab programme and his fight against drugs take account of setting up hostels to take men and women away from drug communities in the important period after they have been discharged?

Thirdly, the minister has not mentioned alcohol abuse. Alcohol is behind the vast majority of crimes of violence and disorder. There is an increase in youth crimes through alcohol abuse. Is the Executive's justice department addressing that issue, along with the more recognisable issue of drugs in society? That has been raised frequently in the press recently, as well as in the Parliament by myself and others. Will the minister address that matter?

Fourthly, although the estates review is being addressed by other parties, I want to emphasise it. We all have in our postbags unsolicited grave concerns from prison officers about morale. They do not know what the future holds for them or what is happening with their contracts. What is the relationship between the minister and the chief executive of the SPS? What are the minister's duties with regard to what seems to be poor morale among the people who work in prisons?

Lastly, with regard to the civil legal aid review, will the minister consider the important areas in people's lives where legal aid is not available, for instance, at employment tribunals or in cases where people are making representations to an education committee and have a lawyer to help them? Will extending the forums for which civil legal aid is available be part of the remit?

**Angus MacKay:** I begin by trying to deal with the two points on drugs and one on alcohol. The customs issue Christine Grahame raised relates to Falcon House near Paisley. My understanding is that that does not have any operational effect on the customs service's capacity to deliver, on its contribution to the co-location at Osprey House next door, under the Scottish Drug Enforcement Agency, or on its capacity generally to fulfil its role in Scotland.

I understand that the customs service is altering the way in which the functions carried out at Falcon House relate to operational individuals within the field. It is not a reduction in service. What is proposed is simply a reduction in the number of sites across the UK and the establishment of two consolidated sites. The view is that that will lead to better operational effectiveness. I am quite relaxed about any potential impact on the enforcement side of our drugs policy.

Drug rehabilitation in prison is an important issue. If individuals are engaged in treatment and rehabilitation while in prison, or even when they are not in prison, when they return to the community they may potentially be exposed to life-threatening situations. In other cases, the situations they face may not be life threatening but may lead to a relapse into the same pattern of behaviour that brought those individuals into contact with the Prison Service in the first place.

10:45

The revamped Prison Service drugs strategy is important because it provides for a drugs co-ordinator in each prison to oversee each of the issues through which the characteristics of drug misuse in the prison population can be addressed. The appointment of through-care workers in some prisons illustrates that the strategy is on the right track. Those workers will provide the link between what is happening in the prisons and what is happening in the communities to which the prisoners will return with the agencies that are trying to deliver services.

The through-care issues are precisely the ones that Christine Grahame raises. What happens when an individual returns to his community and perhaps comes into contact with people who are dealing drugs and faces the temptation that could result in them going back to their drug dependency problem? We must ensure that there is a coherent and seamless service delivery from inside the prison, through the release process and back into the community, which is the best place to tackle the problem.

**Christine Grahame:** Some of the men mentioned relocation as a way of stopping them going back into the community that they came from. You are suggesting that they would return to their community but would be supervised, whereas they wanted to have the option of going into semi-sheltered accommodation away from their community for a period until they had enough resolve to go back to their communities. Is that being considered?

**Angus MacKay:** Some of those issues are broader ones that cover the drug treatment and rehabilitation field, such as access to residential treatment or outreach treatment. Some of the issues are ones that the through-care co-ordinator should be considering with the voluntary sector and social work departments in an attempt to make arrangements to assist individuals to maintain their drug-free lifestyles. In some cases, those individuals might not want to move back into the community from which they came and we would expect the through-care co-ordinator to examine the possibility of making arrangements for that with local authorities or other agencies.

Alcohol misuse is an important issue and I agree with the weight that Christine Grahame gives to it. It is important because of its impact on the lives of the individuals concerned and their families and communities and also because of its impact on the criminal justice system in terms of time and cost. I do not have responsibility for the issue as part of my ministerial responsibility for drugs. It cuts across two departments: health and justice.

In the debate that we had in the last

parliamentary year, alcohol misuse was raised as an issue of substance misuse that required urgent attention. Iain Gray and I agreed that we needed to revisit that issue substantively in terms of parliamentary time and ministerial attention. I believe that work is being done on alcohol misuse and that an announcement will be forthcoming at some point. I am afraid that I cannot give any details of time or context.

**Mr Wallace:** I share Angus MacKay's concern that we should properly address the issue of alcohol abuse. From my own short years of practice in the legal profession I know that alcohol misuse plays a prominent role in marital break-up and crime. At an official level, cross-cutting work is being done by the justice and health departments, with health in the lead. The issue is important and I agree with Angus that it needs more attention in our parliamentary deliberations.

Christine Grahame raised the issue of morale in the Scottish Prison Service. As I said earlier, I think that it is understandable that a period of change that has seen three establishments close in the past 12 months should be unsettling. I am assured that the Prison Service is addressing the issue of morale as a priority. It continues to give a high priority to training and development of staff and to invest in better staff facilities. It is working on a replacement for the Prison Service college as it is clear that its facilities do not match today's requirements. I am told that, when confirmation is received on the final site, the service will have achieved Investors in People recognition.

It is important that the staffing issues are addressed as a priority. The operational matters for the Scottish Prison Service are for the chief executive and his board. Obviously, general legislation with regard to prisons and the setting of the budget are ministerial responsibilities. We set the targets for the Prison Service and publish them as a written answer every year. The Prison Service is expected to meet them. I have regular discussions with the chief executive, and I take a keen interest in what is going on in our prisons. I make it my duty to visit a good number of prisons and meet staff personally. There is no substitute for going out and getting people's views at first hand, so I make a point of trying to do that.

Christine Grahame's other question related to legal aid and tribunals. I do not know whether the committee is aware of this, but there are at present two cases on the issue of whether legal aid should be available for employment tribunals. As those cases are still current, it would not be appropriate to comment on them. I hope that people will recognise that legal aid advice is already available prior to a tribunal hearing, and that the legal aid fund paid for 277,000 grants for advice from solicitors last year. That is a



substantial number of cases in which legal advice was given. In most cases, the aim is that the tribunal system should be simple and that legal representation should not be required; but, clearly, as there is litigation at the moment, the issue is under justiciable review.

I spoke earlier about developing community legal services. That avenue could be explored further, to find out how people who are to appear before tribunals can get access to legal advice.

**Christine Grahame:** I was, of course, asking about representation; I am aware that advice and assistance are available. However, once the threshold is crossed into a tribunal or a committee there is no longer cover to represent a client. I wanted to know whether the minister would extend the cover.

**Mr Wallace:** There are two cases at the moment, *Gerrie v Ministry of Defence* and *Grant v Avondale Coaches*, both of which are sub judice. I do not want to comment while those cases are continuing. However, the fact that those cases are continuing means that the issue is under consideration.

**Christine Grahame:** The European convention on human rights might come into play, because people have the right to a fair trial and a fair hearing.

**Mr Wallace:** Those two cases are ECHR cases. Because of their very nature, we will have to consider these matters. However, pending decisions on those cases, it would not be appropriate to comment.

**Michael Matheson (Central Scotland) (SNP):** I have two brief points. I welcome the news that Polmont will receive funding for its new hall, which, given the state of two of the present halls, has been needed for a long time. However, there is a clear perception that the provision of funding to deal with young offenders institutions is the cinderella of the Scottish Prison Service. It does not necessarily attract the level of resources that are required to deal with young offenders.

On a visit that I made to HM Young Offenders Institution Polmont, the issue was raised of community links for prisoners when they are released from prison—links with enterprise companies, links with employment services and links with other community organisations. Polmont has established an initiative that is funded by the Falkirk Enterprise Action Trust. However, when the enterprise trust ran out of money, the Prison Service did not have any money to continue with the initiative, which provided alternatives for prisoners being discharged from Polmont, allowing them to go into forms of self-employment. I would like to hear the minister's views on whether there will be any further initiatives to improve community

alternatives for prisoners who have been discharged from young offenders institutions.

I would also like to ask about the human rights commission, which I am keen to see established. Although I am sure that the minister would not want to pre-empt any consultation, I would like to hear his views on whether it is desirable to have a human rights commission here in Scotland. If it is desirable, what role does the minister think that it should have, especially in relation to other commissions in Scotland?

**Mr Wallace:** I am glad that Michael Matheson welcomes the investment to be made in Polmont. It is accepted that Polmont should continue to be the main site for young offenders. I would find it impossible to answer detailed questions on that scheme without getting more information.

I visited YOI Polmont in the summer and was very impressed by the commitment of the staff and the interesting initiatives that are under way. One such initiative involved a prisoner videoing bedtime stories to be sent to his children. That received widespread publicity. There were several worthwhile initiatives that were being implemented by staff and that enjoyed much support from the prison population.

Mr Matheson might be aware that one of the reasons that I visited Polmont was to launch "Intervention and Integration for a Safer Society". That was the first time that the Prison Service had put out for consultation detailed plans for a range of offenders—elderly prisoners, women prisoners and young offenders in particular. The role of young offenders institutions is specifically addressed in that publication. One of the main issues that it raises is the importance of promoting links with community agencies and employers. I hope that we will have a positive response to that discussion document. We can make it available to the committee, if that has not already been done. If any members of the committee want to contribute to the process, they are most welcome.

I am interested in the establishment of a Scottish human rights commission. I have indicated that we will publish a consultation paper setting out the issues and options. That will provide interested parties with an opportunity to offer a view on whether such a commission should be established and, if so, what form it should take. I hope to publish that paper at the end of this year or early next year. I have made several speeches setting out my views on the subject and I would be happy to send them to Mr Matheson for his bedtime reading.

**Michael Matheson:** I look forward to that.

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** I am relieved that I do not have to go over the old ground of morale and slopping out—that

will be covered by my colleagues. However, there is one issue in particular that I would like to raise with you, minister. I notice that the first line of the Scottish Prison Service's mission statement is:

"To keep in Custody those committed by the Courts".

Why is no remedy or compensation available when members of the public suffer because that system has failed? Can the minister assure us that some form of fund or compensation will be available in such cases?

**Mr Wallace:** No, I cannot make such a commitment. It raises interesting questions of civil liability; the position is not very clear. As Lyndsay McIntosh knows, liability flows from negligence and it remains an open question against whom such a claim could be established. I cannot make the kind of open-ended commitment that she seeks.

Some very tight targets have been set in relation to the prevention of prisoner escapes. The targets set in the two years for which I have been responsible are much tighter than those in the mid-1990s. Over the years, the Scottish Prison Service has had a good record in that respect.

**The Convener:** I have one request for a second bite from a member who has already asked a question and there are two minor matters that have not been covered so far, which I would like to clear up. I expect to allow the minister to go in the next 10 minutes.

11:00

**Phil Gallie:** At the beginning, you emphasised your support for victims and the fact that people have to understand and respect the justice system. An issue that causes concern—and I accept that it was introduced by Ian Lang in the previous Tory Administration—is the automatic 50 per cent reduction for short-term sentences that are between one day and four years or whatever. Has the minister any thoughts on reviewing that and considering earned remission rather than automatic remission?

**Mr Wallace:** There are no proposals to do so.

**Phil Gallie:** Would the minister perhaps take the matter to the Executive for consideration?

**Mr Wallace:** If Mr Gallie formalises a representation to me, he will receive a considered reply. As he said, the measure was introduced by Ian Lang as primary legislation—I think that it was part of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Given the volume of legislation that is coming down the track, I do not know whether it would rank as a priority. I cannot recall representations on the issue from anyone other than Mr Gallie.

**The Convener:** I want to ask about judicial appointments. We know that the consultation period closed only a few months ago and I do not expect the minister to be able to make a definitive statement today, but I would like to know whether he has come to a conclusion yet about whether legislation will be required. There was some doubt about whether it would be necessary.

**Mr Wallace:** There has been a good response to the consultation exercise. There have been a number of views on the point that you raise. It is a question of balancing the need for quick progress against a long-term interest in having it on a statutory basis. We will have to be clear about that issue when we publish our response.

**The Convener:** The other point arose from one of the summer's leaked documents that appeared in *The Scotsman*, which referred to a future programme of work. I appreciate that that was a leaked document; I simply scanned the section relating to justice in an attempt to find out the practicalities of what the committee might be facing. Moves in respect of criminal asset confiscation were mentioned; I am aware that the deputy minister made some statements on the matter in the chamber in the past year. Is anything being more actively considered?

**Angus MacKay:** You are right. I have made a number of statements in relation to confiscation of assets and civil forfeiture. The confiscation regime already exists in Scottish courts. We have been actively considering the possibility of beefing up the way in which we use existing powers, to ensure that we make full use of them. Clearly, that would not impose a legislative burden on the Parliament or the Justice and Home Affairs Committee, which will be a matter of some relief to you.

Civil forfeiture would be another matter entirely. Provisions for civil forfeiture powers would not be a novelty. They already exist in relation to cases involving cash across borders, when cash can be seized at customs posts, and drugs, when police can seize money linked to drugs. The more general use of civil forfeiture powers, however, would require primary legislation.

We have been in active discussions with the Home Office at Westminster for a number of months, to consider the best way to move those issues forward. Our primary objective is to develop an effective, consistent regime across the UK. The objective of such legislation or policy changes, if legislation were not required, would be to put in place a tighter, more effective regime. The last thing that we would wish to do, in seeking to progress that regime, would be to leave loopholes or to create a non-level playing field across the UK. That has been the subject of our discussions with the Home Office.

As yet, we are not in a position to make a public announcement on that subject, although, in response to Phil Gallie in a debate before the summer recess, I made it clear that I would try to make a statement after the recess. We will seek to do so as early as practicable.

**The Convener:** I thank both ministers. We have ranged far and wide in respect of our remit, but that is to be expected. We have made reasonable time. I look forward to seeing one or other or both of you at various times over the coming year.

I remind members of what I said earlier: you should bear it in mind that the Lord Advocate and the Solicitor General are to appear before the committee on 27 September, and we will obviously wish to raise a range of issues then. Some of them were touched upon this morning.

## Domestic Violence

**The Convener:** We now come to item 2 on the agenda. The senior assistant clerk has provided a note, entitled "Proposed Protection from Abuse Bill", which has been circulated to members. It clearly sets out the issues for the committee. Members should recall that, at our meeting on 4 April, we agreed in principle to recommend the introduction of a bill that would effectively allow a sheriff the discretion to attach power of arrest to an ordinary existing civil interdict. We have already made that decision, and the issue this morning, on which I will ask Maureen Macmillan to make a few comments, follows on from our discussions on 4 April, and relates to whether breach of interdict should be a civil or criminal offence.

I hope that Maureen can clarify whether she is suggesting that we now drop the issue of introducing the possibility of power of arrest to an ordinary civil interdict in favour of simply maintaining the existing common law position on interdict, except for the fact that breach of interdict would become a criminal rather than a civil offence. We would do that instead of attaching powers of arrest to civil interdicts—that is where this is a wee bitty unclear.

**Maureen Macmillan:** As I see it, the situation is as you have explained it. The original proposal came from Scottish Women's Aid. Just before I met Angus MacKay on 15 August, it was again suggested to me that the proposal would serve to lessen the burden of civil legal aid contributions on women—or on any abused person who required to access the courts.

The interdict would have attached to it some form of order—not being a lawyer, I am not sure what the formula for that would be—to make it clear that, if the interdict was breached, that would be a criminal offence, rather than being a matter merely of having the power of arrest attached.

**The Convener:** I am a little confused about what is being suggested. At the moment, interdict is a matter of straightforward common law which anybody can seek through the civil courts. Is the suggestion that, instead of allowing the sheriff discretion to attach power of arrest, we should simply legislate to make breach of interdict a criminal offence? If that is the case, would that legislation or proposal cover any and all breaches of civil interdict, or would we seek to define breaches of interdict that come into this category? If so, I think that there are problems with that.

**Maureen Macmillan:** We would seek to define the breaches of interdict in the same way that we define interdicts with powers of arrest attached to them.

**The Convener:** The difficulty is that our initial discussion about attaching powers of arrest seemed relatively straightforward. The idea was to allow a sheriff the discretion to attach the power of arrest if he concluded that there was a risk of physical violence or assault, with such a power applicable to any and all interdicts where that was the case. That resolved the issue of thinking only in terms of cohabiting husband and wife. My concern is that if we have to start defining the kinds of interdict of which any breach would constitute a criminal offence, we get back into the whole problem of definitions.

**Maureen Macmillan:** I am not a lawyer, so I might be missing something. However, it seems fairly straightforward to me that a class of persons who apply to the court for an interdict with the power of arrest attached because they are in an abusive situation can surely go to a sheriff who would have the discretion to grant them such a criminal interdict, for want of a better phrase. I do not see the problem.

**Gordon Jackson (Glasgow Govan) (Lab):** Although I do not see a problem in that sense either, I have to disagree with Maureen Macmillan for another reason. We might start to get entirely confused here. I did not think that we would do what the convener suggested, which was to attach the power of arrest to every interdict; I thought that we had always intended to attach the power to what might be defined as domestic-type interdicts. Obviously, we cannot attach the power of arrest to certain interdicts. I cannot think of any off the top of my head, but clearly they must concern civil matters and have nothing to do with domestic abuse. I thought that we were going to set up a power of arrest by extending the present matrimonial interdict, the problem with which is that it dies when the marriage dies, or introduce a new form of interdict with a power of arrest that was broader than the existing Matrimonial Homes (Family Protection) (Scotland) Act 1981 and would therefore cover domestic situations.

I am not overkeen in making breaches of an interdict a criminal offence, even in the situation that Maureen Macmillan outlined. Sometimes there seems to be real confusion about criminal prosecutions. I do not want my following comments to be taken out of context. Criminal prosecutions come about because the body politic has been offended. For example, if Scott Barrie punches Pauline McNeill, we prosecute him for assault, whether or not she wants that. The TV notion of people pressing charges really has no meaning. As a society, we say that it is wrong for somebody to assault or attack somebody else and, as a society, we prosecute whether the victim wants to prosecute or not. If my imagined assault takes place and we prosecute Scott Barrie, it does not matter whether Pauline McNeill tells the police

three weeks later that she does not want him to be prosecuted. We have witnessed the assault and he will be prosecuted, because it is a criminal matter.

However, I wonder whether the same applies to matrimonial situations. A couple might be in matrimonial difficulties and in the middle of civil proceedings. If the person who is interdicted from being in a particular place does something in that place—such as assault or a breach of the peace—that would be a criminal offence anyway; the offence will be prosecuted. On the other hand, the person might breach an interdict simply by turning up at a particular place. If doing so becomes a criminal offence, it will be prosecuted, whether or not the woman wants that to happen. Someone said that that was a good thing, as it takes the decision out of the woman's hands. However, I am not so sure that that is a good thing as far as people's relationships are concerned. There might be many situations where people go to court and there is much emotional trauma, and the guy is present when, strictly speaking, he should not be. Now he has to be prosecuted because he has committed a criminal offence.

11:15

The woman might not want the man to be prosecuted, not because she is frightened or intimidated, but perhaps because a mediation process is under way. We might create a situation where things are out of the hands of the parties, and are in the hands of the criminal court. I am not so sure that that is a very clever idea.

**Maureen Macmillan:** We are not talking about matrimonial interdicts, which would still exist. We are talking about an interdict for people in relationships other than marriage. Divorce proceedings would not be going on at the same time.

**Gordon Jackson:** But we must consider the fact that relationships now take place outside marriage.

If there is a problem in a relationship and something has happened that would not normally be criminal, we should not bring in the criminal courts, because we take the matter out of the hands of the people who are trying to work out the relationship. I suppose so—okay. I just have reservations about doing that.

**The Convener:** I think that some issues need to be clarified before we go on, as there are clearly different understandings about our initial idea. We will need to go back and examine the *Official Report* of the committee meeting that we are talking about.

I understood that we would propose a bill that

would permit a sheriff to attach a power of arrest to an interdict where he thought that such a power was appropriate, which avoided any discussion about matrimonial this or matrimonial that. The bill would simply make it clear that the sheriff, in making his decision, would examine the question whether some form of assault or violence was likely to take place. In a sense, that takes the matter out of the domestic violence remit, meaning that we are not required to define the term "domestic violence" at all, and that we do not have to ask questions such as, "Are husband and wife involved? Are cohabitantes involved? Is it that the former partner who has left the house is now coming back to harass the victim?" The bill would allow the sheriff an added ability under the existing interdict procedure to attach the power of arrest, and would have nothing to do with issues of property and so on.

However, I am concerned that we are considering something rather different from our initial intention. If the power of arrest is attached to an interdict and the police are advised of it, they can use that power in the way that they do with matrimonial interdicts and take the individual off the scene. The whole matter becomes difficult if we start to discuss making breach of interdict a criminal offence, as we will get into the issue of definitions. Gordon Jackson is correct. Someone can be interdicted from writing to a newspaper about another, if that person so chooses. Surely we will not make such a breach a criminal offence.

**Maureen Macmillan:** I do not see that argument at all. We define at the start who can apply for this kind of—

**The Convener:** I am sorry, but defining who can apply is not the basis on which we initially approached the issue. We were going to give the sheriff the power to respond to a request from a solicitor that it was appropriate for a power of arrest to be attached to an interdict.

**Gordon Jackson:** If we follow the convener's suggestion, it all comes to the same thing, because the person would have to be in fear in order to receive such an interdict. That is fine. Normally only people in relationships would be subject to anti-violence interdicts. Adding a criminal offence to that would not be hugely difficult, because it would apply only to such people. My difficulty is with the other proposal—is it a helpful way of dealing with the relationship problem?

**Pauline McNeill:** Convener—

**The Convener:** Just a second. I want to let Maureen Macmillan reply to that first. Another member also indicated that they wished to speak before you did.

**Maureen Macmillan:** I see what Gordon

Jackson is saying about the end result of allowing the abused person to decide whether she wants a prosecution to go forward. I can see that a balance needs to be struck there. However, I do not agree with what the convener said about our intention. It was very clear that this would be a broad piece of legislation that would apply to a range of relationships.

**The Convener:** The whole point of giving the sheriff discretion to attach a power of arrest is that it is not necessary to define anything.

**Maureen Macmillan:** That is right.

**The Convener:** What I do not want and do not think the committee should want to do is to approach this issue from the need to define relationships.

**Maureen Macmillan:** Absolutely not. We are talking at cross-purposes. We said that the sole criterion would be that someone was abused and in fear of further abuse. That person would go to the sheriff and ask for an interdict, with powers of arrest attached. All we are proposing is that, instead of having powers of arrest attached, the interdict should be a criminal one. Gordon Jackson is saying that that takes the power out of the hands of the abused person, because often an abused person would not want there to be a prosecution at the end of the process. That may be a good or a bad thing. I am looking for the best way of protecting people. Frankly, I am not particularly bothered about the process.

**The Convener:** That has clarified matters. We are talking about a criminal interdict instead of, rather than as well as, attached powers of arrest.

**Maureen Macmillan:** Yes.

**The Convener:** This is in place of what the committee has already proposed. It is a new suggestion.

**Maureen Macmillan:** Yes, it is a suggestion.

**The Convener:** That is clearer. If that is what is being suggested, there are one or two questions that we need to ask. Would it reduce the likelihood of the sheriff granting the order? I think that it might very well have that effect. We need to take that on board.

**Christine Grahame:** I come to this from 12 years' experience as a matrimonial lawyer, so I have a great deal of sympathy with what Gordon Jackson said. When relationships break up, people do many things that they will never again do in their lives. Because the situation is so explosive, a husband or partner may do something once that is threatening and should never have been done, but that they will never do again. There are also partners and husbands who are bad and are criminals. That means that interdicts

with powers of arrest attached could be used to deal with a range of situations.

Like Gordon Jackson, I feel that to make breach of interdict an automatic criminal offence does not deal with the lower range of matrimonial or partner break-ups, which are one-off situations. The result is that the power of arrest is applied, the partner or husband does something, the police go round, there is a cooling-off period and, a year down the road, things settle down. I know that that happens in time—not always, but in many cases. Children may also be involved. If breach of interdict becomes an automatic criminal offence, they will see their dad go to prison. This proposal leaves the sheriff with no discretion to deal with the individuals involved in a particular situation. I think that it is too draconian and would not get the result that Maureen Macmillan wants.

I am totally in favour of protection of spouses. The police have done a great deal to improve response times and to familiarise themselves with the qualities of interdicts—which are often very specific, even down to streets that people should not be in or schools that they should not be outside. I do not think that this proposal would solve the problem; indeed, it might make things more difficult. The knock-on effect of making breach of interdict an automatic criminal offence might be that sheriffs would not issue interdicts, because from experience they would know that that was not the remedy for the problems of particular couples.

**Pauline McNeill:** Christine Grahame has made that point before, and I do not disagree with her. However, I know where the committee started. I am not saying that we do not have the right to change our opinion, but I know that we started by examining the Matrimonial Homes (Family Protection) (Scotland) Act 1981. We decided that we would come at the issue from the other direction: that we would examine a class of interdicts where a particular set of circumstances applied. We know what circumstances we are talking about—the primary cases put to us by Scottish Women's Aid, where women have put up with a history of abuse that puts them in risk of their lives. This was not simply about ensuring that there was a prosecution, but about having a power of arrest that would allow the police, when there was a difficulty, to lift a person before a criminal offence had been committed.

I am not saying that it is easy to legislate for that; we all know that that is a difficult task. However, we came to the right conclusion. Now we are coming up against the obstacles that one encounters when trying to legislate for a class of people or circumstances. We are still clear on our objectives. I agree that we are not seeking to make every breach of an interdict a criminal

offence, because, as Christine Grahame said, the law of interdict covers such a wide area. I am still of the view that we need to focus on the class of interdict and the circumstances to which it relates; we are not seeking a catch-all provision.

The crucial issue is the power of arrest. The point is to provide the police with have a record of the fact that there has been a history of problems and to enable them to arrest the person concerned. Without that power, they would have to wait until an offence had been committed, which is too late. That is the difficulty to which Women's Aid was seeking to draw our attention.

**The Convener:** Having made a decision in principle, the committee has before it an entirely new proposal, which is being suggested as an alternative to what we have already decided. In fairness, we should give the new proposal a hearing and compare it with the original idea. I suggest that we take some evidence on the two proposals as alternatives. We should invite some people to come before the committee to talk to us about the pros and cons of each proposal as compared with the other. That might help us. Some of us are concerned that Maureen Macmillan's proposal would result in fewer interdicts being granted. It might be useful for us to hear from the people who deal with this problem, such as Women's Aid. I suggest that we also take further evidence from the Sheriffs Association and one or two other people.

**Christine Grahame:** I have a counter-proposal. With respect, I think that it would be precipitate for us to take further evidence. We should first look back, as it is some time since we last dealt with this issue. We should review what we have done to date, as there is some confusion about what we were seeking to do and how we have moved on. We should try to reach a consensus on that before we take evidence. We need to take a breather and look back on what we have done, to see why we are where we are now.

**The Convener:** We could combine the two.

**Gordon Jackson:** I have doubts about taking evidence. To some extent, we were talking at cross-purposes, but I do not think that we were disagreeing about what we originally intended to do.

**The Convener:** We want to move on.

**Gordon Jackson:** We wanted to attach a power of arrest to interdicts where there is a fear of violence. Alternatively, we could make breach of interdict a criminal offence. We are capable of deciding between those two options. We could take evidence, but we know what witnesses will say. Some people will say one thing and others will say something else. We can predict the results of any evidence taken on the issue.

**The Convener:** I am not sure that that is true. Like Pauline McNeill, I am concerned that we approach this issue with a view to achieving the best possible result for the people who are on the receiving end of this kind of abuse. We need to ensure that we do not opt for a decision that looks fine to us but will not progress matters. We need to be absolutely certain that we make progress. Christine Grahame makes a fair point, however. I will ask the clerks to pull together our discussions and the documents and distil from them our position, although I am clearer now than I was 10 minutes ago when we started this discussion. I still think that it would be useful to take evidence from some people, especially sheriffs.

11:30

**Pauline McNeill:** I am not entirely behind Christine Grahame's proposal. I am clear about the process that we have taken and about our objectives. I would like to talk with the Sheriffs Association at some length, because we need to examine themes such as the contradiction of making someone who has been on the receiving end of a criminal offence apply through a civil procedure for an interdict to protect themselves. I would like to talk to the experts, even if the session is informal, about the direction in which we should be heading.

**Gordon Jackson:** If we are taking evidence, I would like to include the family law mediation people, because we need to consider the effect on the mediation process. However, I am slightly against taking evidence, because once again we could lose months. I am keen on Maureen Macmillan's interdict with a power of arrest. That is what we were trying to achieve in the first place. This morning, I looked at the forward programme, which could be changed. However, we will lose months and months taking evidence. If we need to hear from sheriffs in order to make a decision, that is fine, but we will lose months.

**The Convener:** We do need to hear from them. I appreciate what Christine Grahame is saying. The danger is that we will take a view now that goes against what Maureen Macmillan has proposed, and I do not want to dismiss her proposal out of hand. That would be unfair on Maureen, who has put a lot of work into this and come up with an alternative that we are duty bound at least to consider. I am not saying that we should do so for months, but we should set aside some time to hear evidence and to get a practical feel for which proposal would be the best way forward. We would then be in a better position to come to a view.

I hear what everyone is saying about the work load. However, from what the minister said this morning, it appears that the work load will be

greater after the new year. That is not to say that the work load will be non-existent in the run-up to the new year, but some of the legislative pressure does not arise until after the new year. We should take the opportunity, if we have a little time—and we can make the time—to hear more evidence. Let us do Maureen's alternative proposal some justice and not rush to a vote today, which would probably dismiss it.

**Maureen Macmillan:** To be honest, I would be relaxed about that, because I am more interested in the result than in the process. There is a balance to be struck, given Gordon Jackson's point about the possibility of damaging relationships. On the other hand, my proposal is less expensive for the individual. It may be that what people need is for the criminal prosecution to be taken out of their hands so that they do not have to make the decision. I am seeing Jim Wallace next week. I think that he wants to discuss details and make us an offer, so we are constrained for time.

**The Convener:** In those circumstances, proposing the alternative at this late stage was not the right thing to do. We have had a discussion. If you are telling us that you will be meeting the minister next week—

**Maureen Macmillan:** I did not know that at the time.

**The Convener:** We cannot hear evidence before you meet the minister. That is unfortunate. If you are not too concerned about the alternative being dismissed, I will take a quick show of hands of those who wish to proceed on the original basis of the attachment of the power of arrest. Could members who are in favour of going with a power of arrest rather making a breach of interdict a criminal offence raise their hands? Let us stick with the powers of arrest. Are you happy with that, Maureen?

**Maureen Macmillan:** Yes. I am happy to take the committee's advice.

**The Convener:** Let us proceed on that basis. I did not take a formal vote; I wanted a show of hands, rather than a formal vote.

**Phil Gallie:** Convener, I would like to raise a point regarding what you said about the programme for this year not being quite as heavy this side of the new year. Can you comment on land reform, because I understand that we are picking up that bill? Has that been timetabled?

**The Convener:** The draft bill is not being published until February, so the introduction of the bill in Parliament is unlikely to take place until after the Easter recess at the earliest. It is a big bill.

We are sticking to the original decision on power of arrest. If Maureen is meeting the minister, she

can report back.

**Maureen Macmillan:** The minister may offer to incorporate our proposals into the family law bill. I will come back to the committee about that, but I want some indication of the committee's feelings. I am concerned about the time scale. I do not know whether it would be quicker if we brought forward a committee bill rather than waiting for the family law bill, which the minister said he hoped to bring before Parliament this year.

**The Convener:** I will explain to the committee how the process works for a committee-initiated bill. Once we decide on the overall shape of the bill—I am not sure whether this discussion qualifies as doing that; we would need more detailed discussion on how to define the kinds of things that we would expect a sheriff to take into account and so on—the next step would be for the clerks to draft a report to Parliament, proposing the general terms of the bill. The drafting of the report would take a couple of weeks. Once the committee agrees to the report and it is published, the Parliamentary Bureau would be required to make time for it to be debated in Parliament—that is not optional; it is required by standing orders. There would then be a debate in Parliament. Under the standing orders, if the Parliament agrees to the proposal, the Executive has five sitting days during which it can commit itself to introduce an Executive bill to give effect to the proposal. Only if the Executive declines to make that commitment do we have the right to instruct the drafting of a bill to give effect to the committee's proposal.

We ought to proceed as a committee and have the debate in the chamber. In a sense, the ball will then be in the Executive's court. If it says that it will incorporate our proposal into whatever it is introducing, the matter would then be out of our hands, regardless of the timetable. Because of that, it would be best if we insisted on progressing the early aspects of this matter and at least get as far as a full committee-initiated debate in the chamber. I think that standing orders say that, if the Executive agrees to take the proposal on board, we will not proceed with it. In effect, we would have forced the Executive to act but, once we had done so, the matter would be out of our hands. I feel strongly that the committee should initiate a debate in the chamber, as that will send the strongest possible message to the Executive that it must take action. We can use that debate to argue about the timing.

**Christine Grahame:** I have a question about standing orders—I do not have a copy of them here. If the Executive decided to follow the committee's suggested route and to incorporate our proposals in forthcoming family law legislation, would there be a time limit? Could the Executive

just say that it would introduce legislation and then drift for years? I am interested to know whether there would be any trigger if the Executive did not do anything.

**The Convener:** The Executive has to commit itself to introducing an Executive bill, but standing orders do not mention a time limit. Perhaps that issue should be referred to the Procedures Committee; under standing orders, if the Executive commits itself to introducing a bill, it is not required to set a time limit for doing so.

**Pauline McNeill:** We have to hear what is on offer.

**Maureen Macmillan:** I cannot make a decision when I meet Jim Wallace next week. I will have to bring the proposals back to the committee.

**The Convener:** It may turn out that the issue is one of timing rather than anything else.

**Pauline McNeill:** I, too, want to hear what Jim Wallace has to say. I am not convinced that the matter should be covered in a family law bill, but I am willing to keep an open mind about the question.

**The Convener:** Maureen Macmillan should make it clear to the minister that our proposal does not need to be incorporated into a family law bill; indeed, that might be misleading, as it could make the proposal sound more prescriptive than it is intended to be.

That is the position under standing orders. Maureen Macmillan's meeting with Jim Wallace will not take place before the committee meeting next week, so we will put the issue on the agenda for the following meeting, so that she can report back as soon as possible.



## Legal Aid Inquiry

**The Convener:** The next item on the agenda is the legal aid inquiry. Members will have seen a note from the clerks on the appointment of an adviser. I think that it would be useful for us to appoint an adviser, as legal aid is such an enormous issue. We would have to draft a job description—most of it is in the paper. Are there any views on this?

**Gordon Jackson:** I have a slight reservation about the appointment of an adviser. Obviously, legal aid is a matter dear to my heart.

**Christine Grahame:** It is dearer to your bank balance.

**Gordon Jackson:** I certainly know a lot about the subject. Where would we get an adviser who did not have an agenda? The problem is that everybody who knows anything about legal aid has a strong position on the subject, one way or another—everybody has an axe to grind. Where would we get someone with the requisite background knowledge and experience who would have anything to offer us and would be impartial?

**The Convener:** I think that we would have to look to the universities for someone who had a detailed understanding of legal aid but no commitment to an issue that might be dearer to their bank balance than to their heart.

**Gordon Jackson:** I am not against the idea in principle.

**Christine Grahame:** I support Gordon Jackson. I have never been struck by how much universities know about legal aid, although they are getting better.

**The Convener:** We need to make a decision about how to progress the review.

**Christine Grahame:** I just think that it would be difficult to find someone who did not have an interest. People have strong views—I have strong views on civil legal aid. It depends whom one picks.

11:45

**Kate MacLean:** I think that we have to appoint an adviser. I cannot imagine that we cannot find someone—an academic rather than a practitioner—with the intellectual firepower to research areas with which they are not familiar. It would be difficult to conduct such an inquiry without an adviser. I do not think that the committee has the necessary experience to take an unbiased and impartial view on legal aid. It would be a sad state of affairs if we could not find someone in Scotland with experience, ability and

knowledge to advise the committee.

**Phil Gallie:** The people who would be most helpful would be those who have a direct interest. There are many legal companies in Scotland that depend on legal aid. They know the intricacies and every aspect of the subject. The logical step is to balance advice from someone from such a company, who could tell us about those intricacies, with advice from someone from the Legal Aid Board.

**The Convener:** We are in danger of confusing two issues. We will want to talk to people on various aspects of this issue, but the views of anyone who makes their living by, among other things, submitting their accounts to the Legal Aid Board, regardless of whether they are for civil or criminal cases, have to be taken as evidence. I agree with Kate MacLean: it would be sad if there were nobody in Scotland who could make a fist of advising the committee about lines of research. I do not want the committee to go over ground that has already been covered elsewhere. A principal role of an adviser would be to draw our attention to the kind of things that have been examined in countries that operate other schemes, as well as in Scotland and the rest of the United Kingdom, so that we could see what was on offer. It would be extremely difficult for us to do that ourselves or to ask the Scottish Parliament information centre to do it.

The kind of review that is envisaged cannot be completed in a couple of months. It is a long-term undertaking. Therefore, it would be extremely useful to have an adviser to keep us from straying, as we may be wont to do from time to time. I do not think that such an adviser should come from the ranks of practitioners, regardless of what area of legal aid they are involved in.

**Christine Grahame:** I agree with Phil Gallie on this. As long as we have balance, do we need to have one adviser? Failing the academic, whom we may or may not find, we could have two advisers who could present us with proposals that they have considered jointly.

**The Convener:** Let us not say “failing the academic”. We should not confuse the role of an adviser with that of a witness. An adviser does not sit in front of us while we take evidence from them; he or she sits in the background, firing things in so that we do not stray.

**Christine Grahame:** I understand the difference between advice and evidence. However, I agree with Gordon Jackson that this is a difficult area, in which, even with the best will in the world, people who have a great deal of expertise may have acquired it because they have a particular type of experience.

**Gordon Jackson:** I agree with Kate MacLean

and Roseanna Cunningham. I am not against the idea of appointing an adviser in principle. I just have reservations about finding someone.

**Pauline McNeill:** Gordon Jackson is right: the adviser should not be someone who has an interest. That might mean ruling out a class of people, but it does not mean ruling out having an adviser. We are talking about taking a wide view. We want to review the legal aid system and access to justice.

**The Convener:** Initially, the adviser will be asked to draw up options for the remit, to make it more manageable.

**Pauline McNeill:** Exactly. That is the crucial point. Kate MacLean is right. The person will probably be an academic who has studied access to justice. We would be foolish to examine the issue without considering middle-income earners and why they do not access justice. We need to examine the technical reasons why people do not get full legal aid. We need someone who has breadth of understanding of the legal system. They will need only to know the basics about thresholds for legal aid. If we need technical advice, we can get that from witnesses. The adviser should be someone like an academic.

**Kate MacLean:** My point is much the same as Pauline McNeill's. Christine Grahame and Phil Gallie mix up the role of an adviser with that of someone who gives evidence. The adviser will not necessarily always be at meetings. We might call the adviser a researcher/adviser. They will be someone who can come up with a remit and guide the committee on lines of questioning that it might want to follow and the evidence that it might want to take. It would be wholly inappropriate for the committee to have a practitioner as an adviser—as Phil Gallie suggested—or to have someone who has a pecuniary interest in the legal aid system. We should find an academic who can act as researcher/adviser to the committee. If that does not work out and we are unable to get the assistance that we require from such an adviser, it is up to the committee to reconsider the matter and, possibly, to identify somebody else. If the committee needs expert witnesses at any time, it can call and take evidence from them.

**Euan Robson (Roxburgh and Berwickshire) (LD):** The concept of an adviser is appropriate. I do not want to limit the scope of the investigation until we have heard from an adviser. Also, if an adviser has a particular agenda or axe to grind, the witnesses will identify that for us fairly quickly.

**Phil Gallie:** I am not confusing the role of an adviser. I have had some experience of advisers on House of Commons select committees. We took on board advisers who had specific interests. I can think of a lady who we took on for a drugs

review who was totally committed to the use of methadone. She had a set view, but she was still useful as an adviser.

**Kate MacLean:** Yes, but she did not have a pecuniary interest. That is the difference.

**Phil Gallie:** She did have a material interest.

**Kate MacLean:** Yes, but not a pecuniary one.

**The Convener:** We will not get into that debate. Let us stick to the issue of principle.

**Phil Gallie:** I suggest merely that people who have a specific interest have been used in other forums.

I have another point with which the clerk will perhaps be able to help us out. I recall that the Scottish Affairs Select Committee considered legal advice and assistance. There may be some information that would be useful to the committee from that consideration, so that we do not reinvent the wheel.

**The Convener:** That is the point.

**Phil Gallie:** Perhaps the advisers who were used at Westminster could be used again, if that was not too long ago.

**The Convener:** We will seek appropriate names to put before the committee, if that is required. Today, I need the committee to agree in principle to finding an adviser, and to what is in the clerk's note about that job, in particular that the specification at item 5 is what the committee requires. Members need to read the specification on experience, skills, abilities, neutrality, availability and confidentiality to see whether they agree.

Are we agreed on the principle of appointing an adviser?

**Members indicated agreement.**

**The Convener:** Will members look at the detailed specification for the adviser and indicate whether they are happy with it? We will try to start identifying names based on that.

Are we agreed?

**Members indicated agreement.**

**The Convener:** I also ask any member—especially Gordon Jackson—who can think of names of people who might be considered appropriate to pass those names to the clerk. I can think of one person.

**Gordon Jackson:** That is one more than me.

**The Convener:** That may be. Anyone who comes up with any other ideas should pass them to the clerk. Although it might cause slightly more technical difficulties, the person does not have to

work in Scotland. There is no reason why we should not range wider than that when seeking an adviser.

**Gordon Jackson:** Would the person—for example, an academic—come out of their job for six months or would they do it as well as being an adviser?

**The Convener:** We need to speak to the adviser about that.

**Gordon Jackson:** If one is trying to think of the names, one has to—

**The Convener:** The post of adviser is not full-time. It is not a job in that sense.

**Phil Gallie:** It is a commission.

**The Convener:** Commission is probably the right word. It will depend on an individual's availability. They will need to be available to do the work that is required and to attend some, but not necessarily all, committee meetings.

**Christine Grahame:** Are we considering civil legal aid or the whole range of legal aid?

**The Convener:** That is one of the things that we will speak to the legal adviser about. From what has gone on during the past year, my perception is that the committee is more concerned about civil legal aid than about criminal legal aid.

**Gordon Jackson** *indicated disagreement.*

**The Convener:** Gordon, I know that you have different concerns.

**Gordon Jackson:** I would not want to restrict the investigation to civil legal aid. There is huge concern out there about criminal legal aid.

**Christine Grahame:** I was not defining the review, I was merely asking.

**The Convener:** At the moment, we have not narrowed the remit in any way. We are examining legal aid and issues to do with access to justice. When we obtain an adviser, we will be able to consider more carefully defining the parameters that will allow us to achieve something practical, rather than spend a year waffling. That is important.

## Petition

**The Convener:** We move to item 4, which is petition PE116 from James Strang. This is the final item on the agenda. Members have a note from the clerk, which explains the issues. The petition is general and relates to ensuring that aspects of Scots law are compatible with the obligations of article 6 of the European convention on human rights. The specific argument that is made in the petition relates to the Parole Board for Scotland, members of which are appointed by the Scottish Executive. The petition calls for the establishment of a forum

“for the purposes of investigating and reviewing any potential conflicts between Scots law and procedure and the Convention rights.”

In my view, that is to do with development of a human rights commission, which—as members know—is under review. I would not therefore expect the committee to spend too much time on that aspect.

That leaves the issue of the Parole Board for Scotland, the detail of which is outlined. The Public Petitions Committee sought views from the minister and some indications have been obtained. The letter that was received by the convener of the Public Petitions Committee from the minister suggests that the Executive is still considering various matters.

We have heard that there is strong likelihood of an imminent ECHR compliance bill. We do not know the precise nature of that bill, but there are a number of ECHR issues to be addressed. The minister did not make any comment on the recall of prisoners to custody and indicates that no ECHR weakness has so far been identified in the existing arrangements for the appointment of members to the Parole Board for Scotland.

12:00

We must decide what to do. The clerk has laid out options for the committee. We can go back to the minister with our reaction to his views and press him further. We could seek the views of other relevant organisations. We could wrap the issues that are raised by the petition into other issues that the committee will consider, including the report of the MacLean committee, which mentions recommendations on consideration of release, release powers and the role of ministers. We may also decide that noting the petition would be sufficient and take no further action.

I invite the views of members on the petition and on what they consider to be the appropriate way forward for the committee. I am disinclined to take the view that we should merely note the petition

and not consider it further. Perhaps that would not be appropriate.

**Gordon Jackson:** It might be possible not only to note the petition but, in effect, to do nothing. I am for doing nothing. That might mean noting it; I do not see any point in spending time on the matter. The petitioner raises three issues, one of which is the appointment of the Parole Board. I cannot see any ECHR problem in that, but if there is, it can be examined in the review of the ECHR, on which the Government is about to introduce a bill.

The second issue, which I thought was more interesting, was the minister's right to recall people to prison. I understand that that is going through the courts—Lady Paton has done that. That challenge to the ECHR is already active and it is too late to change the law to meet it.

The third point is that a committee should be set up to consider all questions of ECHR compliance. As the convener said, that is what we are doing.

**The Convener:** Yes—as would a human rights commission.

**Gordon Jackson:** Therefore, all three issues are exhausted. My fear is that if we do not merely note a petition such as this, where does it end? As you know, dozens of matters are potentially ECHR non-compliant—that will be examined when there is an ECHR bill. If someone says, "Here is a petition about the Parole Board" and we conduct an inquiry on it, next week we might get a petition on—

**The Convener:** Hold on. I am not suggesting that we should conduct an inquiry.

**Gordon Jackson:** I am exaggerating a little.

**The Convener:** Yes, you are.

**Gordon Jackson:** If we decided not to note the petition but to deal with it, and the following week a petition on planning was submitted—which would probably be more legitimate—would we examine that? We have many things to do and the Executive is reviewing the matter, so we should not spend time examining individual suggestions such as this.

**Pauline McNeill:** It is in the spirit of parliamentary procedures that, through the Public Petitions Committee, people can face the Parliament with an issue such as this. That is great—he deserves a reply.

However, it is a legal matter and Gordon Jackson is right in the sense that when we are asked to consider an issue that is a matter for the courts, we must say that. We must not be tempted to examine it. The petitioner should be told what the convener has said, which is that his essential point about examining possible conflicts between

the ECHR and Scots law is for the human rights commission. We should not examine the other issues in the petition. It is not for the committee to determine whether there is a contravention of the ECHR—that is a matter for a court.

**Kate MacLean:** It would be interesting to find out whether the petitioner is happy with the response because, as well as sending the petition on to this committee, the convener of the Public Petitions Committee passed it on to Jim Wallace, who has responded. It would be interesting to know whether the petitioner is happy with that response.

I think—unlike Gordon Jackson—that if we are to do nothing about the petition, we should say that we are going to note it, rather than not note it and not do anything about it.

**Gordon Jackson:** I agree.

**Kate MacLean:** Mr Strang might be happy with the response from Mr Wallace. We should contact Mr Strang and pass on a copy of the response, if John McAllion has not already done so.

**Phil Gallie:** The petitioner has raised a valid issue under the system that has been set up by the Scottish Parliament. We would do the petition an injustice by merely noting it, but I accept that, as Gordon Jackson said, we cannot deal with every issue. We know that the Crown Office and the Executive are examining the matter. The committee could state that we feel that the guy has made a valid point. We could pass that to the Crown Office or the Executive and ask, "Will you consider that?" That would be a positive action, which would be fine.

**The Convener:** Two of the three points—the active court situation and the human rights commission—can be responded to in the way that we have discussed this morning. On the more general point about the membership of the Parole Board, I would like to get a view from the Scottish Human Rights Centre about its immediate response to that; we can do that by letter. When we receive a response to that, we should dispatch it to the Crown Office on the basis that Phil Gallie suggested. I do not want us to dismiss matters out of hand when the petition is not frivolous.

**Gordon Jackson:** To avoid doubt, I think that the point that the man has made is valid. I am not saying that the petition is frivolous. I quite fancied the second point about recall as an ECHR point—although it seems that the courts have said that it is not. It is a valid point, but my difficulty is about what we can do about it when so much stuff is being done elsewhere.

**The Convener:** That will always be an issue with petitions. We will ask Professor Alan Miller for a response on the general point. We will wait and

see what that response is.

I remind members that the next meeting of the Justice and Home Affairs Committee is on Monday 11 September at 2pm. It will be in committee room 8 of Glasgow city chambers and not the Lighthouse, which is what members might have in their diaries because that was where we were going originally.

We will take evidence on the Leasehold Casualties (Scotland) Bill from Adam Ingram MSP and from Professor Rennie of the Law Society of Scotland—although I am not sure that strictly speaking he is Professor Rennie of the Law Society of Scotland. The committee will also take evidence from Clive Fairweather, HM chief inspector of prisons for Scotland.

We have a busy agenda next Monday afternoon and I look forward to seeing members in Glasgow.

*Meeting closed at 12:07.*



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