JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 19 September 2000
(*Morning*)

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JUSTICE AND HOME AFFAIRS COMMITTEE
28th Meeting 2000, Session 1

CONVENER

*Roseanna Cunningham (Perth) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

Angus MacKay (Deputy Minister for Justice)
Tommy Sheridan (Glasgow) (SSP)

WITNESSES

Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals)
Assistant Chief Constable Ian Gordon (Association of Chief Police Officers in Scotland)
Mike Jones (Scottish Campaign Against Hunting with Dogs)
Gordon Nardell (Scottish Campaign Against Hunting with Dogs)
Rachel Newman (Royal Society for the Prevention of Cruelty to Animals)
Alan Stewart (Tayside Police Wildlife Liaison Co-ordinator)
Bill Swann (Scottish Campaign Against Hunting with Dogs)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

The Chamber

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 19 September 2000

(*Morning*)

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

The Convener (Roseanna Cunningham): Good morning. I remind members that we have a great deal of work to get through today; I will try to be quite tight with the timing of items.

We will have a brief adjournment for coffee. We are back in the chamber and we usually have an adjournment only when we have a full morning on stage 2 of a bill. Members can thank Pauline McNeill and Christine Grahame for this morning's largesse. We will probably break for that brief adjournment after item 3. I extend an invitation to the officials, witnesses and so on who are still around at that stage.

I want to raise a small point from last Monday's meeting. We are in contact with the appropriate people to see whether it will be possible to arrange a suitable date for the committee to visit HMP Barlinnie. We thought that it would be preferable to visit the prison at the same time as Clive Fairweather's inspection team visits it. Committee members will be kept apprised of progress.

Item 1 is the time limit motion, which is printed on our agendas, on the debate on SSI 2000/187.

I move,

That the Justice and Home Affairs Committee agrees to debate motion S1M-1157 (motion to recommend that nothing further be done under the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187)) for no more than 30 minutes.

The Convener: Phil, are you happy enough with the 30-minute time limit?

Phil Gallie (South of Scotland) (Con): That is fine, convener.

The Convener: Are members happy with that?

Members *indicated agreement.*

The Convener: Item 2 is simply to ask whether members agree to take in private, at the end of the meeting, item 7 on the committee's consideration of potential candidates for the post of adviser to the committee on the inquiry into legal aid and access to justice. Are we agreed?

Members *indicated agreement.*

Protection of Wild Mammals (Scotland) Bill: Stage 1

The Convener: Item 3 is the Protection of Wild Mammals (Scotland) Bill—that is, foxes. I remind members that the committee's role is to consider the law enforcement aspects of the bill. While it will be impossible not to stray occasionally into some of the wider principles of the bill, I will not allow general debate on those principles, as that is not our job. We do not have the luxury of time to talk about fox hunting in general today. It is for the Rural Affairs Committee to consider the overall merits of the bill, and we do not want to encroach on that committee's job. Some members of the Rural Affairs Committee may show up today.

We have witnesses today, as we are taking evidence from the various campaigning organisations that are promoting the bill.

I invite Bill Swann to introduce himself and the people whom he has brought with him, before we proceed to questions.

Bill Swann (Scottish Campaign Against Hunting with Dogs): Thank you, convener. It was indicated that, with your permission, it might be appropriate to make a brief opening statement.

The Convener: As long as the statement is brief.

Bill Swann: We thank you for the opportunity to address the Justice and Home Affairs Committee. I am aware that the committee has a schedule that it must work to and I will be brief.

Nevertheless, I wish to state the purpose of the bill, which is simple: to end the intrinsic cruelty caused by hunting with dogs. It is accepted that some essentially humane activities involving dogs are thought necessary to enable farmers and landowners to protect their legitimate interests. Those activities are provided for by exemptions in the bill, so the bill has a secondary purpose: to define what Scottish society considers proper in respect of those activities, thereby legitimising them.

Slaughtermen working in abattoirs are protected by legislation, as are the animals that they kill. Society sanctions slaughter by means of regulations and slaughtermen are not judged to be cruel. Those who seek to manage wild animal populations have a right to expect similar guidance. At present, some would judge all their activities to be cruel, but that position is unnecessarily divisive, as I know from my experiences in Ross-shire.

We believe that the bill is straightforward. The offences and penalties are broadly in line with

existing animal cruelty legislation. However, as a responsible backer of the bill, the Scottish Campaign Against Hunting with Dogs, which I represent, has consulted widely. As a result of that process, we have submitted to the committee a short paper, which we trust you will find helpful.

I ask the committee to note that hunting deer with dogs was banned in Scotland in 1951. It is instructive that the main consequences that appear to have arisen from that legislation are improvements in the welfare and management of Scottish deer.

This morning, our purpose is to assist the committee and, to that end, I will introduce our team. Leading our legal team is Mike Jones, a Scottish Queen's Counsel and senior counsel, who is ably assisted by Gordon Nardell, a barrister who drafted the bill and who is a parliamentary draftsman.

I have also brought an enforcement team, as I was unsure how much ground the committee might wish to cover. Chief inspector Mike Flynn does not represent SCAHD, but he is a member of the Scottish Society for the Prevention of Cruelty to Animals and is here today as a consultant. Rachel Newman is a solicitor and head of prosecutions at the Royal Society for the Prevention of Cruelty to Animals. Although the procurator fiscal prosecutes cases of alleged animal cruelty in Scotland, the RSPCA has an unusual role in England and Wales, in that it is the primary prosecuting agency. As a consequence, Mike Flynn and Rachel Newman have between them substantial experience of investigation, interpretation and enforcement in respect of animal welfare legislation. The RSPCA has successfully prosecuted more than 100 cases under the existing laws that seek to protect wild animals.

As a point of information, Lord Watson will lodge amendments to his bill. Amendments are usually considered at stage 2, but the committee may find it helpful to know that one particular amendment will remove any requirement in the bill for licences. We support that amendment.

The Convener: I turn the meeting over to committee members to indicate their interest in asking questions.

Maureen Macmillan (Highlands and Islands) (Lab): I do not know where to start. In my view, the difficulty with the bill is that people do not know what is going on. The analogy that came into my head was poaching. To find out who is hunting illegally, one would probably have to rely on informers, especially if the legislation is not a popular measure. Would it be difficult to find out whether the law was being broken? What network of informers do you envisage being required?

Mike Flynn (Scottish Society for the Prevention of Cruelty to Animals): At present, most of the information concerning animal welfare legislation that comes to the SSPCA comes from members of the public. Our role is to find out the facts and to report them to the procurator fiscal, who then decides whether action should be taken. Instances of badger baiting are still reported to the SSPCA, although such activities have been banned since 1972.

The Convener: Mr Flynn, would you sit a little closer to the microphone and speak into it? This is a big chamber.

Mike Flynn: No problem.

I do not think that the bill will be any different from existing legislation, such as the Protection of Badgers Act 1992, the Wild Mammals (Protection) Act 1996 and so on.

Maureen Macmillan: If the bill is enacted, I foresee that it will be broken by individuals, whereas badger baiting is carried out by gangs of people. I live in Ross-shire and the Black Isle and have seen a farmer go out with a couple of dogs and a gun early in the morning to trail a fox. Who will tell you that such activities are going on?

Bill Swann: I may be able to answer that question.

The bill does not seek to criminalise the farmer who goes out with dogs, where those dogs are being used to locate the fox, which the farmer then may wish to shoot. Farmers carry out that activity when they have an interest in doing so, and the bill would not criminalise it.

The bill seeks to criminalise those activities where dogs are used specifically to pursue, capture and kill animals. There is a certain amount of preparation for such activities that makes it evident that people wish to participate in an activity that is proscribed by the bill. People who walk out with dogs to flush out foxes or other mammals that can legitimately be shot would not come under the bill—they would be exempt.

Maureen Macmillan: That is, they would be exempt if the fox were above ground.

Bill Swann: That is indeed the case. The bill seeks to stop work with terriers, but, if it would help the committee, I will ask Mike Flynn to speak on that point. He will tell you that a necessary amount of preparation must take place for terrier work, where dogs are put underground: putting collar tags on the dogs, going in with spades to dig out animals and so on. There would be no doubt about people's intentions in those circumstances. Someone who was out walking dogs would not be covered by the bill, whereas someone who was making the necessary preparations for terrier work, where there was no doubt as to their

intentions, would, if they proceeded with those acts, be covered by the bill. Those acts would be illegal.

09:45

Gordon Jackson (Glasgow Govan) (Lab): I have already discussed with some of the witnesses my concerns over the legal structure and the enforcement and penalties aspects of the bill that are the concern of the committee.

I want to consider the legal structure of the bill without becoming boringly technical. The offence is given in section 1: if a person contravenes the prohibition on hunting a wild mammal, that person is guilty of an offence. In sections 2 and 3, a number of exceptions are given—for example, retrieving a hare that has been shot, or looking for a wild mammal that has been seriously injured. However, in section 5(6), we read that:

"In proceedings for an offence under"

the first section of the bill,

"the burden of proving"

that an exception applies

"is on the person charged."

I find that a bit draconian. Although the exceptions are listed, the wording of the bill means that the person will be guilty of, in one view, a serious criminal offence until that person is able to discharge the onus of proof. As most people know, our law does that on occasions. However, it does so for good social reasons—in drugs cases, for example. If you are found with £1 million of cocaine in your suitcase, the onus is on you to explain why you have it. The law might be draconian in certain circumstances, but drugs are such a social evil that society, on balance, demands that approach. It is therefore reasonable, to stop major drug dealers escaping, that they have to prove their innocence.

That would be a bit draconian in this situation, where we have perfectly normal, decent, law-abiding, possibly country citizens doing what even the witnesses would regard as a perfectly legal thing to do. They are out with their dog, and they are conducting a perfectly normal legal activity. However, in law, they are required to prove their innocence. There will be a public perception, which will be right, that the bill says that the guy out with his dog doing something lawful is deemed to be guilty of a serious criminal offence, punishable by imprisonment, until he can discharge the onus of proof to show his innocence. I think that that is a bit heavy. I do not think that it would be an insurmountable problem to remove that draconian measure. I hope that that could be done, and would be interested to hear your thoughts.

Mike Jones (Scottish Campaign Against Hunting with Dogs): Those whom I represent are aware of the concerns that have just been expressed. In a number of statutory provisions, I think that it is right to say that some sort of onus is placed on an accused person to exculpate himself. There are different ways in which that can be achieved. As Mr Jackson suggests, in the Misuse of Drugs Act 1971 there is an onus on an accused person to exculpate himself on a balance of probabilities. The same is true, I think, for the provisions of the Criminal Law (Consolidation) (Scotland) Act 1995. In other circumstances, an accused person can exculpate himself simply by raising a defence: if that defence creates a reasonable doubt, the accused person can be acquitted.

It is appreciated that there are concerns. As the committee will know from the campaign's written submissions, it is recognised that effective enforcement of the prohibitions would not be compromised seriously if some or all of the exceptions in the bill were subject to a lesser onus. In other words, it would be possible simply to raise an excuse to create a reasonable doubt. It is thought that at stage 2, this aspect of the bill could profitably be reviewed to meet the sort of concerns that Mr Jackson has raised.

Gordon Jackson: Are you suggesting that section 5(6) of the bill could simply be removed?

Mike Jones: The concerns could be addressed in that way—simply by providing statutory exceptions that have to be raised without specifying any burden on an accused person.

Gordon Jackson: I am happy with that. I have another question, but someone else may want to come in on that subject.

The Convener: No—please proceed, Gordon.

Gordon Jackson: This is perhaps trickier. Arrest is covered in section 4, which says that:

"A constable who suspects . . . that a person has committed, is committing or is about to commit an offence"

may arrest that person and do all the other things that constables do.

I am a little uneasy about the phrase

"about to commit an offence".

There may be occasions when constables arrest on that basis; however, in general terms, in our law we associate the term "arrest" with a situation in which a person has committed, is committing, or is attempting to commit an offence—attempting to commit an offence is itself an offence—and with a person who is about to be charged and put through the criminal justice system. I appreciate that there are other possibilities, but that is how we normally use the term "arrest".

I would put it no more strongly than this, but I am just not clear about the situation around arresting someone who is about to commit an offence. What would happen to the person thereafter? I am open to correction, but I would have thought that police officers have always had the power to stop—I use the word "stop" as a layperson's term—people committing an offence. If police officers see people who are about to commit an offence, I would have thought that they had the power to prevent that offence from being committed.

What is the idea behind having a section in the bill that deals with the whole paraphernalia of arresting and searching people who are about to commit an offence, rather than simply letting the polis use their powers to stop offences being committed? That was a tortuous question, but I think that you know what I mean.

Mike Jones: I will answer the last part of that question first—the question on the idea behind the proposed power to arrest when there is reasonable cause to suspect that a person is about to commit an offence. The policy consideration behind the proposal is set out in paragraph 6 of the campaign's submission. Once a dog has been released to hunt, the fate of the quarry is, in practice, sealed. It was therefore felt appropriate to find some mechanism whereby that could be pre-empted. As Mr Jackson has observed, the police have powers consistent with their duties, particularly in terms of section 17 of the Police (Scotland) Act 1967, to guard, patrol and watch so as to prevent the commission of offences. Having said all that, the campaign accepts that it is a novelty to empower, in legislation, a constable to arrest when he suspects that an offence is about to be committed, as opposed to when he suspects that an attempt is being made to commit an offence. Because it is recognised that concerns have been raised about that novelty, it is intended to review that matter too at stage 2.

The Convener: Could you give some example of things that might give away the intention to commit the offence—leaving aside the rather obvious one of having 20 men in red coats sitting on horses. We accept that, in Scotland, that does not happen in many places. Apart from that obvious example, what would give away the likelihood of an offence being committed? It does not seem to me that people will look or behave very differently—the dogs will be there, the guns will be there and the farmers will be there, no matter what activity is about to commence. What would be the trigger for a policeman to say that one activity is about to be an offence but that another is not? I do not understand how a policeman would know that.

Bill Swann: There is confusion over what constitutes hunting with dogs. It has become evident in discussions on the subject that a considerable degree of ritual and social activity surrounds hunting. Most hunting involves an amount of preparatory work that leaves one in no doubt that a particular type of hunting is about to take place. I will give the example of hare coursing. In order to course hare in a formal way, it is necessary to set out a coursing field. The field is laid out with markers. Score cards are printed and distributed. Hare are transported in cages, ready to be released so that they may be killed by the dogs. The dogs themselves are aligned, ready for release to pursue the hare. Nobody could be in any doubt that the circumstances on that hare coursing field were such that people were about to kill hare. If a constable came across that situation, where one could be in no possible doubt as to why that preparation had been undertaken, the dogs should not have to be released and the hare ripped apart before the constable could stop the process. Where there is organised hunting, we wish to introduce a safeguard.

The Convener: That is clear; but how does it apply to foxes?

Bill Swann: Again, fox hunting tends to be highly organised. You made the point yourself, convener, that with mounted hunting, which is not a major activity in Scotland, one could be in no doubt that such hunting was about to take place. The horses would be assembled, the dogs would—

The Convener: Conceded. Could you move on please?

Bill Swann: To move on to fox destruction societies, we do not dispute the fact that some aspects of fox control using dogs are quite legitimate, when the dogs are used to flush the foxes out from cover so that they may be shot. Again, the preparation for that is clear. The farmers, or other participants, are arranged with their guns in such a way as to make clear that they anticipate that the fox will emerge from cover. The dogs are introduced under control to flush the foxes, and one could be in no doubt as to the intention. I speak from personal experience: I have seen those activities and one could be in no doubt that, in the situation that I have described, the intention was to flush foxes to guns.

However, the introduction of terriers down a hole to kill foxes is not a simple matter. The terriers may become stuck down the hole, so the operators carry shovels so that they can dig out the sett or earth to gain access and to retrieve their dogs. Preparatory work is involved. The hole may be netted so that, if a fox bolts, it is caught in the net. Shovels are carried. A radio collar may be put on the dog so that it may be located if it becomes stuck underground. That preparatory

work makes the purpose quite obvious, and we are concerned about cases where such evident preparatory work has taken place.

The intention of the provisions in the bill is that we should not get to the point of the underground dogfight between the dogs and foxes taking place and injury or cruelty occurring. The intention is to prevent that.

10:00

Gordon Jackson: From what Mike Jones has said, I take it that you accept that the power of arrest is not needed, as a police officer confronted with such a situation is able to deal with it without having a statutory power of arrest such as is in the bill.

Mike Jones: We accept that the introduction of that power is novel and has no precedent. That is something that must be considered.

Gordon Jackson: Is that a maybe?

Mike Jones: In certain circumstances, an offence may be committed by preparing for the commission of a later offence. The Deer (Scotland) Act 1996 is a good example of that; it contains a power to arrest in the context of the commission of a crime of preparing to commit a later crime. We believe that the matter must be considered. We accept that the formulation in the bill as it stands is inappropriate and that it will be removed.

Gordon Jackson: I do not want to get bogged down in this, but do you accept that if more than one person is involved in preparing and conspiring to commit the offence, they are committing a crime?

Mike Jones: We accept that. As was said earlier, a stage of attempt may have been reached. That is why we accept that the formulation in the bill at the moment is quite inappropriate. That formulation will go.

Phil Gallie: I am rather shocked that a senior Queen's counsel should come here today and admit in virtually every response to a question that there are problems that must be addressed at stage 2. Does he feel that, at this point, given the wide-ranging requirements for changes at stage 2, there should be a step back from the bill altogether and a total rethink?

The Convener: Can we confine the total rethink to the criminal penalties, Phil?

Phil Gallie: I am referring to the criminal aspects of the bill and to the comments that Mr Jones has made.

Bill Swann: I shall respond on behalf of Mr Jones by saying that he is here today to assist the committee. His instructions are to act on that basis in an open, honest and credible way, because we do not want to do otherwise in assisting the committee with its deliberations. The committee's purpose is to determine whether there are points that need further discussion, modification or development. It is with that purpose in mind that we are trying to assist the committee. It would be improper of Mr Jones to act in any other way.

Having said that, if bills were written in a perfect form in the first instance, committees of this type would become unnecessary. That is not a flippant answer, as this bill has the potential to be a good piece of legislation and one that has considerable support from existing legislation that seeks to protect wild mammals. There is little in the bill that is new or that is any different from other wild animal legislation.

It is entirely appropriate that the bill should be polished up in the course of its passage. We do not believe that there is anything wrong with accepting the need for adjustment. That is nothing more than the proof that this is a potentially effective piece of legislation, which is capable of such amendment.

Phil Gallie: That may be the case, and I have no doubt about the open, honest and considered presentation of Mr Jones, but that is the point that gives me such concern. Stage 2 of bills allows for reconsideration, but what Mr Jones is suggesting is a major rewrite. That is totally different from what I have experienced in considering other bills.

The Convener: Phil, I must stop you there. We have another six minutes for this question-and-answer session. If we get embroiled in the theory and practice of committee evidence taking we will never cover the ground that we must cover before we move on to the next set of witnesses, who are also important to the process. Please confine your questions to the criminal penalties.

Phil Gallie: In that case, I would like to ask about section 1(3). Are those who are presenting the bill aware of the land reform bill that is likely to come before this Parliament in the near future? What effect would that bill have with respect to owners or occupiers of land and those who operate on it?

Gordon Nardell (Scottish Campaign Against Hunting with Dogs): It happens every so often that a bill that is proceeding through the Scottish Parliament or the UK Parliament has to be adjusted in the light of other legislation that is proceeding. In this case, the interaction would arise if the meaning of an "interest in . . . land" were to be changed by the other pending legislation.

I draw the committee's attention to section 7, where there are supplementary definitions of

"occupier" and "owner". Those definitions also relate to definitions in the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999, which applies to all acts of the Scottish Parliament. "Land" is generally defined in the order as including an "interest in . . . land". All will depend on whether an "interest in . . . land" is redefined from its existing meaning by the pending legislation before the Parliament. That would have to be considered when the final shape of the land tenure legislation is known.

Phil Gallie: Am I right in saying that Mr Swann suggested that Mike Watson intended to remove section 2, on licensing, in its entirety?

Bill Swann: Mike Watson's proposed amendments have been lodged and include a rewrite of the section dealing with exemptions. One of those amendments removes the requirement for licensing altogether.

Phil Gallie: Was not the licensing aspect an important element with respect to those who live in the countryside going about the day-to-day activities that are required over a lifetime to protect their agricultural or other interests? If licensing is to be abolished altogether, would not that remove the guarantees that you have given those people?

Bill Swann: In my opening statement I pointed out that those who work in the countryside and are involved in rural activities have a right to expect a clear indication of what it is proper or improper for them to do. If society judges an act to be cruel, which those people do not want to be judged as cruel, it is proper that those acts are defined in a bill of this type and brought into legislation.

However, it is not necessary that those acts that are deemed to be reasonable, such as flushing to guns, which is one of a suite of methods that farmers and gamekeepers should have available to them for legitimate purposes, should be encompassed by a licence. Those people are experienced in such activities and need to show due diligence and a duty of care to carry them out properly. Most farmers and gamekeepers want to carry out such activities properly, so a licence is an unnecessary bureaucratic restriction on people going about their legitimate business. What is needed is legislation to define what is acceptable in respect of that legitimate business.

The Convener: I would like to make a technical point. No amendments have yet been lodged. Amendments cannot be lodged until stage 1 has been completed. Until then, there is no such thing as an amendment to the bill. All that we have is a proposal that there are likely to be amendments in certain areas. It may be a bit misleading to suggest that amendments have already been lodged.

Bill Swann: Thank you for that correction, convener.

Christine Grahame (South of Scotland) (SNP): I will not say anything about the possible amendments to the provisions on licensing. In light of the convener's reminder, that might be a waste of breath at the moment. Instead I shall go back to what Gordon Jackson said about section 4(1).

I, too, have concerns about the phrase:

"is about to commit an offence".

You gave a description of preparations for hare coursing to show why that phrase is necessary. Would not that be covered by the definitions in section 3(1) and section 3(2), which deal with contraventions and exceptions, and by the definition in section 7, which states that

"'to hunt' includes to search for or course"?

I would have thought that if someone were set up with all the paraphernalia for hunting, it would be apparent that they were at the stage of committing an offence. Do you agree that the phrase

"is about to commit an offence"

would therefore not be needed?

Bill Swann: Mr Jones indicates that we agree with that.

Christine Grahame: My second point is about the burden of proof. I am not a criminal practitioner, but I have concerns about section 5(6), which says that the burden of proof applies to the person charged. Why should it be proved on the balance of probabilities rather than beyond reasonable doubt, as is usual? Where did that pop up from?

Mike Jones: One must go back to the underlying criminal law. It is common and understood that when an accused person may raise a defence and nothing more is said about his entitlement to do that, provided he raises a reasonable doubt he is entitled to an acquittal. In certain statutes, however, such as the Misuse of Drugs Act 1971, a positive burden is placed on the accused. The courts have held that that burden is to be discharged on the balance of probabilities.

Christine Grahame: Thank you for explaining that.

My next point is about disqualification orders and the arrangements made for the care or disposal of dogs usually used in pursuit of wild mammals. Does the Scottish Society for the Prevention of Cruelty to Animals have any idea of time limits for permanent arrangements for care or disposal, given that many foxhounds are not suitable for rehoming? What time scale does the

SSPCA have in mind for those animals, or for the horses that would no longer be needed as a result of the bill?

Mike Flynn: We have no real indication of the time spans involved. Members of the hunting fraternity have not said whether they would be willing to give up their dogs for rehoming. Christine Grahame is correct to say that evidence shows that foxhounds will not be easy to rehome in a domestic setting. However, we have made a wide offer to work with anyone involved in hunting and with animal behaviourists to try to establish new homes for the animals.

Christine Grahame: What is the usual practice if a dog cannot be rehomed and must be put down?

Mike Flynn: A dangerous or destructive dog will be humanely destroyed by a veterinary surgeon under a court order. In this society, we tend not to put down healthy dogs. It would be a new experience for us if those healthy dogs were to come to us for destruction.

Christine Grahame: What about a dog that cannot be rehomed? How long would dog homes keep them?

Bill Swann: One must consider the best interests of the dogs. If a dog is able to adapt to the circumstances in SSPCA kennels, and can be retrained and rehoused in a domestic environment, that is the best thing for the welfare of the dog. If that process would cause the dog undue distress and it was evident that the dog could not adapt, it would be kinder not to subject it to the process. In those circumstances the animal would be put to sleep on humane grounds.

We have little experience of dealing with animals such as foxhounds. It is not normal practice for hunts to offer them for rehoming, so we have never had the opportunity to carry out rehoming trials to see to what extent they will rehome.

10:15

Normally, at the end of their fairly brief working lives, the dogs are shot. That in itself is not a welfare problem: as long as the dog is shot humanely, it does not constitute a breach of good animal welfare and is not a cruel act. Because it is not normal practice for hunts to offer dogs for rehoming, we do not have the experience to say whether the dogs will rehome. As Inspector Flynn said, we will co-operate with any hunting organisation to gather information and carry out trial rehoming to achieve our purpose, but at the moment we cannot answer the question.

The Convener: We are straying a little from the strict detail.

Christine Grahame: There is a section on disqualifications.

The Convener: I know that there can be disqualification orders, but we are getting into the welfare of hunting dogs, which—however brutal this may seem—is not the committee's concern.

Christine Grahame: I was just asking for clarification of the time limits in section 6(2)(b).

The Convener: Can we move on, Christine; we are now running late.

Christine Grahame: My final point is on policing, which I see as being extremely difficult. It would assist me if the witnesses could tell me about how policing operates in other areas of animal welfare, not just in cases of domestic cruelty to animals, but under other legislation.

Rachel Newman (Royal Society for the Prevention of Cruelty to Animals): There are two categories of enforcement. First, there is traditional hunting, which has been discussed and where it is accepted that enforcement is relatively straightforward. The type of activity to which I suspect the member is alluding is covert activity—terrier work in remote places, for example—which would be seen as being more difficult to enforce. A lot of wildlife legislation, such as the Protection of Badgers Act 1992, the Wildlife and Countryside Act 1981 and the Wild Mammals (Protection) Act 1996, poses similar enforcement difficulties as this bill. Although we cannot say that every offence covered by the existing legislation is enforced, there is no indication that the legislation should not have been brought in because of its enforcement difficulties.

Some RSPCA statistics might help. In 1999, the RSPCA got 57 convictions under the Protection of Badgers Act 1992, 99 convictions under the Wildlife and Countryside Act 1981 and two under the Wild Mammals (Protection) Act 1996, meaning that there were a total of 158 convictions for RSPCA-related offences last year. The legislation works. There may be enforcement problems with it, but the offences are being prosecuted and convictions are being obtained.

The Convener: Do you want to ask anything else, Christine?

Christine Grahame: No. I will let someone else in.

Phil Gallie: Can you give us comparable figures for Scotland and tell us whether there are any difficulties with access to land for policing activity?

Mike Flynn: There were two wildlife convictions in Scotland last year. I am not saying that we are nicer. We have been frustrated, in particular, in cases involving foxes. There would have been two further convictions directly related to foxes had

there been legislation in place to protect foxes. We must remember the basis of the bill, which is whether foxes can be caused unnecessary suffering. We believe that they can. Two very good cases fell because there is no specific legislation for foxes.

The Convener: Before I call Scott Barrie, will Rachel Newman and Mike Flynn tell me, for each jurisdiction, the number of cases that are reported, the percentage of that number that proceed to court and, of them, the number that result in convictions? What are the rough figures? I do not need exact numbers.

Rachel Newman: I am afraid that I cannot tell you the number of cases brought in England. The figure for the number of convictions that I gave you does not take account of the number of cases investigated.

The Convener: So you do not know what percentage that is of the number of cases that are reported and go to court?

Rachel Newman: Not off the top of my head.

The Convener: Do we know what the underlying figures are for Scotland?

Mike Flynn: In Scotland last year, around 130,000 animal welfare-related calls were received, of which around 100 resulted in reports to the procurator fiscal and cases going to court. That is average for the SSPCA. We usually have around 100 reports to the fiscal per year.

The Convener: Of which last year two resulted in convictions?

Mike Flynn: Sorry. That figure was only for wildlife. We have strict criteria for what we will report to the fiscal. We will not report cases that are maybe a bit iffy.

The Convener: Do we know the background figures for wildlife?

Mike Flynn: Four wildlife cases were reported last year. In the two cases involving foxes to which I referred, the owners of the dogs were found guilty of failing to provide veterinary treatment for the dogs, but the fox side of the cases fell.

The Convener: I see. There were four reports of wildlife cases, which resulted in two convictions. So, on that tiny sample, Scotland has a 50 per cent success rate.

I call Scott Barrie.

Scott Barrie (Dunfermline West) (Lab): It is okay, convener. My questions have been answered.

Euan Robson (Roxburgh and Berwickshire) (LD): I have a brief question on the European convention on human rights with which Mr Nardell may be able to help. In his submission to the Rural Affairs Committee, he says that Deadline 2000

"has been satisfied throughout that none of the legislation it proposes would involve violation of any Convention right."

On the other hand, the Countryside Alliance says that another QC has informed it that there could be contravention of articles 1, 5, 8, 11 and 14. Why is there such a divergence of opinion?

I ask Mr Nardell also to address the question of economic compensation. One of the key points made by people who oppose the bill is that if there are, as there will be, job losses and economic loss, there is no provision for compensation to assist those affected to recover lost ground.

Bill Swann: Convener, before I pass that question to Gordon Nardell, I will, with your permission, make a point of order. The opinion contained in the submission in the name of Deadline 2000 to the Rural Affairs Committee was obtained from David Pannick QC, who is acknowledged as an expert on ECHR affairs. However, it related specifically to the bill drafted for the committee of inquiry conducted by Lord Burns in England and Wales. To assist the Rural Affairs Committee in Scotland, we are to have an opinion written specifically in respect of the bill being considered by this Parliament. I am sure that Mr Nardell is more than happy to talk about general principles as they relate to the ECHR, but when the matter comes before the Rural Affairs Committee we will have available the opinion tailored specifically to the Scottish bill.

The Convener: It is unfortunate that that opinion is not available for this committee, given that it is part of the remit of this committee, rather than that of the Rural Affairs Committee, to consider those specific aspects. In the circumstances, rather than have Mr Nardell opine in general terms about the implications of ECHR, with which most of us are at least as familiar as he is, we will, if Euan Robson does not mind, move on. I am not sure that we will have a terribly helpful discussion in the circumstances. The member has asked why legal opinion differs. In my experience as a lawyer, legal opinions always differ. If there are two lawyers, there will be at least two opinions. I am not sure that we will get much further than that.

Euan Robson: In that case, I will ask only the question about economic compensation, which is raised by a lot of people. Do the people proposing the bill have any guidance as to why there is no suggestion of compensation in the text of the bill or in submissions?

The Convener: Let me put that a little more specifically. Another, quite separate, members' bill—the Leasehold Casualties (Scotland) Bill—is going through Parliament. In that bill, it was deemed appropriate to build in a compensation

element, however minimal, to ensure ECHR compliance. Euan Robson makes a fair point. However small compensation might be, does not it apply equally in this case under ECHR rules?

Gordon Nardell: We are quite satisfied that article 1 of the first protocol to the ECHR, which protects possessions and property, does not require there to be any provision in this legislation for the payment of compensation to those who are affected by the operation of the bill. The promoters of the bill therefore have no proposal to insert a provision for compensation. There may be people who wish to seek to insert at stage 2 a provision for compensation, but that is a matter for the Parliament's judgment.

Euan Robson: It would be helpful to know why that is your position, although perhaps not now, as we have limited time. You state the case, which is perfectly fair, but why do you think that? It would be helpful if you would take the opportunity to submit a small paper on that to elucidate your reasoning.

The Convener: That would be helpful, as we are dealing with other pieces of legislation in which it is considered that compensation is a requirement to ensure that we are belt-and-braces secure under the ECHR.

Bill Swann: Would it be helpful to the committee if the opinion produced by David Pannick and presented to the committees of the Parliament addressed that specific issue?

The Convener: I think we would want it to be addressed specifically. The same issue arose in respect of another item of legislation. It is therefore reasonable for us to examine that issue in respect of this bill.

Bill Swann: We will undertake to do that, convener.

The Convener: I call Pauline McNeill, who will be the last questioner.

Pauline McNeill (Glasgow Kelvin) (Lab): I have no particular difficulty with that final point, because I am clear that we are trying not to take away people's property rights, but to create a new offence. However, I have one or two difficulties with the section on prohibition and offences, which I will go through.

Section 1(3) states:

"An owner or occupier of land who permits another person to enter or use it to hunt . . . commits an offence."

Is there a more narrow definition of what constitutes permission or is it a broad definition?

Mike Jones: It is common to create an offence of permitting something to be done. Sometimes it is causing. The leading Scottish case is that of Smith of Maddiston Limited v MacNab, which was reported in 1975. A court of nine judges held that to establish an offence of permitting, a necessary ingredient must be that the person permitting had knowledge not only that something was being done, but that it was being done in contravention of a statutory provision. Therefore, without having to go further in the bill, courts will not find the offence proved unless it is also proved that the accused person not only knew what was happening, but knew that what was happening was an offence.

Pauline McNeill: On the same theme, section 1(5) states:

"A person who owns or keeps one or more dogs intending any of them to be used to hunt . . . commits an offence."

I have difficulty with the phrase

"intending any of them to be used".

How is intention established? Is there any case law that helps us?

Mike Jones: Yes. Again, it is common in statutory offences to see a requirement for proof of intent. Intent is usually established by considering the facts and circumstances to see whether a particular intention can be inferred. For the protection of the individual, if the intention cannot be inferred, the individual will be acquitted of the offence.

Pauline McNeill: Is there a definition in the bill of wild mammal?

Mike Jones: The definition is contained in section 7 and includes

"a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild."

Pauline McNeill: Is not that definition a bit broad? It strikes me that it might be.

10:30

Gordon Nardell: The definition of "wild mammal" in section 7 of the bill is meant to ensure that the legislation dovetails with the protection that is already given by the Protection of Animals (Scotland) Act 1912, which extends to captive and domestic mammals. That is designed to ensure that wild mammals are protected where the protection for domestic and captive animals leaves off. That would ensure that the statute book reads as a coherent whole.

Pauline McNeill: Section 2(2) of the bill reads:

"A licence may authorise an individual (or a group of individuals) to use a dog under close control".

What is the material difference between defining an offence and licensing a group of individuals to use a dog? If we remove the licence, what is the

material difference in the circumstances that makes an action an offence rather than a permitted exception?

Gordon Nardell: The licensing provision would have enabled the Scottish ministers to give groups of individuals permission to carry out certain acts, in a particular way, for a specific purpose. That permission would have meant that such acts would not be an offence against the bill. No amendment to the bill has been lodged yet, but Mike Watson has signalled his intention to seek to alter the provisions of the bill when the opportunity arises at stage 2. Mr Watson proposes to replace the licensing exception with an exception of broadly similar scope, enabling individuals to carry out activity in a certain way and for a certain purpose, but without the intervention of the Scottish ministers.

Pauline McNeill: I understand that point. What I do not understand is the difference between the circumstances that you mentioned earlier—the preparatory activity before an offence—in which a group of individuals commit an offence and the circumstances that allow the activity of another group of individuals to fall under section 2(2). What is the material difference between the two circumstances? Is it a question of cruelty?

Gordon Nardell: One would consider what the individuals concerned were preparing to do. If they were evidently preparing to do something that is not covered by the terms of their licence, a constable might have reasonable suspicion that an offence was about to take place.

Pauline McNeill: I thought that the provision for a licence was going to be removed.

Gordon Nardell: Quite so. However, the question was put in the context of licensing under section 2(2) of the bill as it stands. The same answer would apply.

Pauline McNeill: My question is more straightforward than you seem to think. Perhaps I am just being dumb. What is the material difference between a group of individuals without a licence who are hunting with a dog—which they may shoot—but who are not committing an offence and the group of people that you described earlier for whose activities you want to create an offence?

Gordon Nardell: The deliberate use of a dog to hunt a wild mammal would, on the face of it, be an offence. The difference would depend on whether the persons concerned were acting within one of the exceptions to the bill.

The Convener: I thought that you said that using dogs to flush out foxes in order to shoot the foxes is not an offence. You now seem to be suggesting that we are back to the issue of burden of proof—the minute that you see someone with a couple of dogs and a gun the inference is that they are about to commit an offence.

Bill Swann: I do not think that Gordon Nardell intended to create that impression. We would restate the point that where the intent is to carry out legitimate control there would be no confusion—we have talked about flushing, with which we have no problems and that is specifically exempt in the bill. In such cases there would be no reasonable doubt as to intent. The way in which people would set up such activity would not imply that they were doing anything that contravened the principles of the bill. However, where people were intending to undertake an activity that would be an offence under the bill, there would be an obvious amount of preparatory activity that would make the distinction. The reason a licence would be an unnecessary burden is that the procedures that the bill will allow, such as farmers taking out dogs to flush quarry, are so self-evidently different from hunting with dogs.

Pauline McNeill: I know what you are trying to achieve and I probably support that. However, it would be useful to know exactly what you mean by the way in which the activity was set up. That does not mean anything to me. I am looking for something that would demonstrate a material difference between the two sets of circumstances.

The Convener: Mr Swann, I do not want a reiteration of the very obvious things such as hare traps and race cards. We understand those things because they are in the category of the 20 guys in red coats. We are querying the circumstances in which it would be infinitely less obvious. You must accept that, out on the Scottish hills, it will not always be particularly obvious that one group of people is about to do something that is a crime under the bill and another group is not.

Bill Swann: I will ask Mike Flynn to speak about this. Terriers are the dogs that are most likely to be used in those circumstances. When you see them out on the Scottish hills, there can be no doubt as to the intent.

Mike Flynn: The biggest difference, if licensing were to be introduced, would be that the terrier people would have landowner permission to control the foxes. The cases in which we have been involved have concerned travelling groups of terrier men, who do not have permission to be on the land. The landowner does not know that those people are partaking in what they see as a pastime on his land—they are not really acting for a legitimate purpose such as pest control on behalf of the landowner or farmer.

Bill Swann: The intent of such travelling groups could not be in doubt. We have talked about the fact that they carry nets in order to net the

foxholes, radio collars for the terriers and shovels to dig them out. It is not just two people out with a couple of terriers in the countryside. Nobody who owns a terrier and uses it to control foxes would push the terrier down a hole without any consideration for how to retrieve the terrier should it get stuck—they would have all the necessary bits and pieces. If one saw two men walking in the countryside with a terrier without any apparatus, one's mind would not jump to the conclusion that they were about to commit an offence. However, if one saw two men walking in the countryside with a couple of terriers, two shovels, nets and various other equipment, one would have reasonable grounds to suppose that they were up to no good.

The Convener: We must finish there as we are well over time and we have further witnesses who are waiting.

Thank you for attending the committee. We would be grateful for the separate submissions that we have requested.

Bill Swann: On behalf of us all, I thank the committee for hearing our evidence.

The Convener: I welcome Assistant Chief Constable Ian Gordon to the committee. I know that you want to make a brief statement. Perhaps you could also introduce your colleague.

Assistant Chief Constable Ian Gordon (Association of Chief Police Officers in Scotland): I am assistant chief constable for operations at Tayside police. I have held the post for about 20 months. I am also a member of the general policing sub-committee of the Association of Chief Police Officers in Scotland. Amongst other areas, I have national responsibility for wildlife issues. I am also a member of the partnership against wildlife crime groups—PAW.

My colleague is Alan Stewart, who is the wildlife liaison co-ordinator for Tayside police. He is a former police inspector, a recognised authority on wildlife issues in Scotland and he is involved in the prosecution of offenders against wildlife legislation. Alan is also a member of the PAW groups and he has advised them and the Scottish Executive on current and proposed wildlife legislation. He has played a key role in setting up intelligence initiatives, such as operation Easter, which seeks to minimise the theft of birds' eggs. He is also the winner of the World Wide Fund for Nature's award for wildlife enforcer of the year.

I have asked Mr Stewart to accompany me today because he is an experienced practitioner in this field. Together with other wildlife officers, he has had considerable success in reducing the use of poisons on estates and educating landowners, estate workers and young persons about the benefits of conservation and working with one another to minimise wildlife crime. He is the operations expert and has long experience in Scots law of dealing with such incidents. I am here as the spokesperson for ACPOS.

The role of the police is to enforce the legislation that is passed by the Scottish Parliament. We report cases to the procurator fiscal who decides what happens subsequently. It is not our role to comment on the ethical question of whether hunting should take place or what the balance in the natural world should be. However, balance is very important to the police force and the communities that we serve.

As members will be aware, every force prepares an annual policing plan, which draws upon internal and external consultation. The plan addresses the national and local needs; it is important in directing resources and determining the priority that is given to various aspects of a force's activity. Partnerships with a wide range of agencies and communities are formed as a result of the plan. The aim is to address the identified issues in the community, using the resources available. The management of those resources and their prioritisation is particularly important. We have to strike a balance. In this case, there will be groups of people with conflicting interests and our role will be to determine their disputes.

There will be practical difficulties in enforcing the bill. Some of the comments that were made earlier are extremely relevant. The policing plan details what the force proposes to do in response to the demand from the community and the Scottish Parliament. There may be some difficulty in obtaining evidence on some of the more questionable activities. As you said, convener, 20 horsemen in red coats is not difficult to understand, but there might be difficulties in trying to establish who has loaned a dog, for what purpose, and whether that person knew about and permitted the hunting that later took place.

Much police work is done through intelligence gathering and, as the committee will know, that is subject to impending legislation—the Regulation of Investigatory Powers (Scotland) Bill. I know that the committee has considered that bill and I do not intend to pursue that point—there are greater experts on that legislation. However, it will be a consideration. The only way to gain evidence in some of these cases is to watch what is going on. It is unlikely that an officer will just come across such offences because they are liable to be committed in areas outwith those with lots of resources.

We must consider how we deal with such offences. If the police were watching a fox's den, they would have some time to gather intelligence to try to prove the case. I do not have a clear definition as to whether a commissioner on investigatory powers would feel that intrusion on

land in such a case would require an authority. The impending legislation makes it clear that such a case would not fit the criteria of a serious crime.

The legislation would impact on our resources because the offences are relatively minor and we would have to strike a balance. Local supervisors would have to reflect on what issues were to be determined. Such surveillance requires trained operatives, who are in short supply. Those numbers will increase because we have to meet the demand. However, proportionality—where this offence sits in relation to what the public want—is an important issue.

We must also consider the balance of activity. I would ask members to listen to Alan Stewart's views on the question of sporting interests versus legitimate pest control. I anticipate some difficulties there, particularly with farmers. I acknowledge that licensing may be going out of it now, but you cannot, for example, always anticipate a plague of rats. If you have stored grain—let alone growing crops—and there is an influx of rats, I am told that an obvious way to deal with it is by bringing terriers in. To get a licence for that might be difficult. It is the pied piper aspect: how do you know that this is going to occur? However, that may be addressed by licensing coming out.

10:45

The other issue is cost. There is a suggestion that the lack of police activity in having to deal with hunt saboteurs would provide us cost savings. The forces that have active hunts have virtually no hunt saboteur activity and they do not have costs outside the normal policing costs for that area.

My last point is about the welfare of animals. Would we go down the same line as with dangerous dogs where police forces, certainly south of the border, stored dogs for periods of time as part of the evidence? If you seized the dog because it was going to prove the evidence, you could be seizing a pet. I appreciate that there is the horrendous side to this, but there is also the long-existing activity where people have gone into the countryside to do what has been a legitimate activity for years. I see the conflict being a difficulty for us.

The Convener: Would Mr Stewart like to make a brief statement before we go on to questions?

Alan Stewart (Tayside Police Wildlife Liaison Co-ordinator): No. Mr Gordon has covered all the points.

Phil Gallie: My question was going to be on resources, costs and priority. I think that we have had a full statement from the assistant chief constable on that.

I will pick up on a couple of other issues. Mr Gordon heard the evidence this morning—I noticed that he was sitting at the back of the chamber. Does he feel a level of frustration that he has come to the committee to answer questions on this—

The Convener: Could you try not to ask such leading questions, Phil?

Phil Gallie: It is an honest question. Does he feel a sense of frustration that he has come to answer questions on the criminal implications of this bill when they seem to be at square one again, as those are all going to be thought out once more?

Assistant Chief Constable Gordon: I acknowledge the question. I will twist it slightly.

I welcome this opportunity, because it is the first one that I have had to come to a committee meeting such as this. I welcome the opportunity for ACPOS to say at the earliest stage what the policing activity will or will not be. From a policing point of view, it might well sit quite low in the level of policing activity when compared with other more pressing demands. However, we cannot ignore the fact that it is an emotive issue. The committee will have quite a hard job in that respect.

Phil Gallie: In relation to the land mass of Scotland, especially in the Highlands and the remoter areas of the Borders, and given police numbers compared to the central belt, would the enforcement of this bill be unworkable apart from dealing with the red coats on horses and perhaps organised hare coursing?

Assistant Chief Constable Gordon: It would require a large amount of resources to enforce it fully. I would not expect chief constables to see it is a major priority at this time.

The Convener: Is it true to say that police forces in Scotland already have great difficulty investigating wildlife crime in general because of the resource implications?

Assistant Chief Constable Gordon: Yes, that is a fair statement.

Through the wildlife committees—especially with the ACPOS general policing committee—we are trying to raise the level of resources, so I am almost arguing against myself. There are many wildlife activities in which there have been improvements, for example, in removing poison. Mr Stewart is more expert than I am on that. We have managed to eradicate activity that impacts on other forms of wildlife such as birds—raptors—in Scotland. It would be a shame to lose that by concentrating on activities that do not have the same priority.

Maureen Macmillan: Phil Gallie has covered

one or two of the points that I was going to make, for example, the contention that it would be easy to spot what was going on. You can see people who are hare coursing or on horseback or who are putting terriers down holes. You can tell by the nets and spades that something bad is going on. You mentioned terriers being used for ratting—there are other grey areas. You also mentioned that intelligence gathering would be important. How would you do that? Would it be one of the roles for the proposed countryside rangers in land reform legislation?

How would the rural population react to feeling that they were being spied upon? A lot of the rural population are anxious about this bill. They see that there are grey areas. I used the example of two dogs, a man and a gun. Is that man going about his legitimate business or looking over his shoulder to see if someone is spying on him and will report him to the police because he might be breaking the law? Where are the grey areas? What would you concentrate on? Would that man with two dogs and a gun be safe from your interest?

Assistant Chief Constable Gordon: I will comment, then I will bring Mr Stewart in.

Intelligence is an emotive word; it is about open information gathering. You can find information everywhere; it is not about spying on people. Information comes to you about what is going on in the local area. You will hear it from day-to-day chat and officers who live in the area will pick up information. A range of information comes to you and you can identify whether it is intelligence to suggest that an offence is being committed.

If a casual person is out to perform what could loosely be termed poaching, in that they were going to take something that was no longer legal, it is difficult to say that I would give that priority over some of the other activities. I would be happy to put resources in to gather intelligence where organised and savage activity was taking place. There are degrees of this across the board, as there are degrees of any offence. You have to apply discretion to them.

I will pass you to Mr Stewart on the issue of the man with two dogs and a gun. He might be able to help more from the time that he has spent working with the community.

Alan Stewart: Intelligence gathering in relation to this bill might be far more difficult than on some other country-related activities—or crimes, if you want to call them that. For instance, the bulk of the people in the countryside are against the taking of birds' eggs and badger digging, so those are regularly reported. The countryside appears to be split in relation to this bill, with the majority probably being in favour of some of the activities that this bill seeks to stop. They will therefore be reluctant to pass on information about those activities. Maureen Macmillan mentioned the countryside ranger. He will rely on a lot of people in the countryside to get intelligence about other activities. If those people find that the ranger is reporting them for offences that this bill seeks to make, they might stop giving him intelligence.

On Maureen Macmillan's point about a man with two dogs and a gun, it would depend on the circumstances. The police would be duty-bound to make inquiries if there appeared to be an activity that this bill would make into a new offence.

Euan Robson: If I understood you correctly, you rely upon local information to assist in finding offenders in relation to current wildlife crimes. As a great number of people in certain parts of Scotland are opposed to this legislation, do you fear that there might be a knock-on effect in your present wildlife investigatory work because people would lose trust and find it more difficult to talk to the police as they would feel that the police would be involved in efforts to prevent them hunting?

Do you think that there would be an increase in activities such as snaring and poisoning because the perceived means of controlling foxes and other members of the wildlife population that cause damage to livestock and what have you are proscribed in the bill?

Assistant Chief Constable Gordon: On the first point, we have found that persistent offenders—or persistent suspects before they are prosecuted—often have a criminal history. I am talking about the egg stealing that takes place throughout the country, but primarily in Scotland. People who bait badgers are also not necessarily your everyday members of society, as an element of violence and other criminal activity is related to that.

There is a range of activities. People in the community will be happy to address activities that they perceive as threatening and damaging to the community. They will be less happy where someone is, to use the old expression, going out to take something for the stockpot or helping a local farmer who has an infestation problem.

On the second point, if this type of activity is made illegal it will almost force people whose livelihood depends on maintaining, for example, a bird population to adopt other methods. Mr Stewart has spent a lot of time on those issues and has had success.

Alan Stewart: It is certainly a different slant. Crimes go on in the countryside that we all know about, such as poisoning of birds of prey. We appreciate why those crimes go on. The people who commit those crimes are looking after their jobs. We have tried to turn this round. Instead of

trying to detect those offences, which are very difficult to detect away out in the hills, we have tried to prevent those crimes happening. We do that by working with land managers and game managers who might be involved with it and encouraging them to stay within the law.

Our deal with gamekeepers and the shooting industry in Tayside is that we will help them as much as we can with good publicity for what they are doing in relation to habitat. We get them involved in school projects and give them publicity that way. We help them in relation to poaching offences and help them to stop people interfering with their legal pest control, for instance, interfering with legal traps and snares that they have set. We might suddenly be asked to prosecute them, or investigate them, for what is currently legal pest control that we help them with. That will make it difficult to work with those people.

Euan Robson: Do you fear that there will be a loss of police intelligence because local communities will feel less inclined to disclose information to you?

Alan Stewart: That is a real risk.

Euan Robson: Might instances of poisoning and snaring increase as a result of the prohibition of what some people consider to be legitimate present methods of controlling the fox population?

Alan Stewart: That is a possibility. Out in the hills in rural areas, foxes are controlled mostly by the use of terriers underground. If people cannot do that and feel that they must control foxes to keep their jobs, they might resort to methods such as poisoning or gassing, which are currently illegal. We have worked hard to reduce poisoning in Tayside.

Christine Grahame: In the definitions section of the bill, the definition is that

"'to hunt' includes to search for or course".

Is that a sufficiently tight definition? I wonder why the draftsmen of the bill have not said "to hunt for sport". You have used words such as sporting interests, as against pest control, and the word organised came up repeatedly in your evidence. Could a better definition assist in operating, from a police point of view, if this bill came into effect?

Assistant Chief Constable Gordon: From a personal point of view, I believe that the more information that I can have to brief my officers on the better. The better the definition is, the better that is for me. My difficulty with this definition is how you would glean the evidence for it. A discussion took place earlier in the meeting about preparation. I understand the issue to be more about whether they are attempting to do something as opposed to doing it. At what point do you draw the line? The definition is lax: it could be tighter. The difficulty is that it will always be up to the court to interpret it. You will have to wait for the precedents to come from the courts.

Christine Grahame: Is it your view that the definition of "to hunt" might be far too broad and that it might have helped if it had included the words "organised for the purposes of sport?"

11:00

Assistant Chief Constable Gordon: I understood that the bill sought to remove hunting for sport without impacting on pest control. In briefing our officers, our difficulty would be in saying where the distinction lies between sport and legitimate pest control, because the two cross over. For example, rats go underground and the best way of catching them is by terrier control. If the terrier goes underground for the rat, that could be said to be contravening the law.

Christine Grahame: There is a difficulty with the section on licensing being taken out of the bill. In general, would you prefer to retain that section? Would that assist the policing? Setting aside the issues of costs and administration, would the inclusion of a section on licensing make it easier for the police to operate under the legislation?

Assistant Chief Constable Gordon: The difficulty with licensing is that the police will always have to determine the character of the person who is applying for a licence. One concern is how we would prove that a person was a good marksman. I have no idea how that could be done.

I am not sure that something such as this activity requires to be formally licensed, but I cannot imagine how else the police could differentiate between legitimate pest control and sport. If the dogs are going out on organised routes—if it is not a case of travellers coming in with dogs—an officer can question whether they should be there, and the owner can produce a piece of paper to prove that they should be.

Christine Grahame: That is helpful.

My next question concerns access to land. You feel, clearly, that the Regulation of Investigatory Powers (Scotland) Bill does not entitle you to conduct intrusive surveillance, as you do not believe—I think—that this would be categorised as a serious crime.

Assistant Chief Constable Gordon: I said that that was at the far end of the spectrum. I do not think that the bill would impinge on pest control. The difficulty is that directed surveillance would be involved if I ordered a team to investigate.

Christine Grahame: How could a constable gain access to large expanses of private land to arrest someone? What would be his legal

entitlement to do that? How would he defend that action, if the case came to trial?

Assistant Chief Constable Gordon: He could gain access with the permission of the owner, if the owner was aware that there were problems on his land.

Christine Grahame: What if the permission of the owner was not granted?

Assistant Chief Constable Gordon: If the landowner was a suspect, authority from within the police force would be required to mount directed surveillance. The difficulty would lie in judging whether there would be an intrusion on the land—a trespass—and that is not clear, even in the most recent commissioners report.

Mr Stewart may be able to answer that question from personal experience.

Alan Stewart: Yes, but before I come to that, section 4(2) of the bill says:

"A constable may enter land . . . in order to exercise a power given by subsection (1)."

That appears to give a constable that power.

Christine Grahame: So that may cover my point. However, section 4(1) requires

"reasonable cause that a person has committed, is committing or is about to commit an offence".

Even if the phrase

"or is about to commit"

was removed, how would the police gain that information?

Alan Stewart: That would be the issue for surveillance. If the police thought that something was going on on the land, they could go onto the land under that provision. However, if they were trying to glean information by undertaking, say, a technical surveillance on a fox's lair, that would be a problem.

Christine Grahame: My final point concerns the welfare of the dogs. As I understand it, under the Dangerous Dogs Act 1991, dogs that are used as evidence in trials are kept at the Edinburgh Dog and Cat Home, if the case is in Edinburgh. Is that correct? I also understand that the police have responsibility for those animals during the period to trial and disposal.

Assistant Chief Constable Gordon: Yes. That act applies throughout the United Kingdom, and the costs are met by the police.

Christine Grahame: What consideration has been given to the impounding of the dogs that are used if an offence is committed under the bill, in the period from arrest, to trial and disposal and thereafter?

Assistant Chief Constable Gordon: That is quite a difficult area. There may be no need to impound the dogs—a photograph could be taken to show the type of terrier, the radio collar and so on. The question is whether the dog should be returned to the person who has committed the offence—bearing in mind that the dog might be a child's pet, if it comes from a family—or whether it should be stored, incurring storage costs that build up. We have the facilities to impound vehicles, but we do not have the same facilities, nationally, to impound dogs.

Christine Grahame: What facilities, if any, are planned for carrying out such impounding? What are the cost implications and who will meet those costs?

Assistant Chief Constable Gordon: I have not considered that from the force's point of view.

The Convener: I have a couple of brief factual questions, to which you may or may not know the answers.

Roughly how many designated wildlife officers are there in Scotland, in the various police forces?

Assistant Chief Constable Gordon: There are 70 officers who undertake the activity.

The Convener: There are 70?

Assistant Chief Constable Gordon: Yes. However, there are fewer full-time wildlife liaison officers.

The Convener: But there are 70 police officers in Scotland with the specific responsibility of, among other things, dealing with wildlife crime. Are there any plans to increase that number?

Assistant Chief Constable Gordon: I would love that number to be increased, as those officers can make a significant contribution. I am working hard to achieve that, through the general policing standing committee of ACPOS.

The Convener: I presume that you would have to examine the impact of the bill—if it came into force—and determine whether you needed more full-time wildlife liaison officers. However, at the moment there are no plans to increase their number.

Assistant Chief Constable Gordon: That is correct. On a UK basis, the police are considering setting up a wildlife enforcement unit, which would be based primarily with the National Criminal Intelligence Service in London. There would be an opportunity for Scotland to link into that. At the moment, wildlife enforcement on a national basis is provided by Tayside police, through Alan Stewart and me.

That is the only progress that is being made, and it would primarily involve intelligence

gathering. Operational work would be dealt with by wildlife liaison officers or—for more serious offences—whatever was required from the police.

The Convener: Thank you. That concludes discussion of that item. We will now have a brief break for tea and coffee.

11:07

Meeting adjourned.

11:25

On resuming—

The Convener: I bring members to order so that we can proceed. We are already running behind time, but I suppose that was predictable.

Abolition of Poindings and Warrant Sales Bill: Stage 2

The Convener: The next item is stage 2 consideration of the Abolition of Poindings and Warrant Sales Bill.

Tommy Sheridan is here, accompanied by Mike Dailly. Members should not put questions to Mr Dailly, as he will not speak at this meeting—his views will be given through Tommy Sheridan.

We are familiar with the procedure for stage 2. There will be occasions this morning when we can dispose of amendments en bloc. Members will recall how we do that.

I welcome the Deputy Minister for Justice and his team to the committee yet again.

Phil Gallie: I wish to raise a point of order, to which you referred earlier. I attempted to lodge an amendment that, in effect, would have allowed poinding in cases of business debt. The amendment was not accepted by the clerk; I understand that that was on your instruction, convener, in line with standing orders. However, I wish to ensure that the fact that I tried to lodge the amendment is recorded. Perhaps you could say why the amendment was not accepted.

The Convener: Towards the end of last week, Mr Gallie submitted an amendment along the lines that he has described. Clearly, it is I who must decide ultimately on the admissibility of amendments. Rule 9.10.5 states that an amendment is inadmissible if

"it is inconsistent with the general principles of the Bill".

Such amendments are known as "wrecking amendments". The decision on whether an amendment is admissible is entirely one for the convener, and there is no right of appeal.

Mr Gallie's amendment was a particularly difficult case, which I spent much of Friday considering. It might be argued that it was a borderline case, but in the end I felt that it went sufficiently to the heart of the bill to be ruled inadmissible. My decision does not prevent Mr Gallie from submitting a similar amendment at stage 3.

Phil Gallie: I accept what you say. However, my amendment was submitted not as a wrecking

amendment, but was intended to address a specific issue that I felt was important. I believe that the Parliament has registered its will on the bill, and I certainly did not intend to stop its progress.

11:30

The Convener: I appreciate that. The phrase "wrecking amendment" is in inverted commas because it is the colloquial term for any amendment that cuts at the heart of the bill. The bill is entitled the Abolition of Poindings and Warrant Sales Bill, so Mr Gallie's amendment would have challenged the intention of the bill.

I do not propose to discuss further the admissibility of the amendment. If any other member wants to raise a point of order on the matter, they should indicate now that they want to do so.

Christine Grahame: On that point of order, I have raised with the Procedures Committee the issue of publicising rejected amendments and the reasons for their rejection, as there may be a case for amending standing orders. The convener was under no obligation to explain in public the reasons for rejecting Phil Gallie's amendment.

The Convener: There may be occasions this morning when the convener's casting vote will come into play. I advise members that, although I will use my deliberative vote as I deem appropriate, if I have to use the casting vote, I will do so to support the status quo. In relation to the group of amendments on when the bill comes into force, the status quo is that there is no provision on when the bill will come into force. Potential procedural difficulties would arise if I did not take the option of using the casting vote to support the status quo. I am flagging that up in advance so that people do not get confused, as I may use my two votes in two different ways.

Section 1—Abolition of poindings and warrant sales

The Convener: Amendment 5, in the name of the minister, is grouped with amendments 9, 10, 12 to 18, and 20 to 33, also in the name of the minister.

The Deputy Minister for Justice (Angus MacKay): Good morning. I am pleased to be at the Justice and Home Affairs Committee again and to have another opportunity to speak to amendments to legislation.

I will preface my remarks by saying that the Executive amendments, particularly in this group, have been lodged in a spirit of helpfulness to remedy perceived defects in the text of the bill. They are intended to ensure that the bill meets the aims of its sponsor and the committees that examined the bill at stage 1. The amendments are mostly technical in nature.

I also wish to put on record the Executive's commitment to advancing the abolition of poindings and warrant sale and to ensuring that the legislation is enacted. The Executive is committed to those aims. We have tried to demonstrate our willingness to fulfil the wishes of Parliament by lodging these and other amendments.

I do not want to say any more about the amendments, as they are largely technical, and it may save time for later debate if I stop now.

I move amendment 5.

Amendment 5 agreed to.

The Convener: Amendment 6, in the name of the minister, is grouped with amendment 35, in the name of Tommy Sheridan, amendments 7 and 8, in the name of the minister, amendment 36, in the name of Tommy Sheridan, amendment 37, in the name of Alex Neil, and amendments 11 and 19, in the name of the minister.

If amendment 6 is agreed to, under the rule of pre-emption, I cannot call amendment 35.

Angus MacKay: I intend to speak to Executive amendments 6, 7, 8, 11 and 19.

Amendment 6 goes hand in hand with amendments 8 and 11. Together, they seek to make improved arrangements for transitional and savings provision. Amendment 6 deletes subsection 1(2) of the bill because it is defective. That subsection appears to seek a saving for cases that have reached the stage of having a warrant of sale issued in summary warrant proceedings. However, there is no warrant of sale in cases that are carried out in pursuance of a summary warrant.

Amendment 8 deletes subsection 1(4) of the bill. That subsection seeks to save the provisions of the Debtors (Scotland) Act 1987 where a warrant of sale has been granted prior to the bill coming into force. It, too, is defective because it does not disapply section 1(1) of the bill and as a result a warrant of sale could not be executed.

Unfortunately, the bill as drafted does not provide clear or comprehensive saving or transitional provisions. Amendment 11 attempts to provide the clear and comprehensive saving and transitional provisions that are necessary for legal certainty.

Two provisions that need to be saved when the bill comes into force are specified in amendment 11. The amendment also gives the Scottish ministers power to make further saving and transitional provisions that will be necessary.

At least two provisions have been identified as needing to be saved when the bill comes into effect, and there may be others. The first of those provisions is section 33 of the Bankruptcy (Scotland) Act 1985, which sets out property that is exempt from sequestration. It does so by reference to property that is exempted from poinding. The other provision that needs to be saved is section 99 of the Debtors (Scotland) Act 1987, which applies a number of protective provisions that were set down for poinding and sale to other types of diligence. If those provisions were not saved when abolition took effect, there would be no list of property that was exempt for sequestration, and the important protective measures would not be available for other diligences.

Amendment 11 also paves the way for making the appropriate transitional and saving arrangements that must be put in place when poinding and warrant sale are abolished. On the date of abolition, there will be some instances in which the procedures have been started but not completed. Transitional provisions set out what should happen in those circumstances. For example, they will set out what is to happen to items that have been poinded but not sold at the time of abolition. Transitional provisions will also be necessary to determine such matters as the effect that abolition will have on rights that are acquired by a creditor by virtue of their having carried out a poinding before abolition took place. For example, provisions will be necessary to determine the ranking of a creditor's right to share in the estate of a debtor who is sequestrated.

Clear and comprehensive saving and transitional provisions are a necessary part of any legislation that changes existing law. Clear and certain arrangements must be set out for those who are affected by the new legislation and for the courts that have to apply it. We believe that amendment 11 achieves that purpose.

Amendment 7 provides for the repeal of part II of the Debtors (Scotland) Act 1987 in its entirety. The bill does not repeal sections 16, 17, 18, 23 or 26 of that act, perhaps because those sections are applied to other forms of diligence. However, for legal certainty, those sections should be kept only for the specific purposes for which they are required. Amendment 11 now provides for that.

Amendment 19 inserts part II of the Debtors (Scotland) Act 1987 into the bill's schedule of repeals. That is necessary because amendment 7 repeals part II of the 1987 act in its entirety.

I am happy to speak on the other amendments in the group at this stage, or to do so later.

I move amendment 6.

The Convener: I call Tommy Sheridan to speak to amendments 35, 36 and 37.

Tommy Sheridan (Glasgow) (SSP): I accept that the first group of amendments was of a technical and cleaning-up character, but I do not accept that that is the case for this group of amendments. We accept the need for further clarity on what warrant sales may proceed after implementation of the bill. The amendments provide that clarification in relation to summary warrant and ordinary decree. Amendment 37 provides full clarity on the application of those warrants. We do not interfere in any way with the Bankruptcy (Scotland) Act 1985. We are worried that the Executive is seeking to take more power than is necessary to direct the bill after it is enacted—it is seeking unnecessary, overriding powers.

Amendments 35, 36 and 37 would provide the clarity that is required so that, when the bill is passed, no one is left in any doubt as to what warrant sales can proceed and what warrant sales can not. That is what is important here.

I oppose the Executive amendments because they would grant an unnecessary set of powers in relation to transitional arrangements and complicate rather than clarify matters.

Angus MacKay: I will respond by speaking about amendments 35, 36 and 37. Essentially, this is a set of Executive amendments versus a set of non-Executive amendments that attempt to do the same thing.

We understand what the movers of the non-Executive amendments are attempting to do. In fact, on 11 September we wrote to Mr Sheridan to explain our position and to offer the opportunity to discuss saving and transitional provisions. If, after the outcome of any vote on this section, a lack of clarity persists and Mr Sheridan is interested in meeting us, we will be happy to meet him to clarify matters further before stage 3.

Amendment 35 is defective because it would still leave section 1(2) referring to a warrant of sale in pursuance of a summary warrant. As I said, there is no separate warrant of sale in cases that are carried out under the summary warrant procedure.

Amendment 36 is a saving amendment that would allow creditors who had had a warrant of sale granted before the bill came into force to continue with their warrant sale procedure, but it does not address all other necessary saving and transitional issues. As I said in connection with amendment 11, clear and comprehensive saving and transitional provisions are a necessary part of any legislation that changes existing law. There must be clear and comprehensive arrangements for those who are affected by the new legislation and for the courts that have to apply it. The Executive amendments in this grouping meet that

test, but amendment 36 does not.

Amendment 37 tries to provide for a definition of a warrant of sale in cases that are carried out under the summary warrant procedure but, again, we believe that it is technically defective. There is no warrant of sale in cases that are carried out in pursuance of a summary warrant. The amendment refers to the intimation of a forthcoming sale under the summary warrant procedure, which paragraph 16 of schedule 5 to the Debtors (Scotland) Act 1987 provides has to be to be sent to the court. That may be an attempt to provide a suitable equivalent of warrant of sale in summary warrant cases, but it undermines the application of the bill to non-summary warrant cases. That is why we believe that amendment 37 is defective and should not be agreed to.

In moving the Executive amendments, we do not intend to give ministers excessive powers; we are simply trying to make adequate saving and transitional arrangements to ensure that the courts and those involved in such proceedings know what their position is and can sensibly judge how those transitional provisions will work.

Gordon Jackson: I sympathise with the view that people should know what their position is. I think that both arguments we have heard are intended to achieve the same thing, although I sometimes find my eyes glazing over at the technicalities. When I look around the committee, I suspect that I am not alone.

One thing niggles me. I, and I suspect other members of the committee, are not great fans of catch-all provisions. That does not mean that they should never be included—I understand that there are times when the Executive needs catch-all provisions for flexibility—but, as the minister knows from our consideration of other legislation, we have tended to be suspicious of such provisions.

The Executive is giving exceptions, but it is also saying that if, in its wisdom and discretion, it thinks of anything that should be an exception, it reserves the power to throw it in. The cynics among us would be frightened of that. I am not frightened of it; I assume that it is just the usual Government belt-and-braces job, but do we really need it? Have we not applied our minds to it in enough detail to say now what exceptions we need? We have a bank of advisers. Have we not exhausted the possibilities of what the exceptions are likely to be?

I am slightly suspicious of a catch-all provision, especially when it comes in a negative rather than a positive resolution of the Parliament. I appreciate that negative resolutions might be annulled just as positive ones might not be approved, but catch-all provisions with negative resolutions are not my favourite. I shall put it no higher than that. I would like to be satisfied that it is really necessary.

11:45

Euan Robson: I was going to make a similar point. Subsection (2) is all about transitional provisions, so I suppose that, after a period of time, they will lapse anyway. I agree that the negative procedure may not be the best way of proceeding and that the affirmative procedure would be better. I would be interested to hear the minister's comments.

Angus MacKay: I appreciate the points that Gordon Jackson and Euan Robson have made, especially as I have experience of other legislation that this committee has dealt with. There is a distinction between catch-all provisions as set out in other legislation and what is being provided for here. This is a standard provision for savings and transitionals and is commonplace in other legislation—not just legislation passed by this Parliament.

What is proposed does not go any further than those standard approaches. It does not except or exempt any situation that is covered by the bill. It does not allow for ministers to vary particular circumstances as covered by the bill. That is not how it works.

Gordon Jackson: Can you explain that more fully, please?

Angus MacKay: Let us consider the specific circumstances set out by the bill and the Executive amendments. I understand that the amendment would not allow ministers to specify exemptions with regard to specific circumstances that individuals might find themselves in. It specifies the provisions that would pertain, as Euan Robson said, during the transitional period and not beyond it. It concerns what the arrangements would be during that period, but it is not about varying the arrangements during that period.

Michael Matheson (Central Scotland) (SNP): I would like some clarification about the minister's amendments. I understand that if a poinding takes place before the bill comes into force, there could be a warrant sale for up to 12 months after the bill is passed. Is that the case?

The minister referred to eventualities that might have to be dealt with during the transitional period, some of which may be unknown and which it could be difficult to cover in legislation. Would it be more appropriate to deal with such eventualities in the legislation that the Executive will introduce to deal with the issue?

Angus MacKay: The answer to the second question is yes, but we must cater for the circumstance in which it is theoretically possible

that the Executive's legislation does not make it to the statute book. We do not know what might happen. Parliament might decide not to accept that legislation, in which case—we will come to the subject of the commencement date later—this bill would be the bill that replaces existing legislation. We must therefore ensure that appropriate savings provisions are in place. However, we do not believe that that will happen; we believe that the Executive bill will be enacted in time.

The answer to the first question is also yes.

Tommy Sheridan: On the minister's point about exceptions, I ask members to refer to amendment 11, subsection (2) of which states quite clearly:

"The Scottish Ministers may, by order made by statutory instrument, make such transitional provision and further savings as they consider necessary or expedient in connection with the coming into force of any provision of this Act."

That clearly provides the catch-all the minister says he does not have. There is quite clearly a provision there that would allow for a poinding to have been carried out a couple of days before the bill comes into effect and for ministers to decide that that poinding could proceed to sale, even 12 months down the line.

The problem that I find in this is the point that Michael Matheson made—the Executive's proposal does not lead to more clarity about which warrant sales could proceed after the passage of the bill; it would lead to more complications. The transitional power is a catch-all provision.

I agree that there is need for clarity. I hope that the amendments that we have lodged will provide it. Amendment 35 clearly refers to warrant sales under summary warrant; amendment 36 clearly refers to warrant sales under ordinary decree; amendment 37 provides the definition of warrant of sale. Those amendments are consistent, so it is unfair of the minister to accuse us of submitting technically incompetent amendments. They are not technically incompetent either in relation to the bill or in relation to the existing provisions.

Gordon Jackson: I have no concluded view on the catch-all. Do you have any difficulty with the first two points in amendment 11, about the bankrupts and the debtors? Is it only the catch-all that you do not like?

Tommy Sheridan: The amendments that we have submitted already provide for both of the points that are made in subsection (1)(a) and subsection (1)(b) of amendment 11. We already clearly refer to that. We do not affect the Bankruptcy (Scotland) Act 1985. For example, we allow for the list of exempted items under poinding still to remain for guidance in relation to bankruptcy. There is no problem with that.

We are trying to be as minimalist, straightforward and clear as possible, whereas the Executive is creating an unnecessary section that gives it huge powers in relation to transitional arrangements.

Gordon Jackson: Are you saying that there is no objection in principle to the first part of amendment 11—although you say that it is unnecessary, so it would be bad legislation?

Tommy Sheridan: There is no objection in principle; we have already covered it. That is why we cannot understand why subsection (2) of amendment 11 is included.

The Convener: No one else has indicated that they wish to come in on this point. Does the minister want to say anything else on this?

Angus MacKay: I will clarify that the Executive's position is that the amendments that we propose do not allow ministers to disapply any part of this act. This is about timetabling. It is not about exemptions from the legislation as it is passed.

The Convener: Is amendment 6 agreed to?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 3, Abstentions 2.

Amendment 6 agreed to.

Amendment 7 moved—[Angus MacKay].

The Convener: Is amendment 7 agreed to?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 3, Abstentions 2.

Amendment 7 agreed to.

The Convener: We now come to amendment 1, in the name of Tommy Sheridan.

Tommy Sheridan: Amendment 1 is technical. It replaces "schedule 2 (repeals)" with "the schedule".

I move amendment 1.

The Convener: I take it that there is nothing you wish to add, minister.

Angus MacKay: No. As there is only one schedule to the bill, this is a sensible amendment.

Amendment 1 agreed to.

Amendment 8 moved—[Angus MacKay].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 3, Abstentions 2.

Amendment 8 agreed to.

Amendment 9 moved—[Angus MacKay]—and agreed to.

The Convener: Tommy Sheridan has spoken to amendment 37 already. Do you wish formally to move it, on behalf of Alex Neil?

Tommy Sheridan: I may be wrong, but I assumed that because it referred to amendments 35 and 36, it had fallen.

The Convener: Technically, it does not fall.

Tommy Sheridan: I withdraw it, on the basis that it conflicts—

The Convener: Not moved.

Amendment 37 not moved.

Amendment 10 moved—[Angus MacKay]—and agreed to.

Section 1, as amended, agreed to.

After section 1

Amendment 11 moved—[Angus MacKay].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 3, Abstentions 2.

Amendment 11 agreed to.

Schedule

REPEALS

Amendments 12 to 18 moved—[Angus MacKay]—and agreed to.

Amendment 19 moved—[Angus MacKay].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)

Matheson, Michael (Central Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 3, Abstentions 2.

Amendment 19 agreed to.

Amendments 20 to 32 moved—[Angus MacKay]—and agreed to.

Schedule, as amended, agreed to.

Section 2—Repeals

Amendment 33 moved—[Angus MacKay]—and agreed to.

Section 2, as amended, agreed to.

Section 3—Short title

The Convener: We now come to amendment 4, in the name of Tommy Sheridan, which is grouped with amendment 38, in the name of the minister. Amendments 4 and 38 would insert alternative and incompatible commencement provisions.

Rule 9.10.11 of standing orders states:

"An amendment at any Stage which would be inconsistent with a decision already taken at the same Stage shall not be taken."

12:00

If amendment 4 is agreed to, amendment 38 cannot be called. Members who support amendment 4 should vote for it; members who support amendment 38 should vote against amendment 4 if they wish to ensure that amendment 38 is taken. If the vote is tied, I will exercise my casting vote against the amendment in both cases, to ensure that the status quo of the bill remains.

I call Tommy Sheridan to move amendment 4.

Tommy Sheridan: I am disappointed with the Executive's amendment because of the time scale it entails. I have three arguments that I want to put to the committee in the hope of winning members' support for amendment 4.

First, the committee will be aware that there was a lengthy period of evidence gathering—we listened to witnesses and consulted many people who were both for and against the bill—which resulted in a highly charged parliamentary debate on 27 April. The outcome of the debate was that the Parliament expressed its will by supporting the committee's recommendation to support the general principles of the bill. If amendment 4 is supported, the Parliament will implement the bill one year after taking the decision to support it. That is reasonable.

We had hoped for an earlier implementation date, but we have listened to the comments of the committees and have lodged an amendment that is reasonable and proposes a time scale that can be met by civic Scotland. However, the idea of two-and-a-half years' delay between the Parliament debating and deciding on such legislation and its implementation is entirely unreasonable. People outside the Parliament will see that as unreasonable.

Secondly, the Justice and Home Affairs Committee expressed its intent clearly when it said in its report that it wanted the bill to be implemented "sooner rather than later", because it wished the legislation to be "a spur to change". To date, the Executive's record on being spurred to change is quite shameful.

On 27 April, the Executive, in the shape of Jim Wallace, announced the establishment of a committee to examine alternative forms of diligence to poindings and warrant sales. In the past five months that committee has met once. It has not proposed any alternatives. It has a very restricted remit, which is to present another form of attachment of movable assets. I may sound cynical, but I must say that another form of attachment of movable assets could easily be seen as poindings and warrant sales by another name. The restricted remit of the group saddens me.

I ask the committee to consider the fact that the Local Government Committee discussed the time scale for implementation in some detail. I have quotations from Dr Sylvia Jackson and Michael McMahon, both of whom make the point that the bill should be implemented sooner. At one point, Donald Gorrie mentioned a three-year implementation date. Sylvia Jackson said that that was far too long. Michael McMahon described it as ludicrous. I remind the committee that if it accepts the Executive amendment, that is the time scale that it will be endorsing.

The Local Government Committee discussed the matter in January. If the Executive's amendment were accepted, the effective implementation date would be 1 January 2003. That would be ridiculous. The Local Government Committee was charged with considering the effect that the bill could have on local authorities, so its views on implementation are quite important. That committee has the interests of local government at heart. It recognised the fact that West Dunbartonshire Council and Clackmannanshire Council have already banned the use of poindings and warrant sales, with no untoward effect on the collection rate of council tax or other debts that they are owed.

The Local Government Committee concluded that an effective and specific time scale should be put in place. Members will not be surprised to learn that the specific implementation date that the Local Government Committee called for was 1 April 2001. The compromise that the supporters of the bill are suggesting in amendment 4 is in line with the recommendations of the Local Government Committee. I hope that members will take that on board.

My final point concerns the time taken to produce alternatives. I remind the committee that, in the five months since we had the debate in the Parliament, the Executive committee that was established to consider alternatives to poindings and warrant sales has produced no specific proposals and no details on an overhaul of diligence or on improving debt recovery across Scotland.

On the other hand, the informal group that was established by those who support the bill to abolish poindings and warrant sales—including the Scottish Association of Law Centres, the Govan Law Centre, Citizens Advice Scotland, Money Advice Scotland, the Poverty Alliance and many other organisations, including the Law Society of Scotland—has not only produced, in the space of three months, an alternative proposal called a right of disclosure which, while still protecting the rights of debtors, would allow creditors access to information that would allow existing diligence to operate better, but is due to publish in December a complete report on the overhaul of debt recovery across Scotland. There is a bit of a contrast between the voluntary group that has got together to try to improve and humanise debt recovery, which has made so much progress, and the Executive, which has made so little. I hope that that will be borne in mind.

The sooner-rather-than-later spirit of both this committee's report and the Local Government Committee's specific proposal is matched by the 1 April 2001 amendment. The 31 December 2002 amendment represents, I feel, a circumvention of the will of Parliament and of the time scale that was proposed by the MSPs who voted to abolish poindings and warrant sales.

I move amendment 4.

Angus MacKay: I should perhaps preface my remarks by saying that, like Mr Sheridan, I am disappointed: the amendment that he has lodged sets an unrealistic date for commencement. The committee has recognised the need for an alternative diligence against movable property to be in place before poindings and warrant sales are abolished. Amendment 4 gives a date of 1 April 2001, but that does not give sufficient time for the alternative diligence against movable property to be identified and for legislation to be put in place.

The arguments for the need for an alternative diligence to poindings and warrant sales have been well rehearsed in several different venues. People have responsibilities to honour financial commitments that they freely enter into. The legal system has to have a mechanism that allows debts to be recovered from those who can pay their debts but refuse to do so. There has to be a comprehensive set of measures that cover all types of property. Without an alternative diligence against movable property, a large loophole is created. Unless there is a seamless transition between the implementation of abolition and the commencement of the alternative, that loophole will be created.

That is the background, but I would not want the committee to be in any doubt about the Executive's commitment to the abolition of poinding and warrant sale and its replacement by an alternative, modern, humane and effective diligence against movable property. The committee is well aware of the cross-party parliamentary working group to which Mr Sheridan has referred. It has already started work on this matter.

The effect of Executive amendment 38 is that commencement will take place not later than 31 December 2002, without any further order being necessary—which is not the case with Mr Sheridan's amendment. That time scale would allow the cross-party parliamentary working group time to complete its work and for the replacement legislation to be introduced.

I am sure that the committee shares the enthusiasm for a sensible and workable solution that is fair to both debtor and creditor. I therefore hope that the committee will support the need for a realistic time frame for the working group to explore alternatives and make its recommendations.

The bill cannot be brought into force until it is possible to introduce an alternative diligence at the same time. I ask the committee to recognise that reality by supporting the Executive's amendment. Initially, it was intended that the working party should meet every two months. I have instructed that the frequency of meetings be doubled to a minimum of once a month.

The second meeting of the working party was cancelled to allow a new date to be set to allow for full attendance. Not every member was able to attend the first meeting. I understand that Mr Sheridan has concerns about that, which he expressed in *The Herald* in the form of a letter—which is apparently being sent to me. The letter was dated 11 September, but I have not yet received it, so I have not seen Mr Sheridan's

detailed concerns.

The Executive has moved on this matter. During the stage 1 debate in the Parliament, Jim Wallace gave an undertaking to amend the list of exempt articles in section 16(2) of the Debtors (Scotland) Act 1987. That has been done, and the working party's meetings have been timetabled to be more frequent.

The working party initially agreed to report in December 2001—that would at least be the backstop date. As a result of the amendment that we have lodged at this stage and the requirement to prepare a proposal and to go out to consultation on it in time to legislate by December 2002, the working group will now have to conclude its report by June 2001 at the latest. The working group's timetable has been foreshortened as a matter of urgency.

I ask committee members to support the Executive's position, to allow time for a workable alternative to be put in place.

Gordon Jackson: Tommy Sheridan referred to this committee's stage 1 report, and he rightly quoted the phrase "sooner rather than later". It is important that that be placed in the context of all the things that we said in our conclusion. A phrase such as "sooner rather than later" is somewhat loose in itself.

We said a number of definite things. We said that the bill should "serve as the catalyst" for general reform and we have not departed from that. We also said that it was not good enough for the Executive simply to make a commitment "to bring forward legislation" and therefore not pass this bill. Those with any memory will remember how strongly this committee and the Parliament insisted on that, and in the clearest possible terms.

We also said that we felt that there had to be a commencement date. This is important, so I will quote from our report. We said:

"The Committee remains conscious of the danger . . . that immediate abolition of poindings and warrant sales could cause disruption and unintended . . . consequences. We also recognise that those involved in the diligence system . . . need time to prepare for the practical consequences of abolition. We therefore believe that there is a strong case for amending the Bill during its passage to provide that it does not come into force until a specified future date."

That

"would allow abolition to become an established fact . . . while postponing its implementation until the remainder of the reforms needed could be put in place."

I still strongly believe that. The most important thing that we can do at this stage is to establish the principle that there will be a definite commencement date. I would not like to happen what was suggested as possible through the casting vote of the convener: that we do not include a commencement date at this stage. I think it vitally important that that principle is established. The idea that this bill can be implemented as and when the Executive, in its wisdom, thinks fit, would, to my mind, be totally unacceptable. Pressure needs to be put on working parties, civil servants and ministers. They should have a date to work to. That is the most important principle that we can establish.

In regard to what the date should be, we said in our report:

"What is needed now is a clear commitment from the Executive to bring forward legislation within this Parliamentary session".

Unlike the other committee, we did not put a date on that; we said only that it had to be done within this parliamentary session. As far as I can see, the Executive's proposed date is certainly within this parliamentary session, which means that it has complied with the request in our stage 1 report for a specific date. We must establish a date; and if there is a choice between two dates, I am in favour of the date that is further away.

12:15

I am sure that the date issue will be revisited; however, with respect to Tommy Sheridan, I do not think that April next year is realistic at the moment. These issues are complicated and things must be right; and although it might make a political soundbite, it is not legally realistic to try to have the legislation in place by the date that Tommy suggested. I am content with the other option of having the legislation in place by the end of December 2002; however, as I said, the issue will no doubt be revisited. We need a specific time scale and, at this point, should take the longer rather than the shorter one.

The Convener: I plead with members not to make this an opportunity to give speeches, as we are running considerably late with our agenda—and yes, I am getting at you, Gordon.

Pauline McNeill: It is important to put on the record where the committee was coming from on the bill. We were adamant that we wanted a mechanism so that the Executive could not dilly-dally on the bill, which is why we came to the principal conclusion that there should be a date by which the bill should come into force, although the report did not stipulate that date.

As far as I am concerned, there are three long-term aims: the abolition of poindings and warrant sales, to which we are committed; the alternative form of diligence, which is the focus of today's meeting; and debt arrangement schemes, which Mike Dailly in particular talked about in his evidence. We still have a long way to go on this

matter before it is completed.

The date of April 2001 is too soon if we want to ensure that alternative procedures are in place. Although I am not 100 per cent comfortable with the Executive's option of 2002, I think that Tommy Sheridan has to address the point that his time scale is very short. It will leave us only five months to have alternatives in place. Furthermore, I should ask Tommy whether he thinks that, on the day the Parliament passes the bill in whatever form, local authorities will react within the time scale by making any preparations.

The committee has a proven record in being diligent in its scrutiny of the Executive's work. It will be on the Executive's head if no progress has been made on alternative procedures, because the committee and the Parliament will revisit the matter to ensure that progress has been made.

Kate MacLean (Dundee West) (Lab): I am not at all comfortable with the Executive's time scale, as it means that warrant sales could still be carried out up until December 2003. That said, I agree with Gordon Jackson and Pauline McNeill about Tommy Sheridan's amendment. A year is just not long enough for the Parliament to deal with the situation. We have to be pragmatic; the bureaucratic organisation in which we work will not be able to do everything in five or six months, which is regrettable. Perhaps we should investigate the way that we operate.

I notice that the minister said that the commencement date would be no later than December 2002. Is there any leeway for the compromise that could be introduced, at stage 3, to reduce that time scale? Can he commit himself to investigating the possibility of bringing forward the deadline from 31 December 2002, with a view to accepting an amendment at stage 3? [*Interruption.*]

The Convener: Is somebody's mobile phone switched on? Please switch your mobile phones off.

Kate MacLean: Sorry about that, convener, it is now switched off.

Phil Gallie: Unlike the great majority of this committee, I voted against this bill in the parliamentary debate to which Tommy Sheridan referred. I have since had cause for reflection. A good example of the reason why Tommy wants this bill to be passed can be found in South Ayrshire Council. That council has sent out summary warrants to people who are late with their council tax payments by only a few days, because they have not fallen into line with South Ayrshire Council's requirement for payments to be made on the first day of the month. If that is the kind of use that sheriff warrants are going to be put to, many people will revise their views.

Having said that, we must look to the wider good, and we must ensure that debt recovery is possible. I was disappointed to hear what Tommy Sheridan said about the diligence committee, and I note the minister's commitment to increase the number of meetings that that committee is intent on having. I wonder how forced that has been.

Implementation of the bill on 1 April may prove impractical with regard to ensuring the protection that we must have for those who have the resources to pay but will not pay. I will enjoy the remainder of this debate before deciding how I am going to vote.

Christine Grahame: First, I want to address the matter of the cross-party parliamentary working group. I am a member of that group, but I did not attend its first meeting, as the meeting was rearranged and I had something else in my diary that I could not get out of. The second meeting, as Angus MacKay is aware, was scheduled for this week or last week, I think, but will now be held on 5 October. This is the first that I have heard—it may be somewhere in the typing, but it was not in my mail this morning—of a forward diary for consideration of this matter. I have had no notice of that. That group has done nothing for five months. The only meeting that was held was to set the remit, and I have not even agreed to that yet.

I have real concerns. I have watched the Executive in operation when the European convention on human rights has breathed down its neck. It has moved then, and legislation has whizzed through Parliament. The Executive may be acting in good faith, but its actions do not demonstrate an urgency to respond to Parliament's wishes in this matter. I am glad to hear that there is movement on the parliamentary cross-party working group, as this is the first that I have heard of it.

My second point concerns what the Executive has said about an alternative to diligence against moveable property. I refer to the committee's first report, to make sure of what we said. On page 12 of the report, we said:

> "What is needed now is a clear commitment from the Executive to bring forward legislation within this Parliamentary session to ensure that a system of diligence from which poindings and warrant sales have been removed strikes a satisfactory balance between the interests of creditors and debtors."

The word "alternative" does not appear; "substitute" does not appear. We are talking about removing poindings and warrant sales. I support Tommy Sheridan—a rose by any name, et cetera. A poinding and a warrant sale by another name is still a poinding and a warrant sale. That was not what was called for by the committee in its report.

Those are two matters that I wish to raise with

you. Perhaps afterwards we could discuss the cross-party group. Maybe you have written to me about it, but I do not know.

Michael Matheson: My primary concern touches on what Christine Grahame has said about the cross-party group on diligence. Several members have said that Tommy Sheridan's amendment provides an unrealistic time scale. The question arises as to why it is that, five months after the parliamentary debate, the cross-party group has met only once. If we are short of time, the problem is of the Executive's own making, as the cross-party group has not addressed the issues that the Parliament raised in the debate in April.

Kate MacLean made an important point. Agreeing to the Executive's amendments would mean in effect that poindings and warrant sales would technically not be abolished in this parliamentary session. The transitional arrangements that the Executive proposes will mean that poindings and warrant sales will continue until December 2003. That is unacceptable. If there is a lack of time in which to deal with so-called alternatives, that is because of a lack of action on the cross-party group by the Executive.

I agree that it will not be ideal for the scrutiny of legislation if we do not have sufficient time to consider alternatives. However, I am not prepared to wait until December 2002 for the abolition of poindings and warrant sales, after which warrant sales may continue for another year. We should be stamping a mark on the bill to ensure that it happens sooner rather than later, given that there has already been slippage in the past five months.

Euan Robson: I am equally disappointed that 1 April 2001 is not a realistic possibility. Through a combination of circumstances, we have lost an opportunity. We might have moved a bit quicker over the summer. Amendment 38 says that the bill could come into force on

"such earlier date as the Scottish Ministers may, by order made by statutory instrument, appoint."

Therefore, an earlier date is not ruled out.

I would be interested in the minister's response to the point that Michael Matheson rightly made about poindings and warrant sales continuing for up to a year after the legislation curtails them. To meet the committee's view that they should be abolished by the end of the session would require a shift in the time scale back from December to May. Does the minister think that that is achievable? Does he think that we should now aim for a date earlier than December 2002, as is provided for in the amendment?

Angus MacKay: Forgive me if I do not cover all the points that have been made. I will be happy to come back to any that I miss out.

The Executive thinks that it is practical and sensible to set December 2002 as a backstop for commencement. That does not preclude the possibility of legislation being completed and formal abolition taking place earlier than that. We certainly intend to work towards the earliest possible date. However, we think that that backstop is needed to allow the working party to complete its work, proper consultation to take place and legislative scrutiny of the Executive's proposals to be carried out by the committee and Parliament.

The period for which poindings and warrant sales could take place after the legislation has been passed is—in part, if not entirely—down to the transitional arrangements that will have to be made and brought before Parliament by statutory instrument and which will be subject to negative resolution and annulment.

I am happy to undertake today to examine closely the period of time that might be needed for those transitional arrangements. Members have suggested a year, but it might be that a period of less than a year is possible. We will consider actively whether that can be done.

12:30

A number of other issues were raised, of which Christine Grahame raised two or three.

Paragraph 48 of the committee's report states:

"efforts should be concentrated on finding a workable but humane alternative".

I do not think that that statement is ambiguous—it is quite clear. I hope that my response addresses the point that was raised by Christine Grahame.

Both Christine Grahame and Michael Matheson touched on the position of the working group. I do not want to over-politicise the working group, as it has some difficult work to do under a heavy timetable. The working group will have its hands full in trying to produce something that will be acceptable to all members. Christine Grahame has received a copy of the minutes of the working group's first meeting, on which we have yet to receive comments.

In relation to the timetable for the working group, the dates 6 December, 7 February, 4 April and 6 June are noted in my diary, but I am happy to discuss them with members. They were arranged on the basis of the working group meeting once every two months. When the working group was formed, it was intended that all members of it would be able to attend all meetings, to ensure that we would be able to take on board all points of view and to make progress as quickly as

possible, rather than to-ing and fro-ing.

We did not get a full turnout at the first meeting and when we saw from the apologies that were received that the second meeting was heading the same way, we decided to postpone that meeting to ensure that members could make it to the rescheduled meeting. At the same time, I took the view that if members were not going to be able to turn up to a meeting every two months, we might as well move to holding meetings monthly, on the assumption that turnout would be subject to the vagaries of the members' diaries.

Members can comment and scoff as they wish, but at the end of the day, the Executive undertook to introduce a workable alternative to poindings and warrant sales. We will do that and the working group will conclude its work. It will have to do so earlier than was initially proposed and, ultimately, there is not in place—or even in prospect—an alternative to poindings and warrant sales. Some work has been done on ideas that are described as alternatives, but which are not. If we proceed to an early commencement date without an alternative being in place, we will cause serious problems, particularly for finance gathering in local government. That would damage the key services on which the people we seek to protect with the legislation rely wholly.

I hope that that response answers the points that were raised by members.

The Convener: We have probably exhausted all the issues that could be raised in connection with the amendments. Tommy, do you want to wind up?

Tommy Sheridan: Yes.

The idea that local authorities stand to suffer most from the removal of poindings and warrant sales—and that that was not considered by the Local Government Committee—is breathtaking. That point was considered by the Local Government Committee, which suggested the time scale in amendment 4.

I want to repeat some of the committee's conclusions about the evidence that it heard. Gordon Jackson read out a lengthy quotation, but he missed out the last sentence, which reads:

"We are of the view that this should be done sooner rather than later."

I respectfully suggest to the committee that two and a half years after the Parliament has taken a decision is not "sooner rather than later".

I also remind members of another quotation from the committee's report, which states:

"The evidence that poindings and warrant sales cause undue distress to debtors in many cases is compelling, and to that extent we agree with Tommy Sheridan's basic objection to them as no longer appropriate in a civilised society."

That statement was based on evidence to the Justice and Home Affairs Committee and it was included in that committee's report. Amendment 38 suggests, however, that members are content to have poindings and warrant sales in place until 31 December 2002.

Euan Robson raised the idea that the Executive has lodged a catch-all amendment, its point being that 31 December 2002 would be the latest commencement date. Today, members have heard that, in five months, the working group that was set up to consider alternatives has met only once. It has not made a single proposal and will take matters right to the end of the line before changing the system. If that evidence does not convince members, I do not know what will.

The agenda of the meeting of the cross-party working group that was due to take place on 12 October included an alternative to poinding and warrant sales, which was submitted by the improving debt recovery group to the clerk of the working group. However, that meeting was cancelled. I say to Angus MacKay that the idea that meetings should be held only when all members of the group can attend is an incredible precondition—that makes it impossible for people to meet.

It is from that point of view that I appeal again to members of the committee. The decision must be made on the basis of a spur to change. I do not think that anyone has proved the idea that it is not practical to abolish poindings and warrant sales by 1 April 2001. If local authorities such as West Dunbartonshire and Clackmannanshire can ban the use of poindings and warrant sales, why cannot other local authorities operate similarly?

Jack McConnell, the Minister for Finance, visited West Dunbartonshire Council in July and congratulated it on its improved collection of council tax. That council has banned poindings and warrant sales, but he congratulated it. I ask members not to be dazzled by the notions that implementation of the measure will take time, that it will be bureaucratic, and that we have to be pragmatic while people suffer the effects of poindings and warrant sales. I appeal to members to set a date that is realistic to the people out there who hope that Parliament will pass the legislation, rather than a date that is realistic to comfortable lawyers, the Law Society of Scotland, bureaucrats, civil servants and everybody else. I hope that the Parliament listens just as much to the people out there to ensure that the timetable is practical. I appeal to the committee to agree to the amendment that sets a date of 1 April 2001.

The Convener: I intend to proceed straight to

what I anticipate will be a vote. The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

AGAINST

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

The Convener: The result of the division is: For 3, Against 8.

Amendment 4 disagreed to.

Amendment 38 moved—[Angus MacKay].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

Cunningham, Roseanna (Perth) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)

ABSTENTIONS

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

The Convener: The result of the division is: For 6, Against 3, Abstentions 2.

Amendment 38 agreed to.

Section 3, as amended, agreed to.

Long title agreed to.

The Convener: That completes stage 2 of the Abolition of Poindings and Warrant Sales Bill. I thank the minister and his officials, Tommy Sheridan and Mike Dailly.

We are running considerably behind time. We are over our normal time and we still have items on the agenda. We can use the chamber until 1:00pm, but no later, because it is booked thereafter. I propose to continue sitting until 1:00pm. We will do what we can in that time.

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187)

The Convener: We move to item 5. I ask the deputy convener to take the chair for this item, because I have to leave the chamber for a few minutes because of how late we are.

The Deputy Convener (Gordon Jackson): We are dealing with item 5, which is Phil Gallie's motion on the subordinate legislation to do with prisons and young offenders. Phil, will you speak to your motion?

Phil Gallie: I am deeply disturbed that, having been pressured into putting back this debate until today—when to some degree it loses its effect—and to go from a debate of an hour and a half to one of 30 minutes, I now have only 22 minutes. Having said that, I am sure that the committee can deal with the matter swiftly.

My first point for the minister is that the confinement of young offenders is an issue that causes strong emotions. The purpose behind confinement is to give time in which to try to change young people's misguided ways. The reasons for committal to a young offenders institution or prison are: to instil discipline; to create an atmosphere of deterrence in order to put off a young person from committing a crime again; to punish for an offence committed against others; to allow the young person to pick up new skills; and to provide time for rehabilitation. There is a combination of issues.

The wearing of prison garb is important. It sets down a disciplinary standard. I am concerned that the amendment, through the statutory instrument, would move towards reducing the effects of that element of the sentence by giving some discretion to governors on the wearing of prison garb. There are other implications now, because of the pressures that the Prison Service is under—pressures could be brought to bear on staff. Favours could be seen to be given to some prisoners if a governor used his discretion to allow a few to wear their own clothes while others had to wear standard garb. That could lead to unrest and that, with the pressures on staff, gives me cause for concern.

Another point is relevant in relation to rule 80 of the principal rules, which refers to association between those who are put in solitary confinement. Again, we seem to be relaxing the rules. It is suggested that a governor could turn a blind eye to prisoners associating with others in a similar situation.

My final point is on the amendment of rule 100A, which imposes a limit of one sixth of a sentence with respect to adding days to a sentence. If a prisoner incurs the wrath of the system to the extent that more than one sixth of their sentence should be added, that should happen. If it does not, what will deter somebody who is set on a course of constant disruption in an institution from continuing on that course? Those prisoners could say, "There is nothing more that you can do to me."

Those points inform my stand on the motion. I ask the minister to respond to them and the committee to consider them.

I move,

That the Committee recommends that nothing further be done under the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2000 (SSI 2000/187).

Angus MacKay: Phil Gallie has made a number of points.

On the first point, about young offenders in prison, a report will be published on the 26 September—I think that I have got the date right—on the experience of young offenders within the Scottish Prison Service. It is a wide-ranging and comprehensive report. Given the concerns that Phil Gallie has raised, I am sure that he will find it informative and interesting in relation to rehabilitation, access to various programmes and so on. His opening comments triggered that off in my mind.

On the first point that Phil Gallie raised, on prisoners' clothing, the present rules state that all prisoners may wear their own clothes in prison, subject to certain exemptions. The most significant exception to this right is that it can be removed from all prisoners—or particular categories of prisoners—in a prison by a direction made under the rules. Due to security considerations that has been done in respect of convicted prisoners in all but the open prisons.

The Scottish Prison Service now recommends in the changes to the rules that that blanket and centralised approach is not necessarily appropriate. Instead, whether a convicted prisoner should be allowed to wear their own clothing should be decided for each individual prisoner depending on their circumstances. For example, to give it coherence, it is envisaged that governors might allow certain prisoners to wear their own sports clothing for specific recreational activities rather than wearing specified clothing. The discretion that is being given to governors is neither dangerous nor inappropriate. It seems to me appropriately flexible.

12:45

The second point that Phil Gallie raised related to removal from association. He had some concerns about its punitive effect being lessened. At present the rules require that prisoners who are removed from association should be kept entirely separate, not only from prisoners in general but from others who have been removed from association. However, that is not always necessary, for a number of reasons. It can cause practical difficulties. For example, prisoners are entitled to have access to open air at least once a day. At present each prisoner has to be escorted separately, which generates its own bureaucratic cost. We are allowing specific governors to let prisoners who have been removed from association associate with each other where appropriate. I hope that addresses the point that Phil raised.

The final point relates to additional days. As I understand it, the effect of the rules that are being proposed here is to extend the period that the prisoner has to serve before becoming entitled to or eligible for release under the early release provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993. That delays the date on which the prisoner would otherwise be released from custody. That may go some way to addressing Phil Gallie's concern.

Scott Barrie: I have a couple of points on Phil Gallie's reasons for opposing the instrument. Phil must remember that the punishment that we mete out is the loss of liberty, not what happens in the prison. The minister touched on that. Relaxing the rule on prisoners' clothing is about treating people as individuals and not just as entities. Surely it is better for good order in our prisons and young offenders institutions if governors have some sort of discretion. Rather than being hide-bound by some bureaucratic, centralist diktat, they should know their prisoners and know what is best for their prison. The idea was proposed by the Scottish Prison Service—I am sure that it is welcomed by the SPS because of the benefits that would be the result.

When we discuss prisons, the committee has to be careful not to be schizophrenic in its approach. We have been critical of the Scottish Prison Service on numerous occasions. Although it has now closed, those of us who visited Longriggend could see that, rather than treating people the way they were treated in that institution in the past, there would be benefits in something like this.

Christine Grahame: I agree with much of what Scott Barrie has to say about treating prisoners as individuals and the effect that is given to discipline when it is known retrospectively what the sentence is. What prompted the changes? Which organisations supported them?

Angus MacKay: The short answer is straightforward operational experience within the Scottish Prison Service. The rules are changed on an annual basis.

Christine Grahame: Was it the SPS that suggested the changes?

Angus MacKay: Yes.

Pauline McNeill: I thank Phil Gallie for putting this on the agenda. While I agree that the amendments need to be made, it is important that the committee takes the time to consider what is being done. I am sure that many Scottish prisoners would thank us for doing that.

I have two points for clarification. First, I want to clarify whether the amendment to rule 62A brings MSPs into line with MPs and MEPs. That is important, as many of us get letters from prisoners, and I would like to think that we have equal rights there.

Secondly, on extending the period of temporary confinement to cell from half an hour to an hour, is that the only form of confinement?

Angus MacKay: The short answer to the first question is yes, that does put MSPs on a par with MPs and MEPs. On the second question, about temporary confinement to cell, my understanding is that prison officers themselves have the power to confine a prisoner to their cell temporarily if desirable due to the prisoner's emotional state, or if the prisoner is acting in a disobedient or disorderly matter, while other prisoners are permitted to be in association.

I am not sure if this is in the briefing note, but the intention behind rule 85A of the principal rules is to allow officers to defuse difficult situations without resorting to more formal procedures. That would allow confinement of up to one hour in a cell, but I do not think that the intention goes wider than that.

Pauline McNeill: Is solitary confinement different?

Angus MacKay: Yes, solitary confinement is a longer-term status, whereas confinement to cell is temporary.

Pauline McNeill: So it is a specific category of confinement.

The Deputy Convener: Do you want to Phil up—I mean sum up, Phil? [*Laughter.*]

Phil Gallie: First, I thank Pauline McNeill for her comments on taking a stand on this negative instrument. It is all too easy for MSPs to allow such things to flow past without raising questions. We get a heck of a volume of them coming through. Given the debates which we have had on bills, and recognising that, on occasion, we give way to ministers who lodge amendments suggesting that everything will be okay because they will introduce a statutory instrument which we can all examine, it is important for us to take such matters up.

Scott Barrie and I will beg to differ in every way on our interpretations of the use of prison. Apart from that, I accept the minister's arguments, although not with great enthusiasm—rather with a touch of realism, given the committee's feelings. It is not my intention to waste the committee's time further. I do not think that its time has been wasted today, but it would be wasted were I to press the matter to a vote.

The Deputy Convener: On the basis that Phil moved his motion earlier, can I take it that the committee is content for his motion that nothing further be done under the rules to be withdrawn?

Motion, by agreement, withdrawn.

The Convener (Roseanna Cunningham): As members will be aware, we only have about nine minutes left, and a number of items remain on the agenda. I have already had a word with Maureen Macmillan in respect of today's agenda item on domestic violence. Maureen has met the Minister for Justice and the Deputy Minister for Communities.

I understand that Maureen Macmillan also has a meeting scheduled for tomorrow. Because of the fact that we are struggling with time and the fact that, in any case, the further meeting probably means that the matter will have to go back on to the agenda anyway, I propose that we remit the domestic violence item to next week's agenda. We will be able to get a report on the meetings with both ministers and finalise the situation then.

We have already agreed to take item 7 in private, so I would ask anybody not directly connected with this committee—and the official reporter—to leave the chamber.

12:53

Meeting continued in private until 13:05.

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