JUSTICE AND HOME AFFAIRS COMMITTEE

Wednesday 27 September 2000
(*Morning*)

£5.00

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

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JUSTICE AND HOME AFFAIRS COMMITTEE
29th 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:

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)
Alex Fergusson (South of Scotland) (Con)
Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

WITNESSES

Colin Boyd (Lord Advocate)
Paul Cullen (Scottish Countryside Alliance)
Neil Davidson (Solicitor General for Scotland)
Simon Hart (Scottish Countryside Alliance)
Allan Murray (Scottish Countryside Alliance)
Peter Watson (Scottish Countryside Alliance)

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

Wednesday 27 September 2000

(*Morning*)

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

The Convener (Roseanna Cunningham): I bring the meeting to order.

I have received no apologies for absence but Christine Grahame and Lyndsay McIntosh have submitted apologies for lateness. They are held up elsewhere, but they will get here as quickly as possible. Mike Watson, Mike Rumbles and Alex Fergusson may join us for item 3 of the agenda, but I have no idea whether they intend to speak.

I remind members to ensure that all mobile phones are switched off, so that there is no repeat of last week's incident.

I point out to members that the consultation on the MacLean committee report on serious violent and sexual offenders ends on 29 September, which is in two days. We took the view that, because the consultation took place over the summer recess, it was not reasonable for the committee to input into it, even in the limited way in which we managed to respond to some of the other consultations. A white paper is due out early next year, when the committee will be able to consider the proposals in more detail. That may be the most useful input that we can make, in so far as that consultation is concerned.

I also point out to those members who have yet to realise it that the committee's report on the Carbeth hutters will be debated in Parliament on the afternoon of 4 October. The debate will be on a motion in the name of the convener of the Justice and Home Affairs Committee, to note the contents and recommendations of the report. I want to check that members are happy for such a motion to be lodged on behalf of the committee. Given that it was a committee report, I do not suppose that members have any objection to that approach.

Members *indicated agreement.*

Kate MacLean (Dundee West) (Lab): What is the motion?

The Convener: It asks the Parliament to note the contents and recommendations of the report—it is a take-note motion.

Members who had a particular interest in the Carbeth hutters will doubtless wish to note the date in their diaries, so that they can indicate their wish to speak in this committee debate.

Phil Gallie (South of Scotland) (Con): Unfortunately, the date of the debate clashes with the Tory party conference in Bournemouth. I was a minority element in the report and I deeply regret that I will not be present for the debate.

The Convener: We will be able to ensure that your dissenting voice is acknowledged, and I am sure that you will be able to arrange an alternative Tory spokesperson on the day.

On a more controversial note, there will be no tea and coffee today. Although we are in the chamber and have been accustomed to having tea and coffee when meeting here, there is a problem with the agenda, as there is no natural break at an appropriate time for tea and coffee. We would have had to break very early or very late and that did not seem appropriate.

I want to say a few personal words. Most members will realise by now that there have been some changes in personnel at the top of the Scottish National Party, as a result of which my duties are changing. As a consequence, I will no longer convene the Justice and Home Affairs Committee after today. I want to put on the record how much I have enjoyed the work of the committee over the past year as well as enjoying the work that I have done with all members of the committee. We made an extremely good team, got through a colossal amount of work, for which everyone should be commended, and retained a good atmosphere and humour.

I am sorry to have to say goodbye in this fashion; however, nothing stays the same. Next week you will have a new member as well as a new convener, and I am sure that you will afford your new convener the same good humour and courtesy that you have afforded me. Equally, I am absolutely certain that the new convener will enjoy working on the Justice and Home Affairs Committee as much as I have done.

I want to thank the clerking team, which has been magnificent over the past year. We complain about the work load, but we have a tendency to forget that the work load of the staff is every bit as heavy. They have retained as much good humour as members of the committee have done. I want to thank them personally for all the help and support that they have given the committee and me over the past year.

At the end of item 2, I will hand over to the deputy convener, who will convene the remainder of the meeting. I am afraid that I have other things that I must do this morning. At that point I will say my farewells. No doubt I will see members again, only in a different capacity.

We will move on to item 1. I propose to take in private item 7 on today's agenda, which is consideration of evidence on the Protection of Wild Mammals (Scotland) Bill. I also propose that the committee should take in private a draft report on that bill next week. Are members agreed?

Members *indicated agreement.*

Budget Process

The Convener: I welcome the Lord Advocate and the Solicitor General for Scotland. I am sorry that we are a little late starting, but our witnesses will understand that this is not a normal morning for the committee.

I remind members that the principal purpose of this item is consideration of the Crown Office's work over the past year and its plans for next year; this is a taking-stock session. A secondary purpose is consideration of the Executive's spending plans for the Crown Office as part of stage 2 of the budget scrutiny process. I am aware that there might be some constraints on the precise comments that can be made, given the statement that is to be made this afternoon.

If any members think that they should declare a relevant interest in relation to budgets for the justice system, they should do so before they ask questions on the record.

I believe that the Lord Advocate wishes to make an opening statement.

The Lord Advocate (Colin Boyd): Thank you, convener. I will begin on a personal note by congratulating you on your election as deputy leader of the SNP. It is fair to say that you and I have known each longer than either of us would care to remember. Having seen you in operation since the yes for Scotland campaign in 1979, I am not surprised that you now occupy your new position, and I wish you well in it.

On a more formal basis, I thank you for the work that you have done as convener of the Justice and Home Affairs Committee. Everyone who has dealt with the committee during the past year and a bit appreciates the fact that it has had the largest work load by far, certainly in legislative terms and probably on any other terms. We are aware that you have conducted the committee's work in such a way as to get through the business and we would like to thank you for that work.

I will move on to what I hope will be a brief opening statement, although I emphasise that I have not timed it.

Neil Davidson and I welcome the opportunity to attend the committee today, to explain to members our policies for the Crown Office and the procurator fiscal service in particular and to set out the priorities for the new budget settlement, which was announced by Jack McConnell last week.

The spending plans for the Crown Office provide us with £22.5 million of new money over the next three years. We have also secured retention of full end-year flexibility for the current year.

09:45

That increase in funding will allow us to make real progress in relation to the key priorities set out in the spending plans. Those priorities are: to ensure the effective and timely investigation and prosecution of serious crime, focusing especially on violent crime, sex offences, drug-related crime and racially motivated offences; to invest in new technology and improve efficiency; to respond effectively to the European convention on human rights; and to improve services to victims, witnesses and next of kin by setting up a dedicated service delivery structure in the department.

The additional funding will allow us to employ additional staff to help us tackle the anticipated increase in prosecution work in relation to serious crime and the impact of the ECHR. We have already made a significant increase in the work force and will be adding about 30 more legal staff over the next two years.

We were able to go ahead with our plans for improved information technology. In your report, as part of the budget process, you said that you believed that additional funding to allow the Crown Office to use new technology in the way outlined in the Crown Agent's evidence to you should be considered favourably by the Executive. The Crown Agent told you that investment was needed to put in place an appropriate IT infrastructure aimed at speeding up the processing of administration, improving quality control and releasing resources for other priorities. We intend to have a computer on the desk of every lawyer in the service. That will increase their efficiency and give them immediate access to a wider range of resources such as law reports and statutes and allow for greater flexibility in working practices. That will make a radical change in work-flow processes and communications and will improve the service that we give to the public.

The additional funding and improved IT will be of immense assistance in relation to the needs of victims, which is the other key priority of which I want to speak. In the past few years, the procurator fiscal service has laid considerable emphasis on the needs of victims, but there is much more that can be done. In particular, we need to pay attention to the amount and quality of the information that we are giving to victims.

I am therefore pleased to take this opportunity to announce that it is now our intention to establish a dedicated victims assistance service within the Crown Office and procurator fiscal service. The principal aims of the service will be: to provide information to victims and bereaved next of kin about the criminal justice process in general and about the progress of the case that affects them in particular; to provide support to victims and bereaved next of kin by integrating, co-ordinating and liaising with existing services; and to facilitate referral to other agencies for specialist support and counselling as required.

We gave you early sight of the Crown Office strategic plan before the Crown Agent gave evidence to you during the budget process. One of the commitments in that plan was to consider the outcome of a feasibility study on the creation of just such a dedicated witness service. The study was jointly commissioned with the justice department. We have received that report, which provides a thorough look at the present system. The Minister for Justice and I will publish that report by mid-October. It concludes that the service proposed is soundly based, practical and will complement existing and planned initiatives for victims and witnesses.

I digress briefly to say that it is not our intention to supplant institutions or charities such as Victim Support Scotland. We want to work with them. The report argues that the proposal will bring significant improvements in services to victims and witnesses in terms of information provision, support co-ordination and addressing needs. It recommends pilot schemes that would be properly monitored and evaluated so we can use the experience to design an effective victims service.

We have stated our intention to establish a pilot operating from the procurator fiscal's office in Aberdeen to provide support and assistance to victims of crime and bereaved next of kin in serious cases. We are going ahead with that and it will commence this autumn. The necessary arrangements have been made and the staff have been appointed. The Aberdeen pilot will concentrate on those affected by serious cases, proceeding on indictment, and on the next of kin in cases involving deaths that are being considered for criminal proceedings or in relation to which a fatal accident inquiry is held.

Of course, we want to be sure that our conclusions are of general application and are not applicable to one area only or dependent on the particular personalities involved in the single scheme. We therefore intend to establish a second pilot scheme in a more urban area in the west of Scotland. We will announce the details of that pilot shortly.

I appreciate that you will have many questions, but I am sure that you will welcome the fact that we are moving towards an approach that takes better account of the needs of those who have suffered as a result of crime. It is the aim of the Crown Office and procurator fiscal service to play a pivotal role in the achievement of the purposes of the criminal justice system of maintaining the security and confidence of the people of Scotland.

I am confident that the funds that, with your support, I have secured will enable us to make improvements in the service.

Phil Gallie: I welcome the Lord Advocate's comments. Everyone will appreciate what he said about victims of crime.

I hope that the Lord Advocate will not mind if, rather than looking forward, I look back for a moment. He might recall that, last year, he, his predecessor and I exchanged correspondence on the Shirley McKie trial. My concerns were to do with stains on the character of the Scottish Criminal Record Office with respect to the confidence that people had in its fingerprint service. Given more recent findings in the fingerprint service report, does the Lord Advocate have any regrets that the Crown Office did not act more quickly? Does he feel that there could be a number of cases in which appeals will be based on the validity of the fingerprint evidence?

The Lord Advocate: Members will recall that I took the tail-end, as it were, of Jim Wallace's statement on the fingerprints issue. I announced that all fingerprint impressions that had been compared by SCRO officers would be subject to an external check in cases that were being considered for court purposes. Since that time, more than 3,100 impressions have been checked by external experts. Of those, only one was questioned. I do not want to say much about that, as it concerns a current case but, in that case, other evidence played a part in the identification of the person who had given the impression. That check does not demonstrate that there is a wholesale problem with SCRO fingerprints.

With regard to the McKie case, I have asked the procurator fiscal in Paisley to investigate allegations of criminal conduct by officers in the McKie case and the Asbury case. Given that that investigation is under way, I would not want to say too much about it. The investigation is being assisted by the deputy chief constable of Tayside police, who is Jim Mackay, and also by Central Scotland police and Fife constabulary.

Phil Gallie: I welcome the recent actions. We cannot go back in time, I know, but if those actions had been taken earlier, a lot of anxiety could have been avoided.

I want to move on to a different issue, that of death by dangerous driving. As the Lord Advocate will be aware, in most cases in which a death occurs as a result of an accident, the police seem to apply the charge of death by dangerous driving. Time and again, that charge is reduced by the procurator fiscal. That might be done for a good reason, but it leaves anxieties in the minds of victims, their families and their friends. Given that his annual report highlights the fact that it is his responsibility to investigate all deaths, does the Lord Advocate accept that, when a death occurs as a consequence of a driving accident, it should be covered by the investigatory process in any court proceedings?

The Lord Advocate: I assure you that that is what happens. Every sudden and unexpected death—whether it occurs as a result of a road traffic accident or otherwise—is thoroughly investigated by the police. If the death occurs at work, it is investigated by the Health and Safety Executive. The investigation is then passed on to the procurator fiscal, and when there is an allegation of death by dangerous driving that case will be precognosced—investigated by the fiscals—and a decision will be made by the Crown counsel.

I fully appreciate the anxieties over deaths resulting from road traffic accidents; however, we work within the existing law, which is reserved to Westminster. We must live with that. The problem is not unique to Scotland; other jurisdictions have to deal with the issue of selecting the right charge when deaths occur as a result of a road traffic accident. For example, some Australians recently told me that similar problems are experienced in Australia. As you may know, the new quality and practice review unit is conducting a thematic review, which will report by the end of next month. I am anxious to ensure consistency across the board in our approach to the charging for death by dangerous driving.

I have no interest whatsoever in selecting charges that do not reflect the gravity of the crime. I fully accept that prosecution has a role to play in road safety, and I would never knowingly select a charge that did not reflect the gravity of the crime. Often, when police officers charge individuals following a death, they do so within a few hours of the accident, from the information that they have at that stage. The charging takes place under the alternatives of section 1 or section 3 of the Road Traffic Act 1988. Once the matter has been investigated, when full reports and a precognition have been obtained, it is for the Crown to decide on the most appropriate charge.

Phil Gallie: Let us address a slightly different issue, which I would have liked to pursue if time had allowed. Your report seemed self-congratulatory about the incorporation of the ECHR. It says that you are well prepared and suggests that everything is bang in line with your expectations. However, we ended up with a shambles in our courts, as senior sheriffs have explained to this committee. Would the Lord Advocate care to read his report and consider an amendment?

The Lord Advocate: I am sorry if you feel that the report does not truly reflect the situation. The

report came from the Crown Office and the procurator fiscal service, and was well prepared to meet the challenges. In the past, I have set out what was done, and I do not want to take up the committee's time in repeating all that.

Having spoken to prosecutors from other countries where charters of rights have been incorporated into the domestic law, I would say that we have coped remarkably well with the change that has come. Of course, we have lost cases, some of which have had a high profile. I repeat what I said in the parliamentary debate on the ECHR: we will continue to lose cases, as the whole point of incorporating the European convention on human rights is to give rights to individuals. We can try to anticipate where those challenges might come from and move to meet them, but we cannot anticipate everything.

10:00

Kate MacLean: I welcome the intention to establish a dedicated victims assistance service, as victims and their families can be treated appallingly at times, albeit unintentionally. How will that service be delivered? Will it be delivered locally? Would it operate on self-referral, or would referrals come from the procurator fiscal or the police?

On page 3 of your statement, you state the intention to establish a pilot that will operate from the procurator fiscal's office in Aberdeen. Is that a pilot for the dedicated victims assistance service, or for something else? It sounds similar. If it is different, what is the difference?

The first bullet point on page 1 of your submission mentions racially motivated offences. I know that a steering committee that is chaired by Jim Wallace is considering the recommendations of the Macpherson report. What is happening internally in the Crown Office to address the problems that have been identified in the way in which the justice system deals with people from black and ethnic minority backgrounds?

The Lord Advocate: I shall reply to the first question, on the victims and witnesses service, and will then ask Neil Davidson to reply to the second question, on race issues.

The victims and witnesses service does not have an official name yet. We have considered calling it a support service, but we do not want people to confuse it with Victim Support, which is an established and well-organised organisation. The pilot will form part of what will become the dedicated service. The report that we have received, which you will see in due course, suggests that we must run a pilot to determine how to deliver the service properly. The question is not whether we introduce the service—we will introduce it—but how we will run it. The answer to your question depends on the outcome of the pilot.

The service will be running in every region in Scotland within the next 18 months. We will have to address the issue of local delivery, especially in rural areas, carefully. We have not reached any conclusions concerning how best to ensure that delivery.

I hope that everybody who falls into the categories that I set out in the criminal justice system will be self-referred to the assistance service as a result of being a victim of a serious crime. They will be required to do certain things, and if specialist support is needed, the service will refer the victims on—whether to Victim Support or another agency or charity. That is the sort of thing that the service will do.

Neil Davidson (Solicitor General for Scotland): I want to pick up the point about race and what is happening in the Crown Office. The Crown Office takes a vigorous anti-racist stance. We seek to combat racism wherever it occurs as a crime and we have taken a vigorous approach to prosecuting racially aggravated harassment cases and other cases.

Internally, the race strategy group has been formed to deal with race questions in the Crown Office and the procurator fiscal service. In May this year, the Lord Advocate appointed me to chair that group. It is a high-level group that involves the Crown Agents, the deputy Crown Agents, the head of policy, a senior regional procurator fiscal and a number of other people. It is a fairly substantial effort in the Crown Office—the group meets every two weeks to push forward various parts of the anti-racist agenda. It considers issues of training, recruitment and the availability of interpreters. It does not have a fixed agenda, but those are the three items on which it is focusing at the moment.

All members of staff are being exposed to anti-racist training. For the first time, advocates depute are being included in the anti-racist training element. That means that prosecutors throughout Scotland will have had anti-racist training. That is a major step forward. The training is being done in consultation with the Commission for Racial Equality and is being assisted by regional equality councils and external consultants who are specialists in race matters.

We are making efforts to improve the availability of interpreters. We have to dovetail with what the Scottish Executive equality unit is doing, but we are also taking initiatives of our own. A pilot project called language line allows interpreting to be done over the telephone. We hope to have that throughout our offices. We are also seeking to extend the role that interpreters play, so that they

do not merely interpret what a witness says in court, but assist them in, for example, picking up their expenses. People who do not have a good command of English should not suddenly be left alone in court after giving evidence. Translation is connected to that—the leaflet "Being a Witness" is being translated into the six main ethnic minority languages and we hope to produce a translation of all Crown Office leaflets.

The other area that I mentioned is recruitment, on which we have some distance to go. We are making efforts to attract people from ethnic minorities into the service by visiting universities and so on. We want to get across the message that the Crown Office and the procurator fiscal service welcome candidates from ethnic minorities.

If the committee would like me to go into any of those issues in more detail, I will be happy to oblige.

Kate MacLean: We may want to invite some representatives of that group to appear before the Equal Opportunities Committee, so that they can provide us with more detail on the race issues, in which we take a particular interest.

Pauline McNeill (Glasgow Kelvin) (Lab): I would like to ask some questions about the procurator fiscal service. The first is on resources. I have lodged some written questions on the issue, which may be familiar to you after today.

Representations have been made to me, particularly in Glasgow, that the procurator fiscal service is under-resourced in several ways. The service is characterised by inexperienced fiscals, short-term contracts and insufficient resources for the number of trials. Yesterday, I obtained some information from Glasgow sheriff court about two courts that were amalgamated and a sheriff who heard 21 trials. I will come back to sheriffs later, but do you believe that there is a resource problem in the procurator fiscal service? I know that Angus MacKay has announced that there will be an increase in the number of staff. What is your view of the situation?

The Lord Advocate: The number of legal staff has increased by 40 since 1998, from about 280 to roughly 320. The resources that we have secured will facilitate another increase of 30. That means that the number of legal staff in the procurator fiscal service will have grown by one quarter between 1998 and the end of 2001-02—a very big increase.

In that context, the point that Pauline McNeill makes about inexperience is well made. The difficulty is that fiscals do not grow on trees; they have to be trained. We must recruit people and train them properly—we are doing that.

The announcement that I made about information technology, which relates to comments from committee members during the Crown Agents' evidence, will allow more flexible working practices, better use of law reports and so on. It will also allow us to concentrate on the employment of fiscals, because they will do some of the jobs that are done by support staff. We hope to free up resources by investing in information technology. That is an important part of ensuring that we have a properly funded and adequately resourced service.

Pauline McNeill: I am encouraged by what you say about a future increase in the number of fiscals. Do you detect a feeling in the service that it is under-resourced? I have it from many sources that that is the case. Is that a result of the increase in serious crime? I would like to know where the problem lies.

The Lord Advocate: I detect a feeling in the service that it is under-resourced. We have had a survey done that shows that morale in the service does not appear to be good. The reasons for that are also disclosed in the survey. Low morale appears to be the result of a high work load, which comes from two main sources. The first is the impact of the incorporation into Scots law of the European convention on human rights, and the second—which is perhaps more significant—is the upturn in serious crime that we have experienced recently.

Those are the work pressures. The other main reason for low morale is a perception that our pay scales are too flat. They are too long and they do not allow for sufficient upward progress. That is a matter for negotiation between management and the trade union, but I understand staff concern. The resources that we have secured will enable us to tackle that issue.

It is also fair to say that we are going through a period of profound change in the Crown Office and the fiscal service because of devolution, serious crime, the use of information technology and so on. It is bound to be an uncertain period for everyone. It is against that background that we have secured extra funding.

Most younger lawyers coming in to the service have a personal computer at home. Younger people in particular are used to dealing with matters on a computer—they write essays on them and so on. They come into the legal service and do not see what to many of them is a basic tool and they feel that that is something they should have. Again, that is one of the reasons why we are bringing in new working practices.

10:15

Pauline McNeill: That is helpful.

I have had many representations made to me—especially by Glasgow solicitors—on fiscal fines, on which there seems to be a change of policy. I have no evidence of that, other than what people have said to me, but the matter is being discussed out there. Your report says that fiscal fines are for minor offences. The perception is that that is changing and that fiscal fines are being issued for more serious offences, for example police assault. Can you provide any evidence that the policy has changed?

The Lord Advocate: The use of fiscal fines would appear to have decreased during the past year, but the policy remains the same—

Pauline McNeill: I am not talking about the use of fiscal fines, but the categories of crime for which they are used.

The Lord Advocate: We are at cross-purposes—I am talking about the same thing. There has been no change in the categories of crime for which fiscal fines are used.

The Convener: As we are talking about the fiscal service, I return to the issue of pay. I have seen a copy of the staff survey that was carried out. I have also seen a copy of the letter dated 21 September from the Crown Agents, which was sent out to the staff and covered a number of matters. The letter refers to a current review of pay structures and reward arrangements following a three-year review of the 1997 pay and grading changes.

I am not sure whether you or the Crown Agents would be ultimately responsible for dealing with that, but I have been told quite explicitly that the fiscals are unaware that any three-year review of the 1997 pay and grading changes had taken place. Will you comment on that? Is it the case that all we have at the moment is a pay claim and that little in the way of negotiation has taken place? That would impact on potential budget issues—you indicated at stage 1 in the budget process that you would need further funding to meet expected extra staff costs, one of which will undoubtedly be pay. In the light of that, will the extra funding be sufficient to deal with what is clearly an open-ended negotiation that is in its earliest stages?

The Lord Advocate: I do not know. The suggestion that the Crown Agents would be better placed to deal with that is a good one. What I can do, however, is write to the committee to clear that matter up.

I do not involve myself directly in the pay negotiations, but members will know that we are tapping into a civil service modernisation package. The money that we have is designed to allow us to negotiate with the unions on a revised pay structure.

The Convener: But you do not yet know what stage the negotiations are at. Are they at a very early stage?

The Lord Advocate: I do not know, but I can have that question cleared up.

The Convener: Perhaps I will take the matter up directly with the Crown Agents.

Christine Grahame (South of Scotland) (SNP): Much of what I was going to raise has been addressed by Pauline McNeill. There is a perception—which I think is based on reality—that many procurators fiscal feel harassed in the sheriff court because of their large case loads. We know the image of the astute defence lawyer getting a bit of plea bargaining done with a harassed PF. You mentioned the addition of 40 extra legal staff since 1998. I take legal staff to mean procurators fiscal.

The Lord Advocate: And their deputes.

Christine Grahame: How many extra staff did that mean for Glasgow?

The Lord Advocate: I cannot tell you off the top of my head. To be honest, I am not sure whether any extra staff were placed in Glasgow.

Christine Grahame: Forty additional staff looks like a reasonable amount until we consider large and busy courts such as those in Glasgow, Edinburgh and other cities. Setting aside the European convention on human rights and other matters in relation to serious crime, I suspect that there are still resourcing problems. By resourcing I mean having enough procurators fiscal on the ground to handle the case load. Is that still the case?

The Lord Advocate: That is why we have been given the settlement. We intend to use some of the money to recruit more staff.

Christine Grahame: Do you mean the £22.5 million of new money?

The Lord Advocate: Yes.

I am informed that in August 1999, the number of new staff was 62.6, which I think involves part-timers and people who share work. In August 2000, the number was 68.

Christine Grahame: Do you mean in Glasgow?

The Lord Advocate: Yes.

Christine Grahame: Of that £22.5 million, can you say how much has been directed towards recruitment to the procurator fiscal service?

The Lord Advocate: No.

Christine Grahame: I take it that the reference to

"information to the victims and bereaved next of kin"

on the second page of your statement involves the bereaved next of kin and relatives of road traffic victims. There might be a minor charge of driving without due care and attention, but there has still been a fatality—

The Lord Advocate: We are talking about any case in which there are criminal proceedings or the possibility of a fatal accident inquiry.

Christine Grahame: How detailed will the information that is given to the associates of the victim be?

The Lord Advocate: Everybody who comes into the system must have a description of the process—not only a description of the court process, but of the process of investigation and decision making and the communication of that decision to the relatives of the victim. They must know when a case that arises out of the fatality is before the court. If the relatives do not wish to attend court, they must know the outcome and any disposal of the case. If there is an appeal, we should try to communicate to the relatives what happens at the appeal.

Christine Grahame: Will you explain to the relatives what happens at a pleading diet? People sometimes do not understand when a trial is about to take off, and they cannot even hear what is being said.

The Lord Advocate: Yes, the entire process should be explained to them. When things happen, the relatives should be told what has happened and why it has happened—as far as that is possible. If they do not understand what has happened, it should be explained to them.

Christine Grahame: Would you also advise them of when an accused is out on bail, on parole or released? That is all basic information that people often do not know. Is any of that information being given?

The Lord Advocate: The reason for the service is so that such information can be communicated to the relatives. It happens from time to time, but I cannot guarantee that it happens on every occasion.

The Convener: We are now coming to the point when we should think about winding this agenda item up. Members still want to contribute, but the longer we go on, the more people suddenly have bright ideas and want to speak. I will confine questions to Michael Matheson and Maureen Macmillan, as they indicated their wish to contribute at the start of the item. I also have one or two questions about global budget issues, after which we will finish this item. Please try to keep questions and answers a wee bit more brief.

Michael Matheson (Central Scotland) (SNP): I wish to return to fiscal fines. I have received representations on their collection and I understand that a large proportion of them are not collected in full, primarily because it would be too costly to pursue them, given the low level of the outstanding fine. Is there an issue surrounding the collection of fiscal fines? Approximately what percentage are collected in full?

The Lord Advocate: To be fair, I do not think that I can comment on that. The collection of fines is the responsibility of the clerk of court, and the Crown Office and procurator fiscal service have no part to play in that. You would have to direct that question to the Minister for Justice—I am sorry that I do not know the answer to it.

Michael Matheson: I see from your annual report that you established this year a quality and practice review unit, for which I believe the Crown Agents will be responsible. I believe that the unit intends to set targets and performance indicators for the service. Will the report be available publicly every year, so that we can see whether the targets are being achieved? The table on page 34 of the annual report shows a number of targets for both solemn cases and summary cases, which you have clearly failed to meet by a significant amount. In one instance, the situation in relation to solemn cases has deteriorated since last year.

Will those indicators be available publicly, and why has there been such a failure in the Crown Office to achieve the targets that were set last year?

The Lord Advocate: The performance indicators were published in the Crown Office annual report. I am willing to consider generally how the reports from the quality and practice review unit might be disseminated. There might be occasions when, rather than publishing data, I might want to share them with the committee and take things from there. On why we have failed to reach the targets; to be fair, we have missed a couple of them by about 2 per cent and—

Michael Matheson: There are cases of targets being missed by 14 per cent and 9 per cent. There was an example in which you reached 69 per cent in 1998-99, and in 1999-2000 you achieved only 66 per cent although your target was 80 per cent.

The Lord Advocate: I accept that they were ambitious targets in the first place, particularly those on cases on indictment. The amount of work that must now be put into a precognition has increased because of the increase in the amount of serious crime and—one is tempted to say—the quality of crime, in the sense that serious crime is becoming harder to prosecute and harder to investigate.

Undoubtedly, resources have a part to play in our failure to meet the targets, but there are wider issues to do with how we manage resources—

resource management and working practices are being examined. I come back to the point about investing in the future using information technology. I do not see IT as a panacea, but it does offer us considerable scope for improving quality and service.

10:30

Maureen Macmillan (Highlands and Islands) (Lab): Christine Grahame has asked the questions that I wanted to ask so I will not take up the committee's time.

Mrs Lyndsay McIntosh (Central Scotland) (Con): I want to add my support to the Lord Advocate's comments about the victim and witness service. I do not care what it is called, as long as it continues.

I want to go back to careless driving, which a number of members have mentioned. I can see why there would be input from the victim and witness service. Do you envisage items such as the post mortem report, the toxicology report, police reports, the vehicle examiner's report and photographs of the vehicle and the place where the accident happened being included in the information that is given to families? I have seen cases of people who have gone to great lengths to try to prove that a dangerous driving charge ought to have been made, but who have failed miserably when they have tried to make that obvious to the court.

The Lord Advocate: As far as post mortem and toxicology reports are concerned, relatives of the deceased will be shown them if they want. We try to do that as sensitively as possible. Members will understand that post mortem reports—

Mrs McIntosh: They are not light reading.

The Lord Advocate: Indeed, they are not, and they require some explanation. We therefore try to sit the relative down with someone who can go through the report and explain it to them. Preferably, that would be the pathologist who carried out the post mortem. If relatives want to take the report away with them, they can. There is no bar to that and the same goes for toxicology reports. If people really want to see photographs of a road traffic accident involving their dead relative, they can. In many cases, however, that is not something that I would wish on anyone.

Mrs McIntosh: I am not suggesting that we go down a ghoulish route, but people might want to see the position of vehicles, so that they can understand what happened. Photographs make that much easier for some people.

The Lord Advocate: We do not make police reports available routinely. They are and will remain confidential in all cases. We will not change that policy.

Mrs McIntosh: I am grateful for your comments on the victim and witness service, whatever name it is known by. However, how will you get past the data protection issue? You spoke about onward referrals. I am curious about that. Victim Support Scotland has always emphasised that part of its difficulty is that cases are not referred on. People have to self-present—for want of a better word—if they want to get help from the service.

The Lord Advocate: The Data Protection Act 1998 is an issue here. I think that we can deal with that, but at the moment I am not in a position to tell you how. If you wait for the report, it might contain something, although I am not sure. One of the reasons why we have a pilot scheme is to enable us to address such issues.

The Convener: I would like to explore one or two issues relating to the money. The overall figure that you announced at the start of your opening statement was £22.5 million of new money over the next three years. Is that correct?

The Lord Advocate: Yes.

The Convener: Is that £22.5 million expressed in current prices or in real terms?

The Lord Advocate: It is expressed in current prices.

The Convener: When we started the budget exercise, we were working from "Investing in You", in which chapter 5 deals with justice. The figure for the Crown Office contained in table 5.23 is expressed in current prices, whereas the line in table 5.24 is expressed in real terms. We have been given the revised tables setting out the global figure for the Crown Office in current prices and in real terms. Do you have a copy of those?

The Lord Advocate: I am afraid that I do not.

The Convener: I am looking at page 30 of the publication, "Making a Difference for Scotland: Spending Plans for Scotland 2000-01 to 2003-04".

The Lord Advocate: I now have it.

The Convener: Could you look at the line that is in current prices and the line that it is in real terms? Can you explain where the £22.5 million comes from? You have said that the figure of £22.5 million is expressed in current prices. However, the 2000-01 expenditure figure is £51 million and the £2003-04 figure would be £61.1 million. When I learned arithmetic, that added up to £10.1 million, rather than £22.5 million. I can get the figure up to £22.5 million with the help of our old friend triple counting. Is that what is going on here?

The Lord Advocate: The figure is £22.5 million over three years and the baseline is £51 million.

The Convener: The figure for 2000-01?

The Lord Advocate: That is the baseline.

The Convener: That rises to £55 million in £2001-02.

The Lord Advocate: That is £4 million.

The Convener: In 2002-03, the figure is £59.6 million.

The Lord Advocate: That is £8.6 million.

The Convener: That is triple counting. The figure in 2003-04 is £61 million. You are counting the original £4 million increase from 2001-02 three times.

The Lord Advocate: The figure is £22.5 million over three years. I am right about that.

The Convener: By triple counting, though.

The Lord Advocate: No, it is £4 million in the first year—

The Convener: Look at the real-terms line. In 2000-01, the figure is £49.9 million, rising in real terms in 2001-02 to £52.5 million and in 2002-03 and 2003-04 to £55.5 million. In real terms, expenditure in 2000-01 is £49.9 million, whereas in 2003-04 it will be £55.5 million. That means that in real terms, the difference between this year's expenditure and the expenditure for 2003-04 is only £5.6 million.

The Lord Advocate: No, because the increase is calculated by comparison with previous spending plans. That is why I used the term new money. It is new money. It is what Jack McConnell thinks he has given me and what I think I have.

The Convener: Did I detect a hint that we should take up this matter with Jack McConnell?

The Lord Advocate: No. I spent time yesterday going through all this. It appears to me that one can count it in many ways. At current prices, the money that we are getting will be £55 million next year; £59.6 million the year after that; and £61.1 million the year after that. If we had not had the spending review and the settlement had not been there, we would have got £51 million this year; £51 million next year; and £51 million the year after that.

The Convener: I appreciate that, but £61.1 million in 2003-04, in current prices, compared with £51 million this year, is a difference of £10.1 million, not £22.5 million. You are achieving the £22.5 million by looking at the difference between this year and next year, which is £4 million, then going to the year after that, when the difference is £4.5 million, and adding on the previous year's £4 million. You are totalling the figures and then adding on the increase again. Is that the same form of accounting as was used by the Chancellor of the Exchequer last year? It is triple counting. You are counting the initial year's increase on three separate occasions.

The Lord Advocate: The spending plan, had we stayed still, was a flat baseline of £51 million. As I recall, convener, you publicly condemned the plans last time round, because of the flat baseline, which, as you pointed out, meant that spending would decrease in real terms. What I am saying to you is that the money that we are getting over three years is £22.5 million. The important point is that we plan on a three-year basis.

The Convener: Lord Advocate, we all welcome the fact that we are considering three years rather than one year. What I am saying is that this year, in current prices, the global figure is £51 million. In 2003-04, it will be £61.1 million in current prices. The difference is £10.1 million. In real terms, the difference is £5.6 million.

The Lord Advocate: The real-terms increase is given on the line below.

The Convener: It is £5.6 million.

You are accumulating each year's add-on rather than looking at the straightforward figures.

The Lord Advocate: I understand that that is the way in which those settlements are done, over a three-year period and ensuring that there is a proper spread of resources over the three years. The money which—as I say—Jack McConnell thinks that he has given me is £22.5 million over three years.

The Convener: We appreciate that triple counting has now become the standard method of presenting the figures. I wanted to confirm that that was what was happening.

I thank the Lord Advocate and Solicitor General.

We have dealt with item 2. As I indicated, I will now hand over to the deputy convener to convene the rest of the meeting. Thank you to everybody; I will see you in the future in a different capacity.

Phil Gallie: We should record our thanks to you, convener. All the kind words that you have expressed, we could express back to you. Perhaps Christine Grahame would disagree with me, as she has had quite a hard time from you when you have convened the meetings. You have been very kind to the Tories, and we appreciate that.

Protection of Wild Mammals (Scotland) Bill: Stage 1

10:45

The Deputy Convener (Gordon Jackson): The next item on our agenda is to take evidence on the Protection of Wild Mammals (Scotland) Bill. I remind everyone that our remit covers only the law enforcement aspects of the bill; we will not, in this committee, discuss its general and other principles.

Mike Rumbles and Alex Fergusson have come to join us and are, of course, free to take part and ask whatever questions they feel appropriate. Giving evidence are representatives of the Scottish Countryside Alliance, some of whom are rather well-kent faces. Allan Murray, whom I do not know, will introduce his team and give us a brief opening statement.

Allan Murray (Scottish Countryside Alliance): Thank you for the invitation to address the Justice and Home Affairs Committee. Peter Watson, a solicitor advocate from Levy and McRae, and Paul Cullen QC are our legal advisers; Simon Hart is one of my campaigns directors; and I am director of the Scottish Countryside Alliance.

I welcome the opportunity to give members of the committee a short statement on why we are here today to give evidence. I understand fully, and endorse, what the deputy convener said about the remit of the committee. I stress that we have not come to debate the rights and wrongs of banning hunting with dogs.

I would like to introduce some key points for discussion. We have prepared a short submission, which we have presented to the clerk. The submission deals specifically with matters that we feel are appropriate to the Justice and Home Affairs Committee. It also summarises the parts of the proposed legislation that are appropriate. To help everyone, the submission discloses all the independent advice that we have taken and received from Scottish and English counsels. We have included three opinions on the legal aspects.

We feel that it is important to emphasise that the bill removes established fundamental rights from a substantial section of the community. It seeks to criminalise activities that have been lawful for centuries. It is our position that the state must justify legislation that removes those rights. The bill should be closely scrutinised to ensure that its aims and methods are justified and proportionate. It seems that the bill also restricts fundamental freedoms in a sweeping and draconian way. In particular, far-reaching new powers are to be given to the police. Those powers extend well beyond what is reasonably required. Substantial criminal penalties will be imposed and property will be confiscated without compensation.

We believe that social inclusion means respecting the rights of all sections of Scottish society. The declared aim of the bill is to ban hunting. However, the definition of hunting that is given in the bill goes far beyond that aim. Indiscriminately, the bill will outlaw many everyday countryside activities.

We think that the bill will endanger policing by consent, for example, by introducing stop and search, and powers of confiscation, and by criminalising an important aspect of countryside management. It would be wrong to pass any law that might drive a long-established activity underground. If that happened, the regulation of hunting would be destroyed.

For those reasons, I submit that the bill is fundamentally flawed and that the committee should recommend that the bill proceed no further.

We will attempt to answer any questions that are put to us.

The Deputy Convener: Have you had a chance to consider the evidence that we took last week? Certain concessions were made last week, particularly by Mike Jones. It is important that we are all talking about the same thing. I take it by the nodding heads that you have seen that evidence.

Paul Cullen (Scottish Countryside Alliance): Yes, we have.

Kate MacLean: I want to clarify that it is not the remit of the committee to recommend that the bill should not go ahead. We have to consider a certain aspect of the bill, but it is for the Rural Affairs Committee to recommend whether it should proceed.

The Deputy Convener: We will discuss in private what will be in our report to the Rural Affairs Committee, but I agree that we should not go down the path of recommending whether the bill should go ahead. We will confine ourselves to the legal aspects of the bill. Theoretically, they could be so far off the wall that they might destroy the whole bill.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I think that members of the Rural Affairs Committee expect that if, after considering the legal implications of the bill, the Justice and Home Affairs Committee judges that the bill is not competent, it will make a recommendation.

The Deputy Convener: I will take account of that view when we discuss our report in private later.

Phil Gallie: I note that Mr Murray's group has read the evidence that we took last week. Is the Countryside Alliance concerned by statements such as that made last week by Mike Jones, who is a senior Queen's counsel? He said:

"We accept that the formulation in the bill as it stands is inappropriate".—[*Official Report*, *Justice and Home Affairs Committee*, 19 September 2000; c 1711.]

If the people who are presenting the bill think, from a legal perspective, that that is the case, what is the view of the Countryside Alliance?

Paul Cullen: As I understand it, Mr Jones was here last week to assist the committee from an independent and objective perspective and gave his legal opinion in good faith. I agree that the fact that he has given that opinion on behalf of the promoters of the bill goes a long way to undermining the justification for the bill.

As we say in our written submission, we believe that the bill is fundamentally flawed, that it goes far beyond the stated intention of its promoters and that it will lead to unfortunate consequences.

Phil Gallie: As a former Solicitor General, you are renowned for your strong knowledge of Scots law and parliamentary procedures—please ignore the ignorant laughter from one or two of our members. Last week, Mr Swann said that the bill had to be "polished up" and that that could be done by removing section 2, which represents about 25 per cent of the volume of the bill. Is that unprecedented for a bill at this stage?

Paul Cullen: When the bill was presented to Parliament, the licensing scheme was regarded as an integral and essential ingredient in the legislation. We were somewhat surprised to learn that that important component is now to be removed. What will replace it remains a little obscure to the Countryside Alliance. We believe that there will be considerable difficulties in defining in the bill the permitted and lawful activities.

Phil Gallie: Do you think that it would set a precedent to remove such a large chunk of any bill at this stage?

Pauline McNeill: Objection, convener. That is not a relevant question.

The Deputy Convener: I do not want to stop you, Phil, but I feel that you are going into a fairly political attack on the bill, rather than questioning its legal implications. Let us try to concentrate on what we should be doing.

Phil Gallie: I am sorry. I refrained from commenting on this earlier, but what we are looking at, as I understand it, is the way in which the bill fits in with our criminal law and legislative process. However, I shall let that go and pick up on another point that was raised last week with Gordon Nardell, the barrister who was the originator of the written content of the bill. He acknowledged that if the land reform bill that is scheduled to go through the Parliament were to proceed, it would have considerable implications for the bill that we are considering today. Does the Scottish Countryside Alliance feel that it would be appropriate to pass a bill that would immediately have to be reformed if land reform were going ahead?

Allan Murray: If land reform legislation were to go through Parliament now, a bill such as this would have to be reconsidered, as it would not work.

Phil Gallie: Representatives from Tayside police were here last week, speaking for the Scottish police as a whole. They said that they had concerns about the implications of the bill for the co-operation that they receive from people in the countryside with respect to law enforcement. What is your view on that?

Allan Murray: Our view is the same as that of Tayside police. The respect of countryside people helps police forces to manage their areas, especially with wildlife. Police officers do a wonderful job to ensure that there is a balance between any country pursuit and maintaining wildlife.

Phil Gallie: Do you feel that the enforcement requirements for the police would create an impossible working atmosphere in the countryside if the bill were passed?

Allan Murray: I do, because the best police work in the country is done with consent and community spirit. That is well recognised in Scotland, and the police know that. For instance, many police forces have officers on duty when a day's hunting takes place. They do that not only because it is part of their job, but because the police are part of the countryside, too. The way things work at the moment is favourable, so if it ain't broke, why fix it?

Maureen Macmillan: I want to ask about enforcement and co-operation from the public in providing information. The police told us that they would be interested only in blatant examples of hunting, such as riding to hounds, hare coursing or fox baiting by terriers. They felt that people in the countryside would generally support them in such cases, and that a man with a gun and a couple of dogs would not be an object of their interest. Do you agree with that assessment?

I also want to ask about terrier work. There seem to be two kinds of terrier work, which has not been properly emphasised in the bill. Fox baiting goes on with terriers, but there is obviously fox control as well. Do you think that the differences

between those two kinds of terrier work could be teased out so that one could be legal and the other illegal?

Allan Murray: For a gamekeeper, a terrier is a necessary part of his work, especially in the wonderful landscape of the Highlands of Scotland, where terriers are used to control vermin. I am not aware of the term "fox baiting". That is not a legal practice, as everyone is well aware. Fox work and terrier work, especially underground, to control vermin is a necessary part of a gamekeeper's work. The bill would legislate against that. In large parts of the landscape, therefore, particularly in the Highlands, grouse moors would not be viable and therefore unable to sustain an economy that is very necessary to Scotland. Many tourists come specifically for the grouse. Gamekeepers use terriers as part of a management control system.

Maureen Macmillan: The police pointed that out, but they mentioned other types of terrier work, which they described as fairly vicious.

11:00

Allan Murray: Acts are already in place to control illegal terrier baiting. I am sure that the police would enforce those acts should a member of the public inform them that terrier baiting was taking place.

Maureen Macmillan: You have not said whether you agree with the proposition that the bill would deal only with blatant examples of hunting for sport. I get the impression that you are trying to suggest that everyone who went after a fox would be criminalised, and I do not think that that is the case.

Paul Cullen: We acknowledge that the police will need to identify priorities. I believe that that point was emphasised by the Association of Chief Police Officers in Scotland representatives who gave evidence last week.

We suggest that, when introducing legislation that makes criminal activities that have been lawful for a long time, the Parliament should be scrupulous in ensuring that the scope and extent of the criminal conduct is as tightly identified as possible. After all, it is not for the police to define the reach of the criminal law—that is a matter for the Parliament.

One of our concerns, which we have tried to identify in our submission, is that the bill reaches too far. The powers that the bill gives the police are wide reaching and unnecessary. We do not believe that the police wish to have those powers.

Christine Grahame: I will confine myself to a question on the European convention on human rights. The bill's proposers told us that there were no problems under the European convention on human rights. Could you address that issue and give us your views on compensation?

Paul Cullen: We disagree with that opinion. We have submitted to the committee the opinion of English and Scottish counsel to contrary effect. In a nutshell, we think that the legislation infringes article 8 of the European convention on human rights, which is the right to respect for home and private life. Furthermore, the legislation infringes article 1 of protocol 1, the right to peaceful enjoyment of property.

It is for the state to justify those infringements of human rights. We submit that there must be a compelling basis for invading established human rights. As we have tried to emphasise in our submission, human rights are concerned with protecting the rights of groups whose views may not find favour with the whole population.

Our legal reasoning is set out in some detail in the submission. If you have any specific questions on the European convention on human rights, I am happy to try and tackle them.

Christine Grahame: Thank you. Assuming that the issue could be dealt with under the bill without breaching ECHR, do you think that a compensatory element should be included ? That is something that we have done in other legislation.

Paul Cullen: The absence of any machinery for compensation makes it even more difficult to justify the bill. However, we are not saying that a compensation procedure would save the bill in ECHR terms. The bill stands in stark contrast to the legislation that outlawed handguns, which, as committee members know, included compensation machinery. That was a generous compensation package, which included compensation for loss of profits.

The bill concerns not only a recreational activity—although that aspect is important—but an activity that has important economic consequences. We believe that the absence of any compensation machinery would be fatal to the bill's compatibility with the European convention on human rights.

The Deputy Convener: I apologise to Euan Robson for missing him out. I finally got spectacles at the weekend, but they do not seem to be doing me much good.

Euan Robson (Roxburgh and Berwickshire) (LD): Ironically, Christine Grahame asked exactly the question that I was going to ask, but never mind.

I will raise the point that Gordon Jackson made at last week's meeting, of which you probably read the report. He talked about section 5(6), which says:

"In proceedings for an offence under section 1(2), the burden of proving . . . is on the person charged."

You will know that that may be appropriate for some serious crimes, such as those involving drugs, but what is your view on such a provision for the offences that the Parliament will create if the bill is passed?

Paul Cullen: Our written submission contains a short section on civil liberties, but Euan Robson raises an important point to which I will respond. In our view, it is inappropriate to transfer the burden of proof to an accused person in legislation such as this bill. Manifestly, the bill does not deal with major threats to public safety, such as terrorism or organised crime. We see no justification for departing from the basic principle of Scots law that it is for the prosecution to establish and bring home guilt on every aspect of a charge.

The Deputy Convener: For the avoidance of doubt, I must say that we have not seen your written submission. We have it now, but no committee member has had a chance to read it. We will read it afterwards, but do not assume that we have read it, because we have not.

Euan Robson: Are you saying that it may be appropriate for the burden of proof to rest on a person charged with a serious crime such as terrorism or drug trafficking, but that it is inappropriate for it to rest on a minority of the population who have been conducting an activity that has been lawful for many years?

Paul Cullen: That is right. Furthermore, transferring the burden of establishing innocence to the accused person makes it more difficult for the bill to comply with the ECHR.

Euan Robson: At the risk of asking questions that others might want to ask, I will ask about section 4, which concerns

"A constable who suspects . . . that a person . . . is about to commit an offence".

Are there parallels for that provision in other wildlife legislation, or is that a novel introduction?

Paul Cullen: We suggest that that is novel not only for animal welfare legislation but for most legislation. Giving police officers the power to stop and search citizens in the countryside before any offence has been committed, through vague language about an offence that is about to be committed, is draconian. In our written submission, we describe such powers as

"an extraordinary and unacceptable feature of this Bill."

We do not believe that that is an exaggeration.

We suggest that the bill is quite different from most other animal welfare legislation. As we understand it, all animal welfare legislation this century criminalises conduct only if three conditions are met: first, that the causing of unnecessary distress or suffering is proved; secondly, that there is either criminal intention or criminal recklessness; and, thirdly, that the legislation clearly defines the scope of the criminal activity. This bill fails each of those three tests and so is markedly out of step with existing animal welfare legislation.

Michael Matheson: I think that it was Allan Murray who answered questions about the enforceability of any legislation that may be passed. Do you believe that the difficulty in enforcing legislation to ban fox hunting arises because people in the countryside do not want such legislation? Is that the crux of your argument on enforceability?

Allan Murray: No.

Phil Gallie: With respect, convener, this is not addressing the issues that we should be addressing. We are addressing criminality, not principles.

Michael Matheson: That is the pot calling the kettle black.

The Deputy Convener: Stop. I have heard your point, Phil. Carry on, Michael.

Michael Matheson: My question concerns the issue of justice.

Allan Murray: I am sure that many people in the countryside do not want the bill as it has been written. If a bill such as this is passed, people will not break the law unnecessarily. The police have to have the powers to enforce these laws, like any other laws, whether they apply to countryside or town issues. We respect laws. We have done so all my life, and we will continue to do so. If the bill is enacted, it will be enforced, but resources will have to be found to do that. We have good relations with the police in the countryside and we respect them for what they do. They have a tough job covering the areas that they have to cover with the resources that they have.

Michael Matheson: I understood from your earlier comments that you thought that the legislation would not be enforceable, on the basis that people in the countryside would not support it and that the police are dependent on the public's good will to inform them of incidents. Legislation on badger baiting and deer hunting with dogs has been on the statute books since 1951; it is enforceable and it has not placed considerable resource demands on the police. Unless the illegal activity is widely undertaken, the bill should be enforceable, just as the earlier legislation is. Is not that the case?

Paul Cullen: It is the case.

Simon Hart (Scottish Countryside Alliance): The legislation to which you referred is enforced through co-operation with the police. The deer hunting act that you mention was introduced for reasons other than morality and ethics and relies on landowners co-operating with the police for its implementation.

If the bill is passed, the good will that exists between landowners and the police—certainly with wildlife officers—would go into reverse. The police would be seen as a potential enemy, because legitimate, and sometimes perfectly normal, countryside pursuits might be interpreted as activities that could lead to prosecution or at least to suspicion. For example, landowners may permit a person to come on to the land for the purpose of walking their dog. At the moment, that is encouraged and welcomed by landowners, but a time could come when they did not want it to happen because it could lead to suspicion falling on that person or on the landowner.

Michael Matheson: Are you saying that, if the bill is passed, landowners might turn a blind eye to illegal activity on their property?

Simon Hart: Certainly not. The point that I am trying to make is that the bill would jeopardise the co-operation that exists between landowners and the police, and between landowners and the public, because it would impose a difficult job on the police in their dealings with landowners in implementing that law. Equally important, the good will that exists between the public and landowners could be jeopardised to such an extent that issues such as public access would become difficult. Legitimate forms of pest control on which farmers rely—I am talking not about recreational dog use but about economic dog use—may also become the subject of suspicion, if not prosecution. That is where the breakdown of the relationship would occur.

11:15

Maureen Macmillan: Euan Robson talked about people being arrested before a crime had been committed and having their gear confiscated. How similar are the proposed powers to measures in the laws on salmon and deer poaching? I believe that, in those cases, people can be arrested before anything has happened and have their gear confiscated.

Paul Cullen: That area was covered in evidence last week. As we understand it, the promoters of the bill may be prepared to concede that they have gone too far in including powers for the police in respect of offences that are about to be committed. It is not our understanding that other legislation mirrors such powers. As was explained last week, where the police have evidence of an attempted crime, they may be justified in intervening. That might be one way of approaching this issue.

Rather than these somewhat technical aspects, what really concerns us is the sweep of powers that are being given to the police—powers that we understand they do not want. We are especially concerned about stop and search. As members of the committee will be only too aware, those powers have given rise to difficulty and concern in many communities.

Maureen Macmillan: Are the powers similar to the ones that the police can use against suspected poachers?

Paul Cullen: They are more draconian.

The Deputy Convener: In what way?

Paul Cullen: We do not think that the police have explicit stop-and-search powers at the moment. The powers of seizure that the bill would give to the police seem to be extensive. When we come to examine other aspects of the penalties that would be created—particularly in relation to dogs—we will see that the bill seeks to establish something that goes well beyond what is necessary, even if the bill as a whole is justified.

Let me try to develop that idea a little. Why, for example, is there a reference in section 6(1) to "any dog"—a definition that is not even limited to a dog that has been used for hunting? I hope that I am answering the question, but we have to consider the totality of the machinery that the bill is creating.

Maureen Macmillan: I do not think that you are answering my question. A dog is a tool of the trade. If a stick of gelignite or a rod were found in the back of someone's car, the car would be confiscated. I take it that the Scottish Countryside Alliance is in favour of the laws against poaching.

Allan Murray: Yes, we are in favour of the laws against poaching, definitely.

Paul Cullen: I may not have made my case quite clear in relation to dogs. Section 6(1) permits confiscation and disqualification of "any dog". It does not have to be a dog that is used for hunting. That dog can be retained by the police or by whomever—we do not yet know the arrangements that are to be made for this, as they have yet to be explained. The owner of the dog is required to pay for its upkeep while it is in custody. What is the justification for those powers? As far as we can see, that has not been explained at all. Given that we are dealing with the general principles of the bill, rather than the nitty-gritty—which we will come to at stage 2—we believe that there is a substantial onus on the promoters of the bill to justify those sweeping powers. As we understand it, they have made no serious attempt to do that.

In fact, last week, they started to dismantle their own proposals, as has been pointed out.

The Deputy Convener: I want to follow up Maureen Macmillan's question about other animal legislation. You said that the proposals are more draconian than in previous legislation. The Deer (Scotland) Act 1996 says, among other things, that

"any person who—

(a) attempts to commit, or

(b) does any act preparatory to the commission of,

an offence . . . shall be guilty of an offence".

That act makes it an offence to do something even days before, which seems to be more draconian than the power to deal with people who are about to commit an offence—even though the committee is not entirely happy with that provision either. Why do you think that one provision is more draconian than the other?

Paul Cullen: With respect, I disagree with what you are suggesting. The phrase

"about to commit an offence"

used in section 4 of the bill is vague and unsatisfactory. It is less precise than the wording in the Deer (Scotland) Act 1996, especially regarding preparations for committing an offence. At what point when someone goes into the countryside with a dog can it be said that he is about to commit an offence? Is it when he leaves home, when he gets out of his car or when he takes his dog on or off a lead? When does the requirement

"about to commit an offence"

become established and concrete? Those matters will be left to the judgment of police officers in the countryside. Although the police will no doubt exercise their powers with discretion and care, we feel that the provision is unnecessary.

The Deputy Convener: Although you do not want any of these provisions, do you think that it would be better to have wording similar to that in the Deer (Scotland) Act 1996?

Paul Cullen: Again, with respect, it is not for us to redraft the bill; we are here to consider its underlying principles. From the bill as a whole, it is clear that the powers that are being given to the police and the penalties that will be introduced are too great. However, we are happy at an appropriate stage to consider technical questions of drafting.

Mr Rumbles: I am at this meeting as a member of the Rural Affairs Committee, as the bill raises important issues about law enforcement. I am interested in the issues of policing by consent and the civil liberties matters that we have been discussing. I have three points to make. First, to find a problem with the bill, one has only to read the very first line:

"A person must not hunt a wild mammal with a dog".

Last week, Assistant Chief Constable Ian Gordon said that terrier control was the best way of catching rats that go underground. However, if the terrier goes underground for a rat, that might be in contravention of this legislation; the bill provides a wide-ranging, catch-all law.

Secondly, on civil liberties, Gordon Jackson mentioned the draconian nature of section 5(6), which stipulates that the burden of proof will apply to the person charged. At last week's Justice and Home Affairs Committee meeting, Gordon Jackson compared this provision to cases under Scots law where there are occasions for draconian legislation—for example, when we deal with drugs barons and so on. He said that

"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".

However, Ian Gordon said last week that what we are talking about

"would not fit the criteria of a serious crime . . . the offences are relatively minor"—[*Official Report*, *Justice and Home Affairs Committee*, 19 September 2000; c 1707, 1725.]

Pauline McNeill: On a point of order, convener.

The Deputy Convener: Just a minute.

Mr Rumbles: My third point concerns section 4(1), which mentions

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

At last week's meeting, the people who were defending the inclusion of the section in the bill told the committee that such wording was not needed. What is your reaction to those three points?

Paul Cullen: On your first point, we agree that the offence is poorly defined. It is a catch-all provision and we are not satisfied that it is possible to define hunting in a way that achieves the aim of the promoters of the bill.

On your second point, we are concerned about the transfer of the onus of proof to the accused person. We think that that raises major ECHR concerns.

On your third point, as I have tried to explain, we have serious reservations about the fact that section 4(1) refers to someone who is

"about to commit an offence".

We think that that is vague, imprecise and liable to lead to practical difficulties.

The Deputy Convener: Does anyone have any further questions?

Paul Cullen: Allan Murray or Simon Hart may be able to give an illustration of the difficulty that we think that that definition of hunting will create in practice.

Simon Hart: In a sense, the mounted aspect of hunting is probably the least of the problems. We have divided the issue into the recreational use of dogs and the practical use of dogs.

Practical users of dogs who would be caught up in the bill are upland shepherds and upland gamekeepers who need terrier work to secure their crop of birds. Also affected would be the use of lurchers for pest control and the use of flushing dogs for finding predators so that they can be shot. Falconers would also be caught up in the equation. A shepherd who is going about his normal shepherding duties might find that he is inadvertently hunting a fox that may be part of the landscape in which he is working.

Recreational dog use includes the walking of a dog that is instinctively a hunting dog. A person doing so could find themselves caught up in issues arising from the bill, as could the recreational falconer. Dog trainers and those who take part in dog trials are also at risk from the bill.

The risks are not restricted to rural dog users. Anybody—even if they live in an urban area—who owns a dog with an instinct to hunt and who exercises or works it in a rural area could be caught up in the legislation.

The Deputy Convener: I thank you all for coming. It is always valuable to talk to witnesses.

Allan Murray: We thank the committee for the questions that it has asked us. I hope that our answers will be helpful.

Alex Fergusson (South of Scotland) (Con): Convener, am I right in thinking that item 7 on your agenda will be taken in private?

The Deputy Convener: Yes. It has been agreed that we will discuss what our recommendation will be off the record.

Alex Fergusson: In that case, thank you for asking us to attend the meeting.

Human Rights Act 1998 Jurisdiction (Scotland) Rules 2000 (SSI 2000/301)

The Deputy Convener: The next item on our agenda relates to a Scottish statutory instrument, which seems to be fairly straightforward. It deals with how, under the Human Rights Act 1998, cases have to be dealt with in the appropriate court. The Subordinate Legislation Committee raised an issue about the instrument but is now satisfied with it. At this stage, I think that we need only take note of the instrument. Is it agreed that we do that?

Members *indicated agreement.*

Domestic Violence

The Deputy Convener: Item 5 relates to domestic violence. Maureen Macmillan will tell us whether she has finally had the meetings that she has been intending to have since we were much younger, and what happened at them.

Maureen Macmillan: This is a bit like "Brookside" or "The Forsyte Saga"—do not put that on the record.

Mrs McIntosh: It is too late, Maureen.

Maureen Macmillan: On 13 September we met the Minister for Justice and the Deputy Minister for Communities. Scottish Executive officials and Lesley Irvine of Scottish Women's Aid were also present. At the meeting the common overall aims that we share with ministers and their willingness to work with the committee were stressed. The Executive said that it would be content for the committee to proceed with its bill, and that the Executive's bill would follow later, as long as there was no clash of policy.

11:30

At this first meeting the ministers suggested that the key point of the committee proposal would be definition of who could apply for the proposed interdict, and that we would need to find satisfactory definitions of people according to the nature of relationships, duration of cohabitation, extent of family connection and so on. They said that lists available from similar statutes, such as non-molestation orders in England, could be adapted and that the Executive would help to draft such definitions. We pointed out that the committee had decided to sponsor a separate bill because of the difficulties of defining cohabitees.

The Executive said that it would prepare a paper to be discussed at our second meeting. At that meeting, which took place on 20 September, the ministers were represented by Executive officials. Lesley Irvine from Women's Aid was again present. The officials had prepared a paper comparing our proposals with the Executive's proposals to amend the Matrimonial Homes (Family Protection) (Scotland) Act 1981. It soon became evident that we had been talking partly at cross-purposes with the Minister for Justice. It had not been appreciated fully that the committee was proposing not simply to amend the 1981 act, but instead had opted for a bill of more general application, aimed at protecting people from abuse, whatever their relationship.

We pointed out that the committee's bill would complement the 1981 act and would offer protection to those excluded from that act, but would not include the power to deprive a person of occupancy rights to his or her home, which at the previous meeting seemed to be a sticking-point. It would have a wider application than to traditional domestic violence situations; it could, for example, apply in the extended family. When we said that there was a pregnant silence, after which the Executive representatives replied that they were not convinced that the case had been made for a more general protection from abuse interdict and that neither they nor the Scottish Law Commission had consulted on such a proposal. They were, therefore, more likely to regard the committee's bill as distinct from their proposals.

As the representatives talked, it became obvious that they were not hostile to the bill and could see merit in it; however, they would need to consult the minister. They said that because our bill was not seeking to amend the Matrimonial Homes (Family Protection) (Scotland) Act 1981, they would be unlikely to want to take it over after it was introduced in Parliament, but they would want to work with us to ensure that the bill was of the proper quality.

We have received no offer of formal drafting support from the Executive, because of the shortage of resources and because our bill is totally separate from its proposals. There is an offer of contact at official level to assist with policy development, and it was noted that the Parliament was in the process of setting up a provision for drafting non-Executive bills. We would be able to access that.

The question of legal aid, which the Executive sees as important, was raised. The Executive acknowledges that at present solicitors may be reluctant to provide emergency legal aid cover, in case the applicant does not proceed beyond interim interdict and does not in due course make a full legal aid application. The arrangements for emergency legal aid may involve a contribution by the applicant that is requested by the solicitor beforehand to protect the firm from being out of pocket.

The Executive is aware of the need to address the accessibility and cost issues, but that does not require primary legislation. The Executive says that it may be possible to improve matters by changing legal aid rules or by measures that reduce the need for solicitor involvement. The Executive would like to work with the committee in those areas. Discussion would also be required with the Scottish Legal Aid Board, the Law Society of Scotland, the judiciary, civil procedure interests and relevant voluntary bodies. If changes along those lines could be developed, they could help a number of victims to obtain remedies even under the existing law, which they are currently blocked from doing on the grounds of means.

The Executive has suggested that discussions on the issue could continue in parallel with the progression of the bill. The committee could also explore the options as part of its inquiry into legal aid and access to justice. In considering the proposal for a protection from abuse bill, the committee should be mindful that it would create a new remedy and therefore new candidates for legal aid. It should be noted, however, that the SLAB indicated in its meeting with me that it did not think that there would be a significant increase in legal aid expenditure as a result of the bill. That question will have to be re-examined.

The Deputy Convener: Thank you. The first question is, in the light of Maureen Macmillan's discussions, do we intend to proceed with a separate protection from abuse bill with a power of arrest?

Phil Gallie: That has been the view of the committee for some time. To her credit, Maureen Macmillan has taken the matter forward with ministers. Ministers have demonstrated that such a bill is not in line with their thinking. Given the view of the committee, proceeding with a bill would seem the reasonable thing to do.

The Deputy Convener: That is certainly a clear indication. The next thing is to develop the idea. There will have to be a report to the Parliament, and there are various stages that must be gone through. If the committee does not mind, I will ask Andrew Mylne to tell us once again precisely what the next procedural step is, as I am not entirely clear what that is.

Andrew Mylne (Clerk to the Committee): The next step is for the committee to report to the Parliament. If the Parliament agrees to the proposal for a bill contained in the report, and assuming that the Executive does not indicate at that stage that it wants to take the matter up in legislation of its own, the convener has the power to instruct the drafting of the bill. The Parliament's new non-Executive bills unit would be able to assist with the process of developing a bill ready for introduction.

The Deputy Convener: Would our report contain a draft bill? Presumably not. Would the report be long or short? Would it deal only with general principles? Can you give us a better idea of what would be in the report?

Andrew Mylne: The report would have to contain a proposal for a bill—it would need to explain what the bill would do and how it would work—but it is not necessary to include a draft bill.

Mrs McIntosh: We could easily do that.

The Deputy Convener: It has been pointed out that it is nearly a year since we took any evidence on this matter. The last thing that I want to do is to waste time, but a lot of thinking, moving, changing and development has taken place in that time. Our report will need to be clear about how the legislation will work and how it will fit in with existing legislation. Before we have the report drawn up and finalised, it may be appropriate to gather the views, either in written or oral evidence, of the people who are involved. However, the committee may feel that members—or perhaps the clerks—are well enough informed to proceed straight to doing a report.

Kate MacLean: I would have thought that we could proceed straight to a report. If a bill results, we will take evidence on the bill at the appropriate time. I would not have thought that we needed to take more evidence before we present a report to Parliament.

Christine Grahame: We should proceed to the drafting. I am drafting my bill and consulting other organisations as I go, because the drafting is when you hit problems and questions are raised about definitions. That is a good time to go back to groups, to sheriff principals and others, to let them see the bill before it goes to stage 1 and to ask whether the bill is in a workable form.

By the way, will this bill mean that mine gets knocked further down the list?

The Deputy Convener: Do I get the impression that the committee wishes to have a stab at the drafting of the report without taking further evidence? Next week, a brand-new convener will parachute in knowing nothing about this, but that should not cause a huge problem for the drafting of the report.

Pauline McNeill: I think that we are focused on what we want a bill to do and can draft a report along the lines that were suggested by Maureen Macmillan. We will eventually have to think seriously about the type of evidence we will hear, particularly as we will be legislating for relationship-based situations, which may be difficult to define. The matter has been lying around for a year and there is a lot of support for taking action on it, so it might help the process if we submit our report sooner rather than later.

The Deputy Convener: It is my impression that we have decided to proceed with a committee bill and to draft a report, but not to take further evidence at this stage. We will not rule out taking evidence if we feel that we need it when we try to draft the report. Is that agreed?

Members *indicated agreement.*

Phil Gallie: Maureen Macmillan outlined some of the difficulties of drafting a bill. She highlighted the fact that at present there are no parliamentary facilities for the drafting of bills. Is the committee permitted to seek external support for the drafting

of a bill, if it considers that urgency is required? Many voluntary organisations have experts in these areas.

Andrew Mylne: The committee office now has a non-Executive bills unit, which has been set up precisely to assist the preparation and drafting of members' bills and committee bills. The unit is empowered to instruct outside drafting at an appropriate point in the process. It is for the unit to decide how it allocates its resources, but we would be able to tap into those.

Christine Grahame: The report should also refer to legal aid.

Petition

The Deputy Convener: Item 6 is petition PE102, which was circulated some time ago. Members will recall that it suggests that sequestration law needs to be changed. In particular, it raises the question of the right of appeal against a sequestration order. In May, we decided to carry out an investigation to find out whether the Executive's review of the law of diligence would cover this matter. We also sought information from various sources, such as the Law Society of Scotland, Money Advice Scotland, the Accountant in Bankruptcy and Citizens Advice Scotland. Some of those whose advice we sought answered and some did not. The general view was that the law was satisfactory. Although there is no appeal against a sequestration order, one can petition to recall it, which might be viewed as amounting to the same thing.

It was also suggested to us by at least one organisation that better guidance might be given to people in this situation. We have several options. The first option is that we do nothing, because we think that no argument has been set out for changing the law. We could, however, refer the matter back to the Executive and ask it to consider whether there is a case for changing the law and how it could improve the information that is available to people in that situation so that they know what their rights are. At the same time, we could ask the Executive to comment on whether it is satisfied that the law is European-friendly.

The suggested options are to do nothing or to ask the Executive at least to consider the matter. Either way, we should tell the petitioner precisely what we are doing. I know that Christine Grahame has views on this.

11:45

Christine Grahame: I am pretty ignorant about such things, but is a petition for recall of sequestration heard only in the Court of Session? I think that, because it is a petition proceeding, it may be handled by the Court of Session. Perhaps we should ask whether petitions for recall could be heard in the sheriff courts, as there are huge differences in different parts of the country. The procedures could be addressed.

I agree with the information, but I would like clarification about the legal aid procedures. When people apply for legal aid, they might also get advice and assistance. However, I am not sure how the processes of what used to be called emergency legal aid click into place for people who are appearing in court. I would like clarification on those issues, because I know that

people tend to come forward very late with such problems, saying, "I've had this thing served on me." In many cases the notice period runs out that day or the next day, because they have put everything off.

The Deputy Convener: We can certainly ask for clarification on those points. I understand that only the Court of Session can recall an order of sequestration, although I would be the last person to pretend that I was an expert in that area.

Christine Grahame: I thought that that was the case. However, having been out of the business for a year, I begin to wonder how much I know. I think that there is scope to consider a change of jurisdiction. A plumber who is sequestrated in Forfar has to petition his recall in the Court of Session, and perhaps that should be changed.

The Deputy Convener: If we write to the Executive, we could ask whether it thinks that there should be any changes to the law. That is something that it could consider.

Pauline McNeill: I think that something in this petition needs to be examined. I know that the Law Society of Scotland has given us a response to it, but I think that that response is totally inadequate, as it does not go into what recall means and how it would have helped the petitioner.

We should not simply end the matter here. The petitioner went to the court in good faith and attempted to pay the debt that he thought he was liable to pay, only to find that he had to pay the whole debt. If that was not obvious to him as a businessman, it cannot be obvious to the ordinary person. We must get to the bottom of that. Even if we do not change the law, the system must be easier and more transparent so people know exactly why they are going to court and what their rights are.

The Deputy Convener: I get the clear impression that members do not want simply to draw a line under the matter. We shall refer the petition back to the Executive and ask it to deal with the issues that I have mentioned and other issues that have been raised. When we receive the Executive's response, we can take matters on from there. Is that agreed?

Members *indicated agreement.*

The Deputy Convener: The last item relates to the Protection of Wild Mammals (Scotland) Bill, and will be handled in private.

11:48

Meeting continued in private until 12:02.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178